

GST UPDATE

(February, 2020)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Extension in last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C

Notification No. 06/2020- Central Tax seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for the period from 01.07.2017 to 31.03.2018.

[Notification No. 06/2020-Central Tax ,dt. 03-02-2020]

2. Prescribing due dates for filing of return in FORM GSTR-3B

Notification No. 07/2020-Central Tax seeks to prescribe due dates for filing of return in FORM GSTR-3B in a staggered manner.

[Notification No. 07/2020-Central Tax ,dt. 03-02-2020]

3. Notifying rate of GST on supply of lottery

Notification No. 01/2020-Central Tax (Rate) seeks to amend notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.

[Notification No. 01/2020-Central Tax (Rate) ,dt. 21-02-2020]

(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.06/2020 – Central Tax

New Delhi, the 3rd February, 2020

G.S.R.....(E).—In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with rule 80 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, in respect of the period from the 1st July, 2017 to the 31st March, 2018, for the class of registered person specified in column (2) of the Table below, till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

Sl. No.	Registered person, whose principal place of business is in	Due date for furnishing return under section 44 of the said Act read with rule 80 of the said rules for the FY 2017-18
(1)	(2)	(3)
1.	Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand.	5 th February, 2020.
2.	Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim, Telangana, Tripura, West Bengal, Other Territory.	7 th February, 2020.

[F.No.20/06/07/2019-GST]

(Pramod Kumar)
Director, Government of India

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

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

Notification No. 07/2020 – Central Tax

New Delhi, the 3rd February, 2020

G.S.R.....(E).—In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, 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.44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R.767(E), dated the 09th October, 2019, namely:—

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

“Provided also that the return in **FORM GSTR-3B** of the said rules for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep shall be furnished electronically through the common portal, on or before the 22nd February, 2020, 22nd March, 2020, and 22nd April, 2020, respectively:

Provided also that the return in **FORM GSTR-3B** of the said rules for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam,

West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi shall be furnished electronically through the common portal, on or before the 24th February, 2020, 24th March, 2020 and 24th April, 2020, respectively.”

[F. No. 20/06/09/2019-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal notification number 44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R.767(E), dated the 09th October, 2019 and was last amended by notification number 77/2019 – Central Tax, dated the 26th December, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 956(E), dated the 26th December, 2019.

(III) CENTRAL TAX (RATE) 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)

Notification No. 1/2020-Central Tax (Rate)

New Delhi, the 21st February, 2020

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification, -

- (a) in Schedule II - 6%, S. No. 242 and the entries relating thereto shall be omitted;
- (b) in Schedule IV - 14%, for S. No. 228 and the entries relating thereto, the following S. No. and the entries shall be substituted, namely: -

“228.	Any chapter	Lottery”.
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2. This notification shall come into force on the 1st day of March, 2020.

[F.No.354/18/2019-TRU]

(Pramod Kumar)
Director to the Government of India

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017 and last amended by Notification No. 27/2019-Central Tax(Rate) dated 30th December, 2019 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 961(E), dated the 30th December, 2019.

(IV) IGST TAX (RATE) NOTIFICATIONS

[TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRAORDINARY]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No. 1/2020-Integrated Tax (Rate)

New Delhi, the 21st February, 2020

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666 (E), dated the 28th June, 2017, namely:-

In the said notification, -

- (a) in Schedule II - 12%, S. No. 242 and the entries relating thereto shall be omitted;
- (b) in Schedule IV - 28%, for S. No. 228 and the entries relating thereto, the following S. No. and the entries shall be substituted, namely: -

“228.	Any chapter	Lottery”.
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2. This notification shall come into force on the 1st day of March, 2020.

[F.No.354/18/2019-TRU]

(Pramod Kumar)
Director to the Government of India

Note: - The principal notification No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the 28th June, 2017 and last amended by notification No. 26/2019-Integrated Tax (Rate), dated the 30th December 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 962(E), dated the 30th December 2019.

(VI) ADVANCE RULINGS

1. No ITC on goods or services used in construction of shopping Mall for leasing: AAAR

Case Name : **In re Tarun Realtors Pvt. Ltd. (GST AAAR Karnataka)**

Appeal Number : Order No. KAR/AAAR-14/2019-20

Date of Judgement/Order : 06/02/2020

Restriction contained in Section 17(5)(d) is applicable to goods and services received by a taxable person for construction of an immovable property. When goods and services are received by a taxable person for construction of plant or machinery, there is no bar on eligibility to input tax credit. The appellant has argued that all the installations mentioned in his application qualify as 'Plant' or 'Machinery'. The Explanation to Section 17 defines "Plant and machinery" to mean apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes –

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

The appellant has only provided information on the use of the various items mentioned in his application. A general understanding of the items such as Lift, Escalator, Travellator, Water treatment Plant, Sewage Treatment Plant, HSD yard, Mechanical Car Park, DG Set and, Transformers, mentioned in the appellant's application, is that they are fixed to the earth either by a foundation or with structural support and they qualify to be considered as "Plant and machinery".

On the other hand, the items such as Chiller, Air Handling Unit, Indoor/Outdoor Surveillance System (CCTV), electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system do not appear to be apparatus/equipment/machinery which are fixed to the earth. The appellant has also not submitted any information as to how these items are getting embedded to the earth since the criteria for terming such items as "Plant and Machinery" is that they have to be fixed to the earth either by foundation or structural support. In the absence of such information we hold that Chiller, Air Handling Unit, Indoor/Outdoor Surveillance System (CCTV), electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system do not qualify as plant or machinery but are items which are procured for the purpose of construction of the immovable property. Hence, the appellant is not eligible for the input tax credit of the tax paid on the procurement and installation of Chiller, Air Handling Unit, Indoor/Outdoor Surveillance System (CCTV), electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system.

As regards the Lift, Escalator, Travellator, Water treatment Plant, Sewage Treatment Plant, HSD yard, Mechanical Car Park, DG Set and, Transformers no information is furnished as to who is doing the installation of the said items. Therefore, we will examine the issue based on the available documents. It is seen from the copies of invoices furnished by the appellant that, in the case of Lifts, escalators and

travellator, the vendor M/s OTIS Elevator Company has entered into a contract with the appellant for the supply and installation of passenger lifts, service lifts, escalator and travellator at the project site. No doubt lifts, escalator and travellators are fixed to the earth with structural supports and they qualify as plant and machinery. However, it appears that the supply of the lifts and its installation at the project site of the appellant are done by the vendor M/s OTIS. In such a case, M/s OTIS will not be hit by the restriction imposed under Section 17(5)(d) since they are engaged in the construction of lift, escalator, travellator which qualifies as plant and However, the appellant will not be eligible for the credit of the tax paid on such procurements since the appellant is not doing the installation of the lifts, escalators and travellators.

Similarly, in the case of the invoice issued by Wohr Parking Systems Pvt Ltd. it is seen that the vendor has raised an invoice on the appellant for the supply of 1 car parking system Combilift 551 for a value of Rs 2.69 cr. It is also stated in the said invoice that the supporting steel structure is in Wohr's scope. This evidences the fact that the complete supply and installation of the car parking system is done by the vendor. The car parking system being fixed to the earth with structural support qualifies as "Plant and machinery". However, the appellant will be hit by the restriction imposed in Section 17(5)(d) and will not be eligible for the credit of the tax paid on such procurements in as much as the appellant is not doing the construction and installation of the car parking system.

Further, in the case of the invoice No 20 dt 5.112018 raised by M/s Veeresh Engineering Works, it is for the fabrication, supply and installation of the HSD yard. The work involves supply of single shell 25KL capacity MS tank for storing HSD, fabrication, testing and commissioning of single shell 25KL capacity MS tank and obtaining NOC from the Dy Commissioner after getting clearances from the local authorities. This evidences that the complete setting up of the HSD yard is done by the vendor M/s Veeresh Engineering Works and not by the appellant. Here again the appellant will not be eligible for the credit of the input tax paid on such supply as the construction of the HSD yard has not been done by him.

In respect of the Water treatment Plant and Sewage Treatment Plant, as can be seen from the photographs, they form part of the civil structure of the immovable property. Civil structures are specifically excluded from the definition of "Plant and machinery". So also, the DG Set and Transformer – they are procured as independent items and their installation becomes part of the civil structure of the immovable property. Therefore, we hold that the appellant is not eligible of the credit of the taxes paid on the procurement of the Water Treatment Plant, Sewage Treatment Plant, DG Set and Transformer. In view of the above, we hold that the ruling given by the lower Authority is correct in law.

2. Whether crushing of grains for distribution through PDS is exempt supply

Case Name : **In re Sakshi Jhajharaa (GST AAR West Bangal)**

Appeal Number : Order No. 41 of WBAAR/2020-2021

Date of Judgement/Order : 10/02/2020

The Applicant intends to make the composite supply as above to the State Government. The recipient is, therefore, the State Government.

The Applicant intends to crush the food grains belonging to the recipient and deliver the crushed grains to the recipient after packing. If the terms of the agreement with the recipient is such that it binds both the supplier and the recipient in a way that neither can divert the food grains to any use other than distribution through Public Distribution System (PDS), the Applicant's supply can be related to distribution through PDS, which is covered under Entry No. 28 of the Eleventh Schedule of the Constitution. It will be an activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution, and its supply to the State Government should be exempt under SI No. 3A of the Exemption Notification, provided the proportion of the packing materials in the composite supply in value terms does not exceed 25%.

If the Applicant's agreement with the State Government binds both the supplier and the recipient in such a way that neither can divert the food grains to any use other than distribution through PDS, the Applicant's composite supply of crushing the food grains belonging to the State Government and delivery of the crushed grains will be exempt under SI No. 3A of **Notification No 12/2017 CT (Rate) dated 28/06/2017** (corresponding State Notification No. 1136 — FT dated 28/06/2017), as amended, provided the proportion of the packing materials in the composite supply in value terms does not exceed 25%.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(17) of the GST Act.

3. ITC not admissible on goods and services used in construction of warehouse used for letting out on rent

Case Name : **In re Unity Traders (GST AAR Madhya Pradesh)**

Appeal Number : Order No. 06/2020

Date of Judgement/Order : 10/02/2020

As per the Section 16 of CGST Act, 2017, every registered person shall entitle for ITC subject to such conditions and restriction as may be prescribed. As per the Section 17(5) of CGST Act mentioned above, the Input tax credit shall not be available on the goods and services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. The definition of immovable property are as under :-

According to section 3(26) of the General Clauses Act, 1882, Immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth". According to Section 3 of the **Transfer of Property Act, 1882**, Immovable property means "Immovable property does not include standing timber, growing crops or grass".

We find that the applicant constructed the building/warehouse which is a immovable property and as per the exclusion clause 17(5) (d) of CGST Act, 2017, the input tax credit is not available on the goods and services used in construction of immovable property as discussed below :-

The Section 17(5) of CGST Act is an exclusion clause in spite of the goods or services used in the course or for furtherance of his business as the Section 16 of CGST ACT, it is clearly mentioned that the entitlement of ITC is subject to the

condition and restriction. We find that the view of applicant that they are entitled for ITC in view of Section 16 is incorrect as per law. Further the applicant stated that if the ITC is not allowed as per the Section 17(5) (d) then it is unwarranted, unreasonable, arbitrary, unconstitutional, illegal, violation of fundamental right, double taxation is baseless as the Section 17(5)(d) of *CGST Act* is very clear and there is no scope of interpretation but in spite of clearcut law, the Applicant has wrongly interpreted the Section to avail the benefit of inadmissible ITC.

The submission of Applicant that if ITC is not admissible, it would render building now constructed for renting out uncompetitive is also not correct as the said provision of Section 17(5)(d) of *CGST Act*, is applicable to all not only to the applicant only. Further the contention of the Applicant that ITC is admissible as there is no brake of supply chain, We find that there is no provision in law that the Section 17(5)(d) is not applicable and ITC is admissible where there is no brake of supply chain.

In view of above, it is concluded that the **ITC is not admissible on the goods and services received and used in the construction of warehouse used for letting out on rent as per the Section 17(5)(d) of *CGST Act*, 2017.**

4. No ruling on classification issue by AAAR as matter is pending in a proceeding

Case Name : **Assistant Commissioner of Commercial Taxes Vs. Karnataka Co-operative Milk Producers Federation Ltd. (GST AAAR Karnataka)**

Appeal Number : Order No. KAR/AAAR-13/2019-20

Date of Judgement/Order : 11/02/2020

The order No KAR ADRG 88/2019 dated 26.09.2019 passed by the Authority for Advance Ruling is declared void ab initio as it was vitiated by the process of suppression of material facts. Therefore , the appellate authority for advance ruling do not intend to give a ruling on the issue of classification since the matter is pending in a proceeding under this Act. Hence the appeal of the Department is allowed .

5. Penalty on Goods Transported for repair without proper documents cannot exceed Rs. 10000

Case Name : **Neva plantation Private Limited Vs ACST&E (GST Appellate Authority Himachal Pradesh)**

Appeal Number : Appeal No. 020/2019, Order No. EXN-005/2019-AA/GST SHimla HP-2992-97

Date of Judgement/Order : 12/02/2020

It appears that there is no dispute regarding quantity/quality of goods and further it has been clearly mentioned on the challan that the goods are not for sale only for repair. Since the transaction has no tax implications, the proper office while adjudicating the case has taken into consideration the invoice value of the nine month old purchase invoice for determining the tax and penalty in this case under section 129(1) of the Act. The method used for valuation of transaction is not just and proper as the disputed goods were old and were dispatched for repair.

As there is no doubt that the taxpayer has violated the provisions of the CGST/HPGST Act, 2017, so is liable to pay penalty. The taxpayer has transported goods without the cover of proper documents (e way bill is one of them). In this regard, attention is invited toward section 122 of the CGST/HPGST Act that can come into play in the instant case which provides:

122. (1) Where a taxable person who-

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

In the view of the above facts, the instant appeal is accented and the order passed by Assistant Commissioner State Taxes & Excise-cum- Proper Officer, North Enforcement Zone Palampur dated 27.11.2018 is set aside. The tax and penalty deposited by the appellant under section 129(1) may be refunded and a penalty of Rs Ten Thousand only (Rs 10,000/-) is imposed on the taxpayer under section 122(1) of the Act.

6. GST on printing of content provided by customer on PVC banners & Supply of Such Banner

Case Name : **In re Macro media Digital Imaging Pvt. Ltd. (GST AAR Karnataka)**

Appeal Number : Advance Ruling No. KAR ADRG 06/2020

Date of Judgement/Order : 17/02/2020

1. *The transaction of printing of content provided by the customer, on Poly Vinyl Chloride (PVC) banners and supply of such printed trade advertisement material is supply of service.*

2. *The classification of aforesaid supply of service is 9989 of the scheme of classification of services.*

3. *The applicable rate of GST on the supply of aforesaid service is 18% up to 30.10.2017 & 12% effective from 31.10.2017, as per Entry No.27 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended.*

7. HSN classification for supply of Bus- Applicant allowed to withdraw application

Case Name : **In re Enlivening Technologies Pvt. Ltd. (GST AAR Karnataka)**

Appeal Number : Advance Ruling No. KAR ADRG 05/2020

Date of Judgement/Order : 17/02/2020

What would be the appropriate HSN classification for supply of motor vehicle (bus), which is bullet proof, blast resistance and built to suit the requirement of a VIP, enabling the VIP to carry on with his administrative functions, even during transportation and What would be the applicable rate of GST and Cess for the said supply ? But the Applicant requested to permit them to withdraw the application filed for advance ruling vide their letter dated 08-01-2020?

The applicant had been given an opportunity of hearing on 09.01.2020. But the applicant vide their letter received in this office on 08.01.2020, requested this authority to permit them to withdraw their application, quoting the reason that the agreement with their customer is cancelled and the company would not be supplying such specialised goods in future. In view of the above, The application filed by the Applicant for advance ruling is disposed off as / withdrawn.

8. 18% GST on sub-contract of Skill Development services to MSSDS

Case Name : **In re M V Infra Services Pvt. Ltd. (GST AAR Karnataka)**

Appeal Number : Advance Ruling No. KAR ADRG 04/2020

Date of Judgement/Order : 17/02/2020

What is the rate of tax applicable on services provided under sub-contract to main contractor, who in turn provides to M/s Maharashtra State Skill Development Society (MSSDS), in respect of training of Building and other construction workers (skill development training) and admissibility of Sl. No. 69 and Sl. No. 72 of the notification 12/2017- Central Tax (Rate) New Delhi, dated 28th June, 2017.

*The rate of 18% GST is applicable on services to be provided under subcontract to main contractor, who in turn provides to M/ s Maharashtra State Skill Development Society (MSSDS), in respect of training of Building and other construction workers (skill development training) and the Sl. No. 69 or Sl. No. 72 of the **notification 12/2017- Central Tax (Rate) New Delhi, dated 28th June, 2017** are not applicable to the applicant.*

(VII) COURT ORDERS/ JUDGEMENTS

1. AAR can decide question of Place of Supply: Kerala HC

Case Name : **Sutherland Mortgage Services INC Vs Principal Commissioner (Kerala High Court)**

Appeal Number : W.P.(C) No. 32634 of 2019

Date of Judgement/Order : 03/02/2020

Authority for Advance Ruling (AAR) has jurisdiction to determine Place of Supply under GST

Facts: Applicant had raised a question before the AAR as to whether the supply made would qualify as export of service as defined in Section 2(6) of the **IGST Act, 2017**. The AAR held that question essentially involves the determination of 'place of supply' which is not included in Section 97(2) of the **CGST Act, 2017** as a question on which advance ruling can be sought. That AAR is a creature of statute and has to function within the legal boundary mandated by the Act; that as the 'place of supply' is not covered by Section 97(2) of the Acts, the AAR is helpless to answer the question raised in the application, as it is lacking jurisdiction to decide the issues – Accordingly, the Application was rejected by the AAR.

Decision of the High Court: The Hon'ble Court held as under It is true that the issue relating to determination of place of supply is not expressly enumerated in any of the clauses as per clauses (a) to (g) of section 97(2) of the CGST Act, but there cannot be any two arguments that the said issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfils the definition of place of service, would also come within the ambit of the larger issue of 'determination of liability to pay tax on any goods or services or both' as envisaged in clause (e) of s.97(2) of the Act. The Advance Ruling authority has proceeded on a tangent and has missed the said crucial aspect of the matter and has taken a very hyper technical view that it does not have jurisdiction for the simple reason that the said issue is not expressly enumerated in s.97(2).

Court has no hesitation to hold that the said view taken by the AAR is legally wrong and faulty and, therefore, the matter requires interdiction in judicial review in the instant writ proceedings. It is ordered that the said rejection order of the AAR is quashed and the application will stand remitted to the Authority concerned for fresh consideration and decision in accordance with the law. The Advance ruling in terms of s.98(4) may be duly rendered by the AAR without much delay, preferably within a period of 3 to 4 months. It has to be borne in mind that India is at the cusp of great global changes and there cannot be any two opinions for anyone, who cherishes the best interest for this country, that with extreme hard work and industry, we have to progress economically, socially and in all spheres of life –

A foreign entity like the principal company in this case would like to have precision and certainty about tax liability so that they can accordingly modulate their future outlook and it goes without saying that the executive authorities concerned including the taxation authorities will have to take the correct perspective and in accordance with the legislative policy framed as per the wisdom of the Parliament and the State legislatures to ensure that there is certainty and precision in taxation liability etc. so that the domestic investors as well as foreign investors, will get more incentive to

continue and increase their level of activities for the overall better development and growth of our economy.

2. Six months GST Return filing default for Cancellation of Registration

Case Name : **Phoenix Rubbers Vs Commercial Tax Officer (Kerala High Court)**

Appeal Number : W.P. (C) No. 35159 of 2019

Date of Judgement/Order : 03/02/2020

Default in filing return for the period of six months should be existing both at time of issuance of notice and passing order for cancellation of the registration under Section 29(2)(c), sets aside the order cancelling the registration.

Sec. 29(2)(c) mandates that power for the cancellation of registration in a case where there is continuous six months' default on the part of the assessee in filing the returns. Since the competent official is obliged to issue a notice in the nature of Ext.P-1 before he passes final orders, it goes without saying that the requirement of 6 months' continuous period should be fulfilled both at the time of issuance of the above said notice in terms of the proviso to Sec. 29(2) of the **CGST Act** read with Rule 22 of the CGST Act, but also at the stage of passing the final order cancelling the registration as per Sec. 29(2)(c). In the instant case, the jurisdictional fact regarding the six months' continuous default on the part of the assessee is certainly fulfilled at the time of issuance of Ext.P-1 show cause notice dated 13.11.2019. Whereas, the said vital requirement of jurisdictional fact is non-existent as on the date of issuance of the impugned Ext.P-3 cancellation order dated 10.12.2019. If that be so, it is only to be held that the impugned order as per Ext.P-3 is illegal and ultra vires and is liable to be interdicted by this Court. Accordingly, it is ordered that the impugned Ext.P-3 order will stand quashed.

3. HC: Powers of Commissioner can be delegated to Special & Additional Commissioner of State Tax under GST

Case Name : **Nathalal Maganlal Chauhan Vs State of Gujarat (Gujarat High Court)**

Appeal Number : R/Special Civil Appeal No. 513 of 2020

Date of Judgement/Order : 04/02/2020

Conclusion: Commissioner is empowered to delegate his powers to the Special Commissioner or the Additional Commissioners of State Tax and once the powers are delegated for the purpose of Section 69 of the **Central Goods and Services Tax Act, 2017**, the subjective satisfaction, or rather, the reasonable belief should be that of the delegated authority.

Held: Applicant told that his son, namely P was a proprietor of a proprietary concern running in the name of Lancer Enterprise. According to the applicant, his son had rented the factory premises including the machines of the proprietary concern to one Mr.N for the purpose of manufacturing miscellaneous articles of plastics on job work basis. Few officers from the office of the Commissioner of State Tax visited the residential premises of the applicant and inquired about the whereabouts of his son. It was alleged that the officers harassed the family by their presence in the flat for

almost a period of one week. In view of the aforesaid, a Special Civil Application came to be filed in this High Court. Ultimately, the son of the applicant came to be arrested in exercise of power under Section 69 of the Central Goods and Services Tax Act, 2017. The arrest was on the reasonable belief that the son of the writ-applicant has committed offence under Section 132 of the Act 2017. Applicant being the father, whose son had been arrested, was here before this Court questioning the legality and validity of the Notification No. EST/1/Jurisdiction/B.2168 dated 5th July 2017, by which the Commissioner of State Tax has delegated all his powers to the Special Commissioner of State Tax and the Additional Commissioners of State Tax. It was to be noted that the delegation had been authorized expressly under Section 5(3) of the Act. If the Special Commissioner or the Additional Commissioners would have further delegated the power to officers subordinate to them then it was to be interfered however, such was not the case over here. In the impugned notification it had been stated that the functions delegated shall be under the overall supervision of the Commissioner. When the Commissioner stated that his functions were delegated subject to his overall supervision, it did not mean or should not be construed as if he reserved to himself the right to intervene to impose his own decision upon his delegate. The words in the last part of the impugned notification would mean that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action. Once the powers are delegated for the purpose of Section 69 of the Act, the subjective satisfaction, or rather, the reasonable belief should be that of the delegated authority. The Bench took the view that having regard to Section 69(4) of the Act referred to above, the Commissioner had been empowered to delegate any of his powers. The Bench also clarified that in the absence of the provisions of Section 69(4) of the Act, the Commissioner could not have delegated the quasi-judicial powers conferred upon him by the Act. The power under Section 69 of the Act can be exercised by the authority upon whom the power is delegated provided the delegatee has reasons to believe that the assessee had committed offence under Section 132 of the Act. Therefore, the condition precedent, i.e. 'reasonable belief', for the purpose of exercise of power under Section 69 of the Act remained the same.

4. Consider representation to be filed for extension of GSTR9/9C due date: HC

Case Name : **All India Federation Of Tax Practitioners Vs. Union of India (Gauhati High Court)**

Appeal Number : Case No. : PIL 15/2020

Date of Judgement/Order : 04/02/2020

This petition is disposed of however, binding the respondent Union of India to take a decision on the representation to be filed on behalf of the petitioners, within one week of its filing. The respondent would also address the issue of extending the time for 30 days, so far as filing of **GST Returns** in the State of Assam, Nagaland, Mizoram and Arunachal Pradesh is concerned, in view of peculiar conditions prevalent in these States.

5. HC denies Bail in GST ITC evasion case despite Bail to co-accused

Case Name : **Sandeep Goyal Vs Union of India (Rajasthan High Court)**

Appeal Number : S.B. Criminal Miscellaneous III Bail Application No. 1521/2020

Date of Judgement/Order : 05/02/2020

In the present case, prosecution case is that the petitioner and his co-accused by creating fake firms, have issued invoices involving tax amount of more than Rupees Seventy Four Crores. The firms were misused for evading GST input taxes by the accused. Fake firms had been created in different States of the country. Although, co-accused Himani Munjal has been granted bail by the Apex Court, but it appears that she has been granted bail on account of the fact that she is a lady and has a young child to look after. Her custody period was also taken into consideration. Thus, the case of the petitioner can be said to be on different footing.

Keeping in view the seriousness of the allegations leveled against the petitioner, no ground for grant of bail to him is made out.

6. Accept GSTR 9 / GSTR 9C returns without any late fees till 12th Feb 2020: Rajasthan HC

Case Name : **Tax Bar Association Vs. Union of India (Rajasthan High Court, Jodhpur)**

Appeal Number : D.B. Civil Writ Petition No. 1805/2020

Date of Judgement/Order : 05/02/2020.

BIG Relief Direction to file GSTR 9 and 9C without late fees till 12th Feb by Hon'ble Rajasthan High Court in PIL filed by **Tax Bar Association**, Jodhpur vs UOI In PIL No 1805/2020 Adv. Sanjay Jhanwar, Adv Rahul Lakhwani and Adv Prateek Gattani appearing for the Petitioner apprised the Court regarding technical glitches being faced by the taxpayers in filing of GSTR 9/9C on the GSTN portal.

The counsels also informed the court regarding new ways of extension of date by CBIC through its twitter handle.

The court after taking into consideration screenshots submitted by the Petitioner regarding the unsuccessful attempts of the tax professionals time and again during the extended period, was satisfied that GSTN portal does not have requisite capacity to handle the filing of pending returns within the deadline.

Even according to data submitted by the counsel of Union of India, the portal at its best day accepted about 2,00,0000 returns where as pending returns as of 1.30 PM on 5th Feb are about approx 30 lacs.

Keeping the bottleneck of the server capacity of GSTN, the division bench of Hon'ble Rajasthan High Court comprising of Hon'ble Chief Justice Inderjit Mahanty and Hon'ble Justice Pushpendra Singh Bhati directed the responders to file a detailed reply by 12th Feb 2020 about their preparedness and GSTN capacity. They also directed to accept GSTR 9 AND GSTR 9C returns without charging any late fees till 12th Feb 2020.

It is interesting to note that in the hearing at 1st instance today in morning, the court asked the Respondents to seek instructions whether the Respondents are ready to accept the return through email, by today which in the post lunch hearing at 2 PM was declined by the Respondents counsel at the instructions of the Union of India. The PIL was strongly opposed by the Counsel of Union of India and State of Rajasthan on the ground that why the taxpayers are waiting for last date for filing of the return. The High Court turned down the arguments of UOI on the basis that it is a

legal right of the taxpayers to file return up till the last date. Further, advocate of the Petitioner Association Mr. Sanjay Jhanwar demonstrated various instances of the technical difficulties as faced by the taxpayers through various screenshot up to 04th Feb 2020 during the extended period.

7. Commission earned from auctioning of flowers not eligible for GST exemption

Case Name : **In re International Flower Auction Bangalore Ltd (GST AAAR Karnataka)**

Appeal Number : Order No. KAR/AAAR-12/2019-20

Date of Judgement/Order : 05/02/2020

The appellate authority for advance ruling set aside the ruling passed under section 98(4) of the CGST Act 2017 vide NO.KAR.ADRG 87/2019 dated 26-09-2019 i.e. Contention of the department appeal is allowed where in the question on which the advance ruling was sought for is answered as follows:

The commission earned from auctioning of flowers is not eligible for exemption under entry no. 54(g) of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 and entry no. 54(g) of Notification (12/2017) FD 48 CSL 2017 dated 29.06.2017.

8. Rajasthan HC stays Recovery of Interest on Gross GST Liability

Case Name : **M/s Perfect Turners Vs Union of India (Rajasthan High Court)**

Appeal Number : D.B. Civil Writ Petition No 1795/2020

Date of Judgement/Order : 06/02/2020

In this case on the issue of Interest Payment under Section 50 of **Central Goods and Services Tax Act, 2017** that whether it should be on Gross **GST Liability** or on Net GST Liability in the case of delayed Submission of form GSTR-3B, High Court has Granted Stay.

9. No discretionary relief to taxpayers who repetitively ignored summons

Case Name : **Ankit Bhutani Vs Union of India (Allahabad High Court)**

Appeal Number : Writ Tax No. 132 of 2020

Date of Judgement/Order : 06/02/2020

In the given case, the writ petitioner is an individual against whom several summonses/notices have been issued from time to time by the Senior Intelligence Officer. It is the admitted position that, till date, the writ petitioner, has not appeared before the concerned Senior Intelligence Officer in response to any of the summonses issued from time to time.

Now, the writ petitioner is essentially seeking relief against this mistake done by him to avoid the consequences.

At least five summonses have been issued for the purpose of such enquiry. A discretionary relief to a petitioner can be granted by the writ Court in exercise of its

extraordinary high prerogative jurisdiction under Article 226 of the Constitution of India only if his/her bonafides are not suspect. The reliefs which the writ petitioner is essentially seeking, if granted, would tantamount to granting him immunity from arrest even though the facts of the case clearly reveal that, till date, he has not even appeared once before the concerned Senior Intelligence Officer.

In so far as this matter is concerned, the series of summonses/notices which have been issued, clearly reveal that the writ petitioner is not interested in cooperating with the enquiry. Hence, the facts of the instant case do not qualify for use of discretion by the writ Court in order to grant the writ petitioner such reliefs as prayed for. The writ petition is, therefore, liable to be dismissed and stands dismissed accordingly.

10. HC rejects Bail application of alleged GST evader accused of running bogus business

Case Name : **Govind Agarwal Vs State of U.P. and Another (Allahabad High Court)**

Appeal Number : Criminal Misc Anticipatory Bail Application U/S 438 CR.P.C. No. - 1337 of 2020

Date of Judgement/Order : 07/02/2020

Allahabad High Court has rejected anticipatory bail and held that that this is not to be a fit case in which indulgence of granting anticipatory bail should be exercised because it has come on record that the applicant's firm was found indulging in running business from bogus address and a huge transaction is shown to have been done without there is any such big transaction reflected from the account of the firm.

The argument of the learned counsel for the applicant that notice is required to be issued to the accused before lodging FIR also does not sound to be a reasonable view because there are offence alleged to have been committed under sections 420, 467, 468, 471, 34 and 120B IPC also regarding which no such notice is required to be sent.

It is found to be a case of economic fraud in which normal course adopted by the Courts should be not to grant stay against arrest because investigation might require custodial interrogation as well. This court is not to be guided only by the fact that apart from IPC, offence under U.P. Act is also said to have been committed which requires notice to be issued to the accused and in totality of the matter this Court finds that there is no genuine ground to grant relief of anticipatory bail to the accused-applicant in this matter.

11. Look into issue of limited GST Server capacity & find solution: SC

Case Name : **UOI Vs Tax Bar Association (Supreme Court of India)**

Appeal Number : SLP (C) No. 3839 of 2020

Date of Judgement/Order : 10/02/2020

In the matter of UOI vs Tax Bar Association, Hon'ble Supreme Court through its bench comprising of Hon'ble Justice R F Nariman & Hon'ble Justice Ravinder S

Bhatt, at the outset, refused to interfere in order as passed by Hon'ble Rajasthan High Court and also clarified that there would be no penal consequences for delayed filing due to problems of GSTN Server.

Ld. Solicitor General stated that extension in due date requires entire modification in Software and therefore it creates ambiguity and chaos. Therefore, Hon'ble Supreme Court said that no further extension would be given post 12th February 2020 through interim order. Ld. Counsel Mr. Sanjay Jhanwar, Mr. Rishabh Sancheti, Mr. Prateek Gattani and Mr Rajat Sharma appearing for Respondents association demonstrated bottlenecks and technical errors at **GSTN portal**. Pursuant to which Ld. SG assured that no penal consequences shall be taken on account of delayed filing. Further, Hon'ble Supreme Court directed the UOI to file detailed reply to address the bottlenecks especially lower capacity of the server of GSTN before Hon'ble High Court and the High Court to decide issue finally on the basis of facts without getting influenced by this ad-hoc order.

The Hon'ble Supreme Court has stayed Rajasthan High Court order which had extended the deadline of GSTR-9 (GST Annual Return) and GSTR-9C (Reconciliation Statement) to 12.02.2020.

Further, Supreme Court directed the UOI to file a detailed reply to address the bottlenecks especially the lower capacity of the server of GSTN before High Court and the High Court to decide issue finally on the basis of facts without getting influenced by this ad-hoc order. Earlier, the Rajasthan High Court had directed the GST Department to accept the filing of GSTR-9 and GSTR-9C till February 12th 2020 without late fees.

The Hon'ble Supreme Court has stayed Rajasthan High Court order which had extended the deadline of GSTR-9 (GST Annual Return) and GSTR-9C (Reconciliation Statement) to 12.02.2020.

Further, Supreme Court directed the UOI to file a detailed reply to address the bottlenecks especially the lower capacity of the server of GSTN before High Court and the High Court to decide issue finally on the basis of facts without getting influenced by this ad-hoc order. Earlier, the Rajasthan High Court had directed the GST Department to accept the filing of GSTR-9 and GSTR-9C till February 12th 2020 without late fees.

The court after taking into consideration screenshots submitted by the Petitioner regarding the unsuccessful attempts of the tax professionals time and again during the extended period was satisfied that GSTN portal does not have the requisite capacity to handle the filing of pending returns within the deadline.

While Staying the part of the Rajasthan High Court order which extended the deadline for submitting the returns, the Apex Court has said that-

We do not intend by this ad-hoc order to at all interfere with what the High Court may ultimately do on the facts of this case.

12. Gujarat High Court stays recovery of interest on Gross GST Liability

Case Name : **Amar Cars Private Limited Vs Union of India (Gujarat High Court)**

Appeal Number : R/Special Civil Application No. 4025 of 2020

Date of Judgement/Order : 13/02/2020

In this case in which GST department has raised Interest Demand on Gross GST without considering the **Input Tax Credit**, Hon'ble Court has directed the department to not to take any coercive steps for the purpose of recovery of the interest.

13. Compute Motor vehicle tax based on purchase invoice value and not on value listed in local website: HC

Case Name : **Fathima Abdulkhadar Vs Regional Transport Officer (Kerala High Court)**

Appeal Number : WP (C) No. 1190 of 2020

Date of Judgement/Order : 13/02/2020

Conclusion: Motor Vehicle tax as per Kerala Motor Vehicle Taxation Act, 1976 should be calculated only upon the purchase invoice value and not upon the value listed in the local web portal as assessee's case did not fall in the 2nd proviso of the operative portion of Sec.2(e) of the Kerala Motor Vehicle Taxation Act, 1976.

Held: Assessee had purchased a new car from Madhya Pradesh for a total sum of Rs.63,40,000/- as per Ext.P-1 purchase invoice issued by M/s.A Cars (P) Ltd and had applied for registration in the state of Kerala. According to assessee, going by the provisions of the Kerala Motor Vehicle Taxation Act, 1976, and the Annexure I appended to the Schedule of the said Act, the motor vehicle tax payable by assessee was 21% of the purchase value of the vehicle. Whereas, the 1st respondent contended that, motor vehicle tax should be paid at the rate of 21% on Rs.79,99,999/- which was stated to the local price of the same brand car, as per the 2nd proviso to Sec.2(2) of the Kerala Motor Vehicle Taxation Act, 1976. It was held that the stand of the respondents that they could accept motor vehicle tax only at the rate of 21% of the figure shown by the manufacturer in the web portal, etc could not be accepted. Of course, in a case where the respondents had a doubt about the genuineness of the figures shown in the purchase invoice, certainly they were entitled to conduct appropriate enquiry to find out whether there was manipulation, etc. But, in a case where the figures shown in the purchase invoice were not in any manner manipulated, and was the genuine figures shown therein by the dealer in the purchase invoice, and the respondents did not have a case that the said purchase value was not inclusive of VAT, GST or other taxes, duties etc, as envisaged in the 2nd limb of the operative portion of Sec.2(e) of the Kerala Motor Vehicle Taxation Act, 1976, or that the figure was on the basis of discount or rebate given by the dealer to the registered owner, etc, or that the car had been purchased from a foreign country, or that the car had been obtained not on the basis of purchase, and therefore it's purchase value was not known on account of non availability of the invoice, etc the scenario would be as covered in this Court's judgement dated 30.1.2020 in WP(C).No.2399/2020. If the contentions of the respondents were accepted, then it amounted to substituting the present definition of "purchase value" as per Sec. 2(e) with the understanding that it was the value of the vehicle as shown by the manufacturer in the Parivahan web portal. Accordingly, the above said stand taken by the respondents was illegal and ultra vires.

14. HC denies bail to Accused in 22 Crore GST ITC Fraud Case

Case Name : **Aditya Gupta Vs. Union of India (Rajasthan High Court, Jaipur Bench)**

Appeal Number : S.B. Criminal Miscellaneous 4th Bail Application No. 1535/2020

Date of Judgement/Order : 14/02/2020

Petitioner has filed this petition under Section 439 **Code of Criminal Procedure, 1973** seeking regular bail in File No. DGGI/JZU/INU/GST/02/18-19 filed by the Directorate General of GST Intelligence, Jaipur Zonal Unit for offences under Sections 132(1), (b), (c), (f), (h), (j) and (k) read with Section 132(1)(i) of **Central Goods and Services Tax Act, 2017**.

Learned counsel for the petitioner has submitted that the petitioner has been falsely involved in this case. Petitioner is in custody since 20.6.2018 and till date, case is listed before the trial court for pre-charge evidence. A perusal of the statement of the witnesses recorded so far, reflects that no case is made out against the petitioner. Other co-accused of the petitioner are on bail.

Learned counsel for the respondent Union of India has opposed the petition and has submitted that the present case relates to fraud committed by the accused to the tune of Rs.22 Crores. Petitioner and his co-accused had created fictitious firms and had claimed tax input credit more than Rs. 22 Crores. Bail petitions filed by the co-accused Sandeep Kumar Agarwal and Ram Kumar were dismissed by this Court on merits. Bail petition filed by the petitioner was dismissed by this Court vide order dated 22.10.2018 in view of the fact that bail petitions filed by the co-accused had been dismissed by the co-ordinate Bench of this Court. Other co-accused were granted bail under Section 167(2) of Cr.P.C.

Keeping in view the seriousness of allegations levelled against the petitioner, no ground for grant of bail to him is made out.

Dismissed.

15. Hardcastle Restaurants- SC Transfers all Writ Petitions to Delhi HC related to Anti Profiteering

Case Name : **NAA Vs Hardcastle Restaurants Pvt. Ltd. & Ors. (Supreme Court)**

Appeal Number : Transfer Petition (Civil) Nos 290-292 of 2020

Date of Judgement/Order : 19/02/2020

In the given case, a batch of writ petitions are pending before the High Courts of Delhi, Bombay and Punjab and Haryana in which the constitutional validity of Section 171 of the **Central Goods and Services Tax Act 2017** read with Rule 126 of the **Central Goods and Services Tax Rules 2017** and other cognate provisions, is under challenge.

We consider it appropriate and proper that, in the interests of a uniform and consistent view on the law, all the writ petitions should be transferred to the High Court of Delhi, where earlier writ petitions are already pending.

At this stage, we have not issued notice to the petitioner before the High Court of Punjab and Haryana, but leave it open to the petitioner to move this Court, should it have any reason to do so for appropriate directions.

The Registries of the respective High Courts are requested to immediately transfer the papers of the proceedings of the writ petitions to the High Court of Delhi. We leave it open to the parties to apply for necessary orders either with regard to the interim relief or for modification of such orders, as the case may be.

16. SC transfer writ petition filed against decision of NAA to Delhi HC

Case Name : **NAA Vs Hardcastle Restaurants Pvt. Ltd. & Ors. (Supreme Court)**

Appeal Number : Transfer Petition (Civil) No. 290 of 2020

Date of Judgement/Order : 19/02/2020

Supreme Court directs transfer of 3 writ petition filed against the decision of NAA to Delhi High Court. Supreme Court, observing that 20 writ petition filed against order of NAA is pending before Delhi High Court, 2 before Bombay High Court and 1 before Punjab & Haryana High Court, held that in the interests of a uniform and consistent view on the law, all the writ petitions should be transferred to the High Court of Delhi, where earlier writ petitions are already pending.

17. Detention of goods only if it is found that intention was to evade payment of GST

Case Name : **Hanuman Trading Co. Vs State of Gujarat (Gujarat High Court)**

Appeal Number : R/Special Civil Application No. 6129 of 2019

Date of Judgement/Order : 19/02/2020

While issuing notice, this Court directed that the vehicle as well as the goods be released, upon payment of the tax, in terms of the impugned notice.

The writ applicant availed the benefit of the interim-order passed by this Court and got the vehicle, along with the goods released on payment of the tax amount. The proceedings, as on date, are at the stage of show cause notice, under Section 130 of the **Central Goods and Services Act, 2017**. The proceedings shall go ahead in accordance with law.

Section 130 of the Act is altogether an independent provision which provides for confiscation in cases where it is found that the intention was to evade payment of tax. Confiscation of goods or vehicle is almost penal in character. In other words, it is an aggravated form of action, and the object of such aggravated form of action is to deter the dealers from evading tax.

The formation of the opinion by the authority that the goods and the conveyance are liable to be confiscated should reflect intense application of mind. We are saying so because it is not any or every contravention of the provisions of the Act or the Rules which may be sufficient to arrive at the conclusion that the case is one of an intention to evade payment of tax. In short, the action must be held in good faith and should not be a mere pretence.

It is now for the applicant to make good his case that the show cause notice, issued in GST-MOV-10, deserves to be discharged.

18. HC refuses to allow release of goods for Non Disclosure of Godowns & Non Payment of GST & Penalty

Case Name : **Ashu Traders Madar Gate Vs UOI (Allahabad High Court)**

Appeal Number : Writ Tax No. -1583 of 2018

Date of Judgement/Order : 24/02/2020

The subject matter of challenge in the instant writ proceeding is challenging the seizure as well as praying for release of the seized goods.

A counter affidavit filed on behalf of the State reveals, *inter alia*, as follows :-

“5. That, it is to submit here that INS-01 is an Authorization letter / Order issued by the Higher Authority constituting a Team of responsible officers to conduct raid in such cases, where the Department is affirm that irregularities and theft of Tax are being committing after secret enquiry. It is also submitted that after issuance of INS-01, the constituted Team raids the suspected person / firm in the presence of witness after taking their signatures on INS-01 and after conducting the enquiry, the constituted Team pass order of seizure, which is known as INS-02.

7. That, upon such information, a enquiry was conducted by the Answering Respondents and when the aforesaid fact was found true, then raid was conducted after the Authorization.

The facts, as revealed in the counter affidavit, clearly reflect upon the conduct of the writ petitioner post seizure of its goods. Till date, no TRAN-1 has been submitted by the writ petitioner. The enquiry preceding seizure has revealed that the petitioner has one declared godown and three undeclared godowns and stocks were also found at the undeclared godowns during seizure. As such, proceedings have been initiated under section 67 (2) of the Uttar Pradesh Goods and Services Tax Act, 2017, read with Rule 139 (1) of the Uttar Pradesh Goods and Services Tax Rules, 2017. That apart, it is noticed that consequent upon proceedings initiated by the concerned respondent authority, the writ petitioner never deposited any tax or penalty or bond or security, as required under section 67 (6) of the Uttar Pradesh Goods and Services Tax Act, 2017. Notices / summonses have been issued but no one appeared on behalf of the writ petitioner on the date fixed. So far as the rejoinder affidavit is concerned, the stand of the writ petitioner, as contained therein, is evasive and vague.

19. Proceeding against issue of Fake Invoice to illegally avail ITC not hit by Limitation under Section 6(2)(1)(b) of CGST Act 2017

Case Name : **Dadhichi Iron And Steel Pvt. Ltd. Vs Chhattisgarh GST (Chhattisgarh High Court)**

Appeal Number : WPT No. 42 of 2020

Date of Judgement/Order : 25/02/2020

What clearly reflects is that the initial issuance of the show cause notice and the proceedings drawn were in respect of the intrastate transactions made by the

petitioner, wherein he had used fake and bogus invoices for the purpose of availing ineligible ITC, whereas subsequent to a secret information being received and further investigation being made, particularly in the course of a raid, which was conducted at the premises of the petitioner-establishment and other related premises, it was revealed that the magnitude of the offence committed by the petitioner-establishment was far more grave and serious. It was in the course of raid found that the petitioner had been making false and bogus transactions and has illegally availed ineligible ITC credits. The magnitude of which detected by now is approximately Rs.60 crores and with further investigation the amount is likely to increase.

This Court does not find any substance in the arguments of the petitioner, when they say that the investigation and the proceedings now initiated is one, which hit by Section 6(2)(1)(b) of the **CGST Act of 2017**. What has also to be appreciated is the fact that there is a clear distinction between a proceeding drawn for the demand of tax evaded by the petitioner-establishment and the investigation be conducted by the Department of the DG, GST Intelligence Wings in respect of an offence committed by an establishment by way of using bogus and fake invoices and illegally availing ITCs, which the petitioner-establishment otherwise was ineligible.

20. HC grants Bail to Practicing Advocate allegedly involved in Fake GST Invoice Scam

Case Name : **Rajesh and another Vs State of Haryana (Punjab and Haryana HC)**

Appeal Number : CRM-M-40312-2019 (O&M)

Date of Judgement/Order : 25/02/2020

Hon'ble High Court held that Rajesh Mittal has played an pivotal role in the entire scam for the purpose of incorporating 18 different firms wherein in a majority of the firms, his e-mail ID or phone number had been used. During the course of investigation, the police has been able to collect evidence to the effect that bank transactions of withdrawal of Rs. 1,21,17,230/- was made in the account of M/s Ansh Hospitality between 23.1.2019 and 30.6.2019 and an amount of Rs. 1,21,21,881/- was deposited and for which the learned counsel representing Manish, owner of the said firm, could not furnish any justification as to on what count the said huge payments had been received and as to what articles had been supplied by him against the said payment. Similarly, during investigation, it was found that bank transactions of huge amount had been effected in the account of M/s Shree Bala Ji Wooltax. The learned counsel for the petitioner-Inder Partap Singh, owner of M/s Shree Bala Ji Wooltax, could not furnish any justifiable explanation as to on what count the said payment has been received, as the said firm was not found to be actually into business. The learned State counsel has informed that during investigation this fact had been confirmed that the aforesaid firms were not into business and that the amounts so received in their bank accounts had been withdrawn immediately and had infact gone back to the industries which had made the said banking transactions.

In view of the aforesaid discussion, the complicity of the kingpin Rajesh Mittal and also of Manish, owner of M/s Ansh Hospitality and of petitioner Inder Partap Singh, owner of M/s Shree Bala Ji Wooltax, is clearly evident. Keeping in view the enormity of the scam and the colossal loss caused to the State exchequer, which has lost

GST, this Court does not find any ground for grant of bail. The petitions on their behalf, as such, are dismissed.

As far as the petitioner Satnarain is concerned, it is not disputed that he is an CRM-M-5051-2020 (O&M) Advocate by profession. It appears that he had rendered his professional services and assistance for the purpose of incorporation of the firms. At this stage, it cannot be said that he had joined hands with Rajesh Mittal or was beneficiary of any amount other than his professional fee. In any case, since he has already been behind bars since the last about 8 months, his further detention will not serve any useful purpose. The petition on his behalf, as such, is accepted and the petitioner-Satnarain is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

21. AP HC stays recovery of Section 50 Interest on ITC under GST

Case Name : **Srinidhi Marketing Vs Union of India (Andhra Pradesh High Court)**

Appeal Number : SCN in Write Petition No. 4769 of 2020

Date of Judgement/Order : 26/02/2020

Considering facts that as per Section 50 of the Central Goods and Services Act, 2017, interest is payable on the delayed payment of tax and that as per the interest statement filed along with the impugned letter, dated 07.02.2020, there was delay in filing GSTR-3B and hence, interest on 'cash set off' and 'ITC set off' has been calculated and payment thereof has been asked for, recovery of interest against the petitioner, insofar it relates to 'ITC set off, shall remain stayed.

22. HC directs inspection of teer-counters Curb & to check for GST Evasion

Case Name : **Sajan Ch. Marak Vs Union of India & ors (Meghalaya High Court)**

Appeal Number : PIL No. 06/2019

Date of Judgement/Order : 27/02/2020

This writ petition by way of Public Interest Litigation [PIL] has been filed by Shri Sajan Ch. Marak, inter alia, with the prayer that the respondents be directed by issuance of a writ of mandamus to close down all running illegally teer-counters in the State and to provide age limit restrictions for entering into the betting of teer and to ensure that the distance in terms of **Section 6** of the Meghalaya Regulation of the Game of Arrow Shooting and the Sale of Teer Tickets Act, 2018 [for short 'the Act of 2018] between ticket counters/teer-counters is maintained by the owner and further to direct the respondents to implement the Meghalaya Goods and Service Tax Act in terms of service code tariff 999692 (gambling and betting services including similar online services) for ongoing business of betting in the form of teer in the State of Meghalaya.

HC therefore disposed of this writ petition with the following directions:-

(i) The respondent-State is directed to ensure that the sites of all teer-counters in the State are inspected, especially those teer-counters, which were run by earlier licenses and if such teer-counters are found to run without new license, they should be immediately closed down and should be allowed to operate only if they obtain the

license and fulfill various requirements under the Act of 2018 especially Sections 6 and 16.

(ii) If any operator of teer-counter has an obligation to get himself registered under the Meghalaya Goods and Service Tax Act, 2017, he should be required to obtain necessary registration and make payment of due amount of GST.

(iii) In order to carry out the aforesaid directions, the Commissioner of Taxes is directed to undertake a special derive to inspect/check all such centers throughout the State during the month of March, through different Superintendent of Taxes, with the help of local police and the district administration.

(iv) It is made clear that that the respondent No.9-Association will have no authority to issue any NOC/license, to authorize anyone to run such teer-counters or also would have no authority to collect tax on behalf of the Commissioner of Taxes. If it is found to have indulged in any such illegal activity either in the past or is even now found to indulge in such activity, the Commissioner of Taxes would take appropriate action against it in accordance with law.

Writ petition is accordingly disposed of with the above directions.

23. SC dismisses Dept. SLP against HC permission to file Revised TRAN-1

Case Name : **Union of India & Ors. Vs. Adfert Technologies Pvt. Ltd. (Supreme Court)**

Appeal Number : Petition(s) for Special Leave to Appeal (C) No.4408/2020

Date of Judgement/Order : 28/02/2020

In the case of Adfert Technologies Pvt. Ltd. Vs Union of India & Ors., Punjab & Haryana High Court) has directed the Government to permit the Petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30th November 2019. The Respondents are at liberty to verify genuineness of claim of Petitioners but nobody shall be denied to carry forward legitimate claim of CENVAT/ITC on the ground of non-filing of TRAN-1 by 27.12.2017.

Against this direction department has filed Special Leave Petition with Hon'ble Supreme Court held that 'we are not inclined to exercise our jurisdiction under Article 136 of the Constitution. We accordingly dismiss the Special Leave Petition'.