GST UPDATE
(August, 2020)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Provision for Aadhar Authentication in GST Registration notified

CBIC notifies Provision for Aadhar Authentication in GST Registration and physical verification of the place of business before GST Registration vide Notification No. 62/2020–Central Tax Dated: 20th August, 2020.

[Notification No.- 62/2020-CT dt 20.08.2020]

2. Interest payable on Net Tax liability from 1 Sep 2020

- Much awaited amendment to Section 50 notified, levy of interest on delayed payment of GST on Cash Component only, made effective from 1 Sep 2020.
- It is worth remembering that, the 39th GST Council meeting declared that the interest on delayed GST payments would be applicable only on net cash tax liability after the deduction of the available input tax credits. The interest on a delayed GST payment will no longer be charged based on the gross tax liability. This change will be applicable retrospectively with effect from 1 July 2017, the date on which GST legislation came into force.
- However, ignoring the GST Council recommendation, Interest for delay in payment of GST on the Net Cash Tax Liability has been notified w.e.f. from 1st September 2020.

[Notification No.- 63/2020-CT dt 25.08.2020]

3. GSTR 4 Due date extended to 31 Oct 2020

Date of filling GSTR4 for Financial Year 2019-20 has been extended to 31 Oct 2020. Earlier due date of GSTR4 return was 31 Aug 2020. GSTR4 return is required to be filled annually by composition dealers.

[Notification No.- 64/2020-CT dt 31.08.2020]

(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 62/2020 – Central Tax

New Delhi, the 20th August, 2020

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

1. **Short Title and commencement.**- (1) These rules may be called the Central Goods and Services Tax (Tenth Amendment) Rules, 2020.

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

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, for sub-rule (4A), the following sub-rule shall be substituted with effect from 01st April, 2020, namely: -

   "(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), with effect from 21st August, 2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in **Part B** of **FORM GST REG-01** under sub-rule (4), whichever is earlier.".

3. In the said rules, in rule 9, with effect from 21st August, 2020,-

(i) in sub-rule (1), for the proviso, the following provisos shall be substituted, namely:-

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the registration shall be granted only after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25:

Provided further that the proper officer may, for reasons to be recorded in writing and with the approval of an officer not below the rank of Joint Commissioner, in lieu of the physical verification of the place of business, carry out the verification of such documents as he may deem fit.";

(ii) in sub-rule (2), before the Explanation, the following proviso shall be inserted, namely: -

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the notice in **FORM GST REG-03** may be issued not later than twenty one days from the date of submission of the application.";

(iii) in sub-rule (4), for the word, "shall", the word "may" shall be substituted;

(iv) for sub-rule (5), the following sub-rule shall be substituted, namely: -

"(5) If the proper officer fails to take any action, -

(a) within a period of three working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is notified under sub-section (6D) of section 25; or

(b) within the time period prescribed under the proviso to sub-rule (2), in cases where a person, other than a person notified under sub-

section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8; or

(c) within a period of twenty one days from the date of submission of the application in cases where a person does not opt for authentication of Aadhaar number; or

(d) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved.".

4. In the said rules, in rule 25, with effect from 21st August, 2020, after the words "failure of Aadhaar authentication", the words "or due to not opting for Aadhaar authentication" shall be inserted.

[F. No. CBEC-20/06/16/2018-GST (Pt. II)]

(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and was last amended *vide* notification No. 60/2020 - Central Tax, dated the 30th July, 2020, published vide number G.S.R. 480(E), dated the 30th July, 2020.

[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. 63/2020 – Central Tax

New Delhi, the 25th August, 2020

G.S.R. ….(E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of September, 2020, as the date on which the provisions of section 100 of the Finance (No. 2) Act, 2019 (23 of 2019), shall come into force.

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

(Pramod Kumar)
Director to the Government of India

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

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

Notification No. 64/2020 – Central Tax

New Delhi, the 31st August, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:–

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

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

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 322(E), dated the 23rd April, 2019 and last amended by notification No. 59/2020-Central Tax, dated the 13th July, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 443(E), dated the 13th July, 2020.

(III) ADVANCE RULINGS

1. GST on supply to Wular Conservation and Management Authority

Case Name : **In re Reach Dredging Ltd (GST AAR West Bengal)**
Appeal Number : Order No. 08/WBAAR/2020-21
Date of Judgement/Order : 10/08/2020

It appears from Notification No. 311 dated 25/09/2012 of the Forest Department of State Government (now a Union Territory) that the recipient is constituted as an authority under section 3 (1) of the Jammu and Kashmir Development Act, 1970 for preservation and conservation of Wular Lake. The Board of the recipient, constituted the same day by Notification No. 314, ensures 100% control of the State Government (now a Union Territory). The powers and functions of the recipient are described in Govt Order No. 396 FST of 2012 dated 10/10/2012 of the Forest Department, Government of Jammu and Kashmir. They broadly conform to the function of promoting urban forestry, protection of environment and ecology entrusted to a municipality under article 243W of the Constitution. The recipient is, therefore, a Governmental Authority within the meaning of para 5(ix) of the IGST Notification.

Based on the above discussion, The applicant's supply, as mentioned in para 1.1, to the Wular Conservation and Management Authority is taxable under Sl No. 3(vii) of **Notification No 8/2017 – Integrated Tax (Rate) dated 28/06/2017**, as amended from time to time.

2. GST on Irrigation and Flood control Department, Govt of Jammu & Kashmir

Case Name : **In re Reach Dredging (GST AAR West Bengal)**
Appeal Number : Order No. 07/WBAAR/2020-21
Date of Judgement/Order : 10/08/2020

The applicant's supply, as mentioned in para 1.1, to the Irrigation and Flood control Department, Govt of Jammu and Kashmir, is taxable under Entry No. 3(vii) of **Notification No 8/2017 – Integrated Tax (Rate) dated 28/06/2017**, as amended from time to time.

3. Three-wheeled electrically operated motor vehicle classifiable under HSN 8703

Case Name : **In re Hooghly Motors Pvt Ltd (GST AAR West Bengal)**
Appeal Number : Order No 06/WBAAR/2020-21
Date of Judgement/Order : 10/08/2020

Classification of the three-wheeled electrically operated motor vehicle

Motor vehicles for carrying less than ten passengers are classified under Heading 8703 of the First Schedule of the Customs Tariff Act, 1975 (hereinafter the Tariff Act),

which is adopted in the GST Act for classification. Sub-heading 8703 10 covers the vehicles specially designed for travelling on snow, golf cars and similar vehicles. The term 'similar' narrows the scope to specific use other than carrying passengers on hire on regular roads. All other sub-headings except the residual subheading 8703 90, refer to vehicles fitted with an internal combustion engine. E-rickshaws or electrically operated three-wheeled vehicles are, therefore, classifiable under Tariff heading 8703 90 10 of the Tariff Act.

A three-wheeled motor vehicle without the battery pack does not have the essential character of an 'electrically operated vehicle.' However, it is neither a vehicle fitted with an internal combustion engine. Unless it is equipped with any device like solar panels that may supply energy for its locomotion, it is not classifiable as a vehicle under Sub-heading 8703 of the Tariff Act. However, it includes the chassis fitted with the motor to convert electrical energy into the mechanical energy to put the vehicle into locomotion once the battery pack is attached. Such a device is called the engine of the vehicle. It is, therefore, classifiable under Tariff-head 8706 00 31, being the chassis fitted

A three-wheeled motor vehicle is classifiable under HSN 8703 as an electrically operated vehicle, provided it is fitted with the battery pack. Otherwise, it will be classifiable under HSN 8706.

4. Assignment of leasehold right on land is taxable under GST

Case Name : **In re Enfield Apparels Ltd (GST AAR West Bengal)**
Appeal Number : Order No. 05/WBAAR/2020-21
Date of Judgement/Order : 10/08/2020

The activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed of sub-lease stands extinguished after assignment. Neither does it create fresh benefit from the land. It is in the nature of compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee. It is a service classifiable under 'Other miscellaneous service' (SAC 999792) and taxable @ 18% under Sl No. 35 of **Notification No. 11/2017 – CT (Rate) dated 28/06/2017** (State Notification No. 1135-FT dated 28/06/2017), as amended from time to time.

The transfer fee charged by the Sub-lessor is the consideration payable to the Sublessor for providing a service in the course or furtherance of business, more specifically because business includes supply or acquisition of goods or services in connection with the closure of a business in terms of section 2 (17) (d) of the GST Act. The GST to be paid on such transfer fee is, therefore, admissible as input tax credit.

5. GST on Security Excise Adhesive Labels

Case Name : **In re Marketing Communication & Advertising Ltd. (GST AAR Karnatka)**

Appeal Number : Advance Ruling No. KAR ADRG 42/2020
Date of Judgement/Order : 18/08/2020

The applicant have sought advance ruling in relation to supply by applicant to various distilleries and sought ruling on correct classification of Security Excise Adhesive Labels i.e., HSN Code applicable and The rate of tax applicable on supply of Security Excise Adhesive Labels.

We observe that the primary use of the Security Excise labels is for security. We also observe that akin to Note No.2 to entry 49 in Central Excise Tariff, a similar Note No. 12 is existing in Chapter 48 of GST Tariff which reads as below:

"Except for the goods of Heading 4814 or 4821, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49."

We further observe that that the sixth edition of volume III of Explanatory Notes of World Customs Organisation in relation to Chapter Heading 4911 also includes at item No. 10, "Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., "comic stickers" and "window stickers".

We therefore conclude that the judgment of the Hon'ble Supreme Court in the case of M/s. Holostick India Ltd wholly applies to the instant case and therefore the product in question is classified under the Heading 4911 and rate of tax is 12% as per Sr. No. 132 of schedule II of **Notification No. 01/2017-CT (R) dated 28.06.2017**.

6. No GST on Transportation charges recovered from employees

Case Name : **In re Tata Motors Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA- 23/2019-20/B-46
Date of Judgement/Order : 25/08/2020

Question: -1. Whether input tax credit (ITC) is available to Applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace?

Answer: – ITC is available to the applicant but only after 01.02.2019.

Question:-2. Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of employee bus transportation facility in non-air conditioned bus?

Answer: – Answered in the negative.

Question: -3. If ITC is available as per question no. (1) above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?

Answer: – Answered in the affirmative.

7. GST payable on leasing of property in the nature of hotel, inn, guest house

Case Name : **In re Sri. Taghar Vasudeva Ambrish (GST AAAR Karnataka)**
Appeal Number : Advance Ruling No. Kar/AAAR-01/2020-21
Date of Judgement/Order : 31/08/2020

In the instant case, the Lease Deed dated 21st June 2019 evidences that a property has been rented/leased to M/s DTwelve Spaces Pvt Lt by the Lessors (the Appellant being one of the lessors) who are also the owners of the said property. The Appellant claims that the property which has been leased to the lessee is a residential property and has put forth evidences in the nature of sanctioned building plan and Katha extract to substantiate the same. They have also relied on several judicial pronouncements to emphasise that a "residential dwelling" is a place where people live or stay for a considerable period of time. We take note of the fact that the **Notification No 09/2017 IT (R)** as well as the GST law does not define the term "residential dwelling". However, we refer to the CBIC Education Guide dated 20 June 2012 which gives clarifications in the context of Service Tax laws wherein it is mentioned that in the absence of a definition of the term "residential dwelling", one has to interpret the same in terms of normal trade parlances as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat or like places meant for temporary stay. In the case before us, we find from the records submitted by the Appellant that, the impugned property was constructed as Hostel building. The project description in the sanctioned plan submitted to us indicates that the plan is for the construction of a hostel building. Can a hostel building be called as a residential dwelling? A common understanding of a hostel is that of an establishment which provides inexpensive accommodation to specific categories of persons such as students, workers, travellers. On the other hand, a common understanding of the term "residential dwelling" is one where people reside treating it as a home. **We find that the Appellant has constructed the building with the intention of providing hostel accommodation which is more akin to sociable accommodation rather than what is commonly understood as residential accommodation. Therefore, we conclude that the impugned property cannot be termed as "residential dwelling". Once the impugned property is not a residential dwelling, the exemption under Sl.No 13 of Notification No 09/2017 IT (Rate) dt 28.06.2017 will not apply to the renting/leasing of such property.**

(IV) COURT ORDERS/ JUDGEMENTS

1. HC order release of Goods on payment of 100% of tax payable

Case Name : **The Secretary to Govt. Department of Finance Vs M/s. K.S. Arcanut Stores (Karnataka High Court)**
Appeal Number : Writ Appeal No. 200011-13/2020 (T-RES)
Date of Judgement/Order : 05/08/2020

High Court states that, a close scrutiny of Section 129 (1)(a) of the Act indicates that if the owner come forward to pay the tax payable on such goods equal to 100% of the tax payable, then Section 129 (1)(a) of the Act is attracted. But when already the appellants have passed an order under Section 129 (1)(b) of the Act, by rejecting the documents tendered by the person in charge, until and unless that order is set aside, no order can be passed under Section 129 (1)(a) of the Act. Even for the order under challenge under Section 130 (1) of the Act some order ought to have been passed. The learned Single Judge without looking into the said provisions, by taking shelter under Section 168 of the Act gone into the circular issued on 31.12.2018 and passed the impugned order. Taking into consideration the above aspects of the matter, without expressing anything on the merits of the case, the impugned order is not in consonance with the provisions of law. Firstly he has to say whether the orders passed by respondent – Government are in accordance with law or not. Then, if it is not in accordance with law, he has to set aside the same, then pass the suitable order. By keeping pending those orders, whatever order has been passed is not sustainable in law. It appears to be contrary to each other. The orders passed by the Government remain in tact and learned Single Judge passes order under Section 129(1)(a) of the Act. In that light, it requires interference at the hands of this Court. If the matter is remitted to consider afresh all the issues which have been raised by both the parties, then thereafter to pass suitable order, it would meet the ends of justice.

2. Madras HC issued Notice to Commissioner & AC of GST for ITC related Issues

Case Name : **Amplexor India Private Limited Vs Union of India (Madras High Court)**
Appeal Number : W.P. No. 10344 of 2020
Date of Judgement/Order : 07/08/2020

The Madras High Court issued the notice to the Commissioner and Assistant Commissioner of GST for various issues related to Input Tax Credit, its transitional provisions and concern time limit.

3. Provisional bank account attachment ceases to have effect after one year from order date

Case Name : **Namaskar Enterprise Vs Commissioner of Goods & Service Tax (Gujarat High Court)**

Appeal Number : R/Special Civil Application No. 18105 of 2019
Date of Judgement/Order : 07/08/2020

A perusal of the aforesaid Sub-Section-2 of Section 83 makes it abundantly clear that the provisional attachment would cease to have effect after the expiry of a period of one year from the date of the order made under Sub-Section-1. Although no specific date has been mentioned in the impugned order of provisional attachment of the bank account, yet having regard to the statement made by the learned counsel that the attachment came into force from 2-8-2019, we take it that the order of provisional attachment has come to an end. In such circumstances referred to above, no further adjudication is necessary as regards the other contentions raised in the writ application. We direct the State Bank of India i.e. the respondent No.3 to take notice of this order and permit the writ applicant to operate his Bank Account No.37846915026 forthwith.

4. Rajasthan HC grants interim relief from High VAT & CST demand to J.K. Lakshmi Cement

Case Name : **M/s. J. K. Lakshmi Cement Limited Vs State of Rajasthan (Rajasthan High Court at Jodhpur)**
Appeal Number : S.B. Civil Writ Petition No. 6501/2020
Date of Judgement/Order : 11/08/2020

Rajasthan High Court Grants Interim Relief to J.K. Lakshmi Cement Ltd. From Being Exposed To High Tax Demand Under Rajasthan VAT Act And Central Sales Tax Act.

Anti Evasion Commercial Tax Department of State of Rajasthan issued Notices for assessing and reassessing for 6 Financial Years to the cement manufacturing company, JK Lakshmi Cement Ltd. for reopening of the assessment for Financial Years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19,2019-20 under Rajasthan Value Added Tax,2003 and Central Sales Tax Act, 1956. The Commercial Tax Department issued Notices to the Company on 05.03.2020 and 06.06.2020 for different financial years while considering the issuance of Diesel to its work agencies to be sale under the Act and on that pretext, the Company be imposed with huge and humongous tax, interest and penalty, thereupon, for alleged the sale consideration received by company.

Being aggreived, the Company preferred writ petitions before the Rajasthan High Court at Jodhpur while assailing the validity of Notices issued by the Tax Department which are in due ignorance of law and with legal mala fide and ignoring the earlier concluded assessment for same financial years.

Senior Advocate Mr. Ravi Bhansali assisted by Mr. Ramit Mehta and Mr. Saurabh Maheshwari appeared for the petitioners and advanced arguments that the Notices under challenge are without jurisdiction and on misconceptions of the Department. The petitioner company provides Diesel to the work agencies under arrangement and does not charge any single amount for the same.The Department has wrongly and

without any material evidence concluded in Notice that the petitioner company makes sale to other business entities while collecting consideration. It was specifically argued that the petitioner company does not charge and collect even a single penny and thus, it is grossly wrong on part of the Department to assume such arrangement to be Sale and reopen the settled assessment while imposing tax, interest and penalty.

The Hon'ble Court heard arguments on behalf of petitioner of bunch of the writ petitions at length and vide order dated 11.08.2020, the Hon'ble Court duly stayed the effect and operations of the impugned notices while issuing notices to the Respondent arrayed in the writ petitions and matter be kept after 6 weeks.

The Hon'ble Court vide order dated 24.07.2020 in the matter of JK Cement Ltd. granted similar interim orders.

5. HC to GST Council- Decide GST Rate for Ayurvedic Sanitizer

Case Name : **Haryana Ayurvedic Drugs Manufacturers Association (HADMA) Vs Central Goods & Service Tax & Ors. (Punjab & Haryana High Court)**
Appeal Number : CWP No. 11474 of 2020
Date of Judgement/Order : 11/08/2020

Instant writ petition seeking quashing of show cause notices issued by the Taxation authorities to the manufacturers of the 'AUS ingredients bases sanitizer' for depositing the GST at the Tariff Rate of 18% under the HS Coder 3808-94 instead of 12%.

The High Court forwarded the application to GST Council for appropriate consideration of exact GST rate applicable on Ayurvedic/ Unani/ Sidha (AUS) ingredient based sanitizers in accordance with law. Accordingly the petition is disposed off with the hope that the same shall be taken up for consideration by the Council at the earliest, considering the issue involved.

6. No detention of goods for mere non-mention of Tax payment details on E-Way Bill

Case Name : **M.S. Steel and Pipes Vs Asst. State Tax Officer (Kerala High Court)**
Appeal Number : W.P.(C) No. 16356 of 2020
Date of Judgement/Order : 12/08/2020

The issue under consideration is whether the detention of goods with the allegation that the E-way bill does not have tax amount mentioned on it is justified in law?

High Court states that, the power of detention under Section 129 is to be exercised only in cases where a transportation of goods is seen to be in contravention of the provisions of the Act and Rules and not simply because a document relevant for assessment does not contain details of tax payment. As per the statutory provisions applicable to the instant case, a person transporting goods is obliged to carry only the

documents enumerated in Rule 138(A) of GST Rules, during the course of transportation. The said documents are (i) the invoice or bill of supply or delivery challan, as the case may be and (ii) the copy of e-way bill in physical form or e-way bill Number in electronic form etc. A reading of the said Rule clearly indicates that the e-way bill has to be in FORM GST EWB-01, and in that format, there is no field wherein the transporter is required to indicate the tax amount payable in respect of the goods transported. If the statutorily prescribed form does not contain a field for entering the details of the tax payable in the e-way bill, then the non-mentioning of the tax amount cannot be seen as an act in contravention of the rules. In the instant case, it is not in dispute that the transpiration was covered by a valid tax invoice, which clearly showed the tax collected in respect of the goods and an e-way bill in the prescribed format in FORM GST EWB-01. Since there was no contravention by the petitioner of any provision of the Act or Rule for the purposes of Section 129, the detention in the instant case cannot be said to be justified. In the result, HC allow the writ petition by quashing Ext.P4 series of detention notices and directing the respondents to release the goods forthwith to the petitioner.

7. Not allowing personal hearing to petitioner violates principles of natural justice

Case Name : **CSK Realtors Limited Vs ACST (Telangana High Court)**
Appeal Number : WP No. 11843 of 2020
Date of Judgement/Order : 13/08/2020

The court is of the opinion that the opinion that the 1st respondent ought to have provided a personal hearing to the petitioner, since the petitioner requested for it specifically in its objections dt.18.02.2020 filed by it to the show cause notice issued on 31.01.2020 to it by the 1st respondent, and that failure of the 1st respondent to do so is a violation of principles of natural justice warranting setting aside of the impugned order.

Accordingly, the Writ Petition is allowed; the impugned assessment order passed by the 1st respondent on 13.03.2020 in Form GST DRC-07 for the tax periods 2017-18 and 2018-19 is set aside; the matter is remitted back to the 1st respondent for fresh consideration; the 1st respondent shall provide a personal hearing to the petitioner; and then the 1st respondent shall pass a reasoned order in accordance with and communicate it to the petitioner. No order as to costs.

8. HC direct GST authorities to decide on release of IGST & Duty Drawback

Case Name : **AAR Impex Vs Union of India (Delhi High Court)**
Appeal Number : W.P.(C) No. 4464/2020
Date of Judgement/Order : 13/08/2020

High Court direct the concerned GST authorities to decide the question of release or otherwise of IGST along with interest as well as the release or otherwise of duty

drawback due to the petitioner in accordance with law, rules, regulations and Government policies within a period of three weeks from today.

9. HC dismisses plea to include masks & sanitizers in Essential Commodity

Case Name : **Gaurav Yadav & Anr. Vs Union of India & Ors. (Delhi High Court)**
Appeal Number : W.P.(C) No. 5222/2020
Date of Judgement/Order : 13/08/2020

(a) What items are to be included under the Essential Commodities Act, 1955 as 'Essential Commodity', is a policy decision of the respondent/Government and, therefore, unless the decision can be shown to be manifestly unreasonable or arbitrary, this Court will be extremely slow in interfering with the policy decision of the Government.

(b) Inclusion of commodities in the list of 'Essential Commodities' under the Essential Commodities Act, 1955 is a complex decision based upon varieties of factors such as availability, price etc. Moreover, the aforesaid notification dated 13th March, 2020 has not been extended beyond 30th June, 2020 as, in the opinion of the Government, masks and sanitizers are now easily available and there is no need to control such commodities or to regulate supply etc. of these commodities. Thus, a conscious decision has been taken by the respondents not to extend the notification dated 13th March, 2020 (Annexure P-2) beyond 30th June, 2020 as, in the opinion of the Government, based upon the facts, there is no need to control the price of the masks and sanitizers, as per the Office Memorandum dated 1st July, 2020 (Annexure P-5 to the memo of writ petition).

(c) The petitioners have not brought any material on record to demonstrate that the basis for the decision of the respondents is erroneous in any manner. In fact, the learned counsel for the petitioner specifically accepted that these commodities are now generally available. However, he submitted that in the absence of regulation, the manufacturers and traders may take advantage of the situation. In our view, this is a conjecture which is not supported by any materials, and cannot be used to characterise the decision of the respondents as arbitrary or unreasonable. Unless there is a cogent need for regulation, it cannot be said that normally the items should be included under the Essential Commodities Act, 1955. Such regulation of commodities based on conjectures is also not required.

(d) Even during the period of coverage of masks and sanitisers under the Act, the only regulation in place was about the price of the aforesaid two commodities as is clear from the notification dated 21st March, 2020 (Gazette Notification dated 24th March, 2020 – annexed at page-51 of the writ petition). Thus, there was no further restriction at all except regarding the price of the said two commodities in the notification dated 21st March, 2020. The contentions about regulation of quality of these products, as sought to be raised in the petition, are therefore not relevant to the relief sought.

Looking to the other prayer in the petition, which relates to reduction of rate of GST on masks and sanitizers, it ought to be kept in mind that the rate of tax cannot be

challenged in a Court of law unless it is abundantly confiscatory in nature. In the facts of the present case, nothing has been argued out about how the present rate of GST is confiscatory in law. Merely, because this petitioner feels that the GST rate applied on masks and sanitizers is excessive, this cannot be a reason for issuing a writ of mandamus and direct the respondents to reduce tax on the said commodities.

10. Allow to submit GST TRAN- 1 Form electronically or manually: HC

Case Name : **M/s. Sri G K Exim Vs The Deputy Commissioner (Andhra Pradesh High Court)**
Appeal Number : W.P. No. 1922 of 2020
Date of Judgement/Order : 13/08/2020

In W.P. No. 3298 of 2019, a similar issue came up before the Division Bench of this Court for consideration. Relying upon the judgments in **Uninav Developers Pvt Ltd., v. Union of India & Others** [2019-VIL-367-DEL], **Bhargava Motors v. Union of India** [2019 SCC Online Del 8474-2019- VIL-2 18-DEL], **Kusum Enterprises Pvt. Ltd. V. Union of India** [WP (C) 7423/2019] and Sanko Gosei Technology India Pvt. Ltd. V. Union of India & Others [WP(C)7335/2019] – 2019-VIL-34 1-DEL], the Court disposed of the writ petition, on 13.08.2019, directing the respondents to either open the portal so as to enable the petitioner to again file the Form GST TRAN- 1 electronically or in the alternative, accept the Form GST TRAN- 1 presented manually by fixing a cut of date and process the claim in accordance with law.

The Judgment delivered in W.P. No. 3298 of 2019 was followed by another Division Bench in W.P. No. 15769 of 2019, to which one of us was a party.

Having regard to the judgments referred to above, this Writ Petition is **disposed** of in terms thereof directing the respondents concerned to permit the Writ Petitioner to submit GST TRAN- 1 Form electronically or, in the alternative, manually, by fixing a cut off date, within a period of 30 days from the date of receipt of judgment, in which event, the same may be dealt with, in accordance with law. No order as to costs.

11. Onus on revenue to prove that CA Certificate is False Statement

Case Name : **Tvl. Madura Coasts (P) Ltd. Vs Commissioner of Commercial Taxes (Madras High Court)**
Appeal Number : W.P.(MD) No. 521 of 2020
Date of Judgement/Order : 13/08/2020

The issue under consideration is whether Sales Return transactions which are erroneously shown it in sales tax return as sales can be rectified eventually after submission of CA certificate alongwith the concern Invoice memos?

High Court states that, when the assessing authorities could accept the explanation of the assessee for the subsequent years, there is no reason for them to take a different stand in the instant year. Therefore, the orders impugned in the writ petition warrant interference. As regards the aspect, namely, sales return, it is seen that the petitioner

has enclosed the certificate issued by the Chartered Accountants along with their The Chartered Accountants have certified that the transactions in question were executed by the assessee and that they had been reversed in their books of account. In other words, the transactions became unfructified sales. It appears that for proving bona fides, the documents regarding reversal of export sales were produced before the assessing authority. The assessing authority has rejected this stand of the petitioner by stating that the relevant documents have not been submitted. High Court cannot appreciate this reason adduced by the assessing authority. When the petitioners deny the sales in question, they cannot do anything more. If the assessing authority is of the view that this is a false statement, the onus is on the authority. The petitioner cannot be expected to prove the negative. Therefore, the orders impugned in this writ petition stand set aside to that extent. The writ petition stands allowed accordingly.

12. High Court Grant Bail to Pakistani National accused of GST evasion

Case Name : **Vijay Kumar Nair Vs State of M.P. (Madhya Pradesh High Court)**
Appeal Number : M.Cr.C. No. 23289 of 2020
Date of Judgement/Order : 13/08/2020

In the present case, the applicant is facing trial for offences punishable under section 132(1)(a)(i) of the GST Act and under Section 409, 467, 471, 120-B of the IPC. The applicant, who is a Pakistani national faces an allegation that he is indulged in clandestine clearance of mouth freshener, commonly known as 'Pan Masala', without payment of GST. The Counsel for the applicant prayed for bail being granted to the applicant on the grounds that the petitioners were earlier paying GST honestly and are also ready to pay the same in future. However, due to unprecedented circumstances of spread of COVID-19 pandemic and complete lockdown pursuant thereto; there was some delay in paperwork and submission of the invoices etc. It was further contended that though under pressure, they have already paid some sum and are still ready to pay the deficit, if any, found due on the final assessment.

High Court states that on careful consideration of nature and gravity of the allegation made against the petitioners and the specific evidence collected in respect of these allegations, elaborate discussion of which would not be apt as it may adversely affect the interest of either party, the specific facts put-forth by the learned senior counsels for the petitioners and their reply and other facts and circumstances of the case, in the considered opinion of this court, the case for granting bail is made out. Therefore, without commenting on the merits of the case, both the petitions stand allowed.

13. Emails being to taxpayers for payment of interest are mere intimations & not orders

Case Name : **Saha Hospitality Ltd. Vs The State of Maharashtra & Ors. (Bombay High Court)**
Appeal Number : WP-LD-VC- NO. 112 of 2020
Date of Judgement/Order : 14/08/2020

1. The Petitioner has filed the above Writ Petition challenging the orders dated 17th February, 2020 and 19th June, 2020 issued by Respondent No.2 – The Deputy Commissioner of State Tax, D.C. E-634, T.U.-3 (impugned orders).

2. According to the Petitioner, by the impugned orders, Respondent No. 2 seeks to directly recover interest under Section 50 of the GST Act through coercive recovery provisions of Section 79. This is clearly in contravention of Section 78 of the GST Act, which provides for a three-month breathing period after the passing of any order, before the coercive recovery provisions of Section 79 can be invoked.

3. It is further submitted by the Petitioner that the impugned orders are passed without issuing any show cause notice and without giving a hearing to the Petitioner. The Petitioner is not aware of how the interest calculation has been arrived at.

4. The Petitioner has also submitted that Respondent No.2 is threatening to initiate coercive recovery proceedings under Section 79 of the GST Act if the amount is not paid within a period of 7 days. The Respondent No.2 has filed its Affidavit in Reply dated 27th July, 2020. Paragraph 18 of which reads thus :

"18. With respect of paragraph No. 5 of the above Petition, I deny the conclusion arrived at by the Petitioner. It is humbly submitted that the email was sent to the Petitioner on 17th February, 2020 and 19th June, 2020 was merely an intimation of payment of interest under section 50 of ***CGST Act*** */ MGST Act, 2017. The payment of interest is on account of late filing of Return-GSTR 3B from July, 2017.* ***This office is conscious of the procedure required to be followed by it to recover and will initiate the recovery proceeding with issuance of show cause notice, working of interest calculation and further actions as per provision of law. There is no intention of this office to directly recover interest under Section 50 of the CGST / MGST Act, 2017. I therefore say that the above Writ Petition is not only without merits but premature and hence liable to be dismissed."***

(emphasis supplied)

6. In view of the above statements made in paragraph 18 of the Affidavit in Reply dated 27th July, 2020 filed by Respondent No.2, the Learned Advocate appearing for the Petitioner is not pressing for reliefs sought in the Writ Petition. The Writ Petition is accordingly disposed off.

7. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

14. Search & Seizure justified for Goods kept under Illegal Custody: HC

Case Name : **Suresh Kumar P.P. Vs Deputy Director (Kerala High Court)**
Appeal Number : W.A. No. 943 of 2020
Date of Judgement/Order : 14/08/2020

The issue under consideration is whether the initiation of inspection, search and seizure under Section 67 of the CGST Act for goods kept under illegal custody is justified in law?

High Court states that, the allegations raised of harassment and high-handedness cannot be considered in a petition under Article 226 of the Constitution. An operation carried out by a statutory authority invested with the powers of search, inspection and seizure, by reason only of such activities having been carried out in the residences and offices of any person under investigation for a long time, cannot be labeled as harassment or high-handed. Nor could the inconvenience caused to the person under investigation, especially of remaining in the premises for the entire duration, termed to a detention pursuant to an arrest. A search and seizure operation necessarily brings with it certain discomforts, which are to be endured in the best interest of the person under investigation who witnesses every action of the inspection team. The allegations are also not substantiated which, HC perfectly understand, are impossible of substantiation, especially in a petition under Article 226. Apart from the invalidity urged of the very search, inspection and seizure, HC are not considering any of the issues so raised in the writ petition and in the appeal. Hence it is dismissed.

15. HC restrains Govt from appointing Technical Members to GSTAT until further orders

Case Name : **Revenue Bar Association Vs Union of India (Madras High Court)**
Appeal Number : W.P.No. 26762 of 2019
Date of Judgement/Order : 17/08/2020

Madras High Court restrained the Central Government from appointing technical members to the Goods and Services Tax Appellate Tribunals (GSTAT) until further orders vide its order dated 17.08.2020.

16. GST Order Served by Uploading it on Web Portal is Valid

Case Name : **Pee Bee Enterprises Vs Assistant Commissioner (Kerala High Court)**
Appeal Number : W.P.(C) No. 14376 of 2020
Date of Judgement/Order : 17/08/2020

The issue under consideration is whether the serving of assessment order by uploading it on web portal and not communicated separately to the assessee will be considered as valid under law?

High Court states that, the assessment orders dated 20.8.2019 were served on the petitioner through publication on the web portal on 20.8.2019 itself. Over and above that, an email was also sent to the petitioner at his registered email id, although the petitioner says that he did not receive the email but received only a copy of the or through registered post much later. I find however, that the service of an order through

the web portal is one of the methods of service statutorily prescribed under Section 161(1)(c) and (d) of the SGST Act. If that be so, then the petitioner cannot deny the fact of receipt of the order on 28.9.2019 for the purposes of filing the returns as contemplated under Section 62 of the SGST Act with a view to getting the assessment order withdrawn. In as much as the return filed by the petitioner for the period April and May 2019 was only on 30.10.2019,ie., 71 days after the date of service of the assessment order through the web portal (20.8.2019), the petitioner cannot aspire to get the benefit of withdrawal of the assessment orders contemplated under Section 62 of the SGST Act. The assessment orders would therefore have to be held valid and the remedy of the petitioner against the said assessment order can only be through an appeal before the appellate authority under the Act.

17. HC Restrain CG to Appoint Lawyers as Technical members to GSTAT

Case Name : **Service Bar Association Vs Union of India (Madras High Court)**
Appeal Number : W.P. No. 10863 of 2020
Date of Judgement/Order : 17/08/2020

The present writ petition has been filed by the Service Bar Association, regarding significantly omit advocates from being considered as qualified and eligible for being appointed as Member. The Madras High Court restricted the Central Government from appointing technical members to the Goods and Services Tax Appellate Tribunals (GSTAT) until further orders.

18. Order passed by Ignoring Cross Examination Request is unlawful

Case Name : **M. P. Ganesan Vs The Commercial Tax Officer (Madras High Court)**
Appeal Number : W.P. Nos. 34988 & 34990 of 2019
Date of Judgement/Order : 17/08/2020

The issue under consideration is whether the order passed by AO by denying the cross examination request of custom banker as well as bank officials is justified in law?

High Court states that, a perusal of the impugned orders indicates that the directions of this Court in the first round of litigation have not been taken into account in proper perspective in finalizing the assessments. This Court had specifically directed that a proper enquiry be made by the Assessing Officer, which would not only include examination of all materials procured from the Customs and the Income Tax Department, but also on an independent application of mind of those materials and a proper and effective opportunity being extended to the petitioner to substantiate his repeated contention that he is unconnected with the import transactions. However, the Assessing Officer has merely relied on the same materials which were already available on record, to pass the impugned order. The observations of the Assessing Officer indicate the cursory and arbitrary manner in which the assessments have been completed. Moreover, despite a request for cross- examination of the Customs Broker

as well as bank officials by the assessee, the Assessing Officer does not even refer to the request, let alone consider the same. High Court thus of the view that the impugned assessments have not been framed in a proper manner. Though they inclined to quash the assessments in full, they have remit the same to the file of the officer to be re-done de novo solely.

19. MP HC grants Bail against GST offence | Section 132(1) | CGST Act 2017

Case Name : **Jagdish Arora and another Vs Union of India (Madhya Pradesh HC)**
Appeal Number : M.Cr.C. No. 24219/2020
Date of Judgement/Order : 18/08/2020

In the instant case, the petition is filed for obtaining bail against in respect of the offence punishable under Section 132(1)(a) read with section 132(1)(i) of the **Central Goods and Service Tax Act, 2017**.

HC state that the parties at length and bestowed our anxious consideration on their respective arguments advanced. The record was also produced by the respondent in a sealed. HC have gone through the record in order to ascertain the existence of "reasons to believe" for the proceedings being initiated against the applicants. HC do not perceive any material, except the statement of the employee. There is no documentary material produced on record to show that the present applicants were legally in charge and responsible for the day-to-day working of the Company. They had already resigned legally from the Directorship of the Company. **Merely on a bald statement of an employee of the Company, it cannot be held that the present applicants were in charge and responsible for the functions of the Company.**

On a careful consideration of nature and gravity of the allegations made against the applicants and the specific evidence collected in respect of the allegations levelled, elaborate discussion of which would not be apt, as it may adversely affect the interest of either party, the specific facts put forth by the learned senior counsel for the applicants and the reply and other facts and circumstances of the case, in the considered opinion of this Court, the case for granting bail is made out. Therefore, without commenting on the merits of the case, the application for grant of bail to the applicants stands allowed.

20. Competent authority can order provisional release of goods, pending confiscation proceedings: HC

Case Name : **Karan Toshniwal Vs State of Gujarat (Gujarat High Court at Ahmedabad)**
Appeal Number : R/Special Civil Application No. 4043 of 2020
Date of Judgement/Order : 18/08/2020

Hon'ble High Court held as follows:-

[1] Pending the confiscation proceedings, if the writ applicants file an application under Section 67(6) of the Act for provisional release of the goods and the vehicle, if any, then the competent authority shall look into the same at the earliest and pass an appropriate order on such application within a period of fifteen days from the date of receipt of such application.

[2] If the writ applicants are in any way aggrieved or dissatisfied with the order that may be passed by the competent authority under Section 67(6) of the Act, then it shall be open for them to prefer an appeal before the appellate authority under Section 107 of the Act.

21. RTI Seeking Details of Minutes of Meeting of GSTN – HC refers matter back to CIC

Case Name : **Goods and Service Tax Network Vs Information Commissioner, CIC & Anr. (Delhi High Court)**
Appeal Number : W.P.(C) No. 11399/2016
Date of Judgement/Order : 18/08/2020

The issue under consideration is whether RTI application seeking disclosure of Minutes of the Board Meeting & resolutions of Goods & Service Tax Network (GSTN) by information commissioner will be sustain in law?

High Court states that, in their opinion the minutes of the board meetings are bound to contain some confidential information relating to the commercial aspects of the company, the technological aspects of the technology and other IT network that it is providing to various governments/government agencies. Disclosure of such information is likely to harm the interest of the petitioner. Respondent has failed to show that larger public interest warrants the disclosure of such information. This aspect has not been noted or stated in the impugned order. Further, it is true that the Commission directed exclusion of the information which was exempt under Section 8(1)(d) of the Act, but, that was not a correct approach to deal with the matter. By doing so, the Commission left the whole thing to the discretion of the petitioner to decide as to which information would be exempt from disclosure and which information would not attract the exemption provisions contained in the Act. The correct approach, would have been to call upon the petitioner-bank to satisfy the Commission as to how and to what extent the information sought by the petitioner, included matters of commercial confidence, trade secret or intellectual property of the petitioner the disclosure of which would harm the competitive position of a third party and then take a view in the matter. For this purpose, the Commission could also have examined such part of the information which the petitioner claimed to be exempt under Section 8(1)(d) of the Act, without disclosing the same to the respondent. Of course, if the Commission was of the view that larger public interest warranted disclosure of the information, it could have directed such disclosure even if the information was in the nature of commercial confidence, trade secret or intellectual property of the petitioner, but, to leave it to the petitioner to decide as to which information was exempt from disclosure and which could be disclosed to the applicant is likely to result in further litigation since

the applicant may not be satisfied with the decision of the petitioner-bank in this regard and may be constrained to again knock at the door of the Commission. The CIC had passed a decision to give the Minutes of the Board Meeting directing expunction of information which was exempt under Section 8(1)(d) of the Act. Hence, the CIC left the whole thing at the discretion of the petitioner which was held not to be the correct approach.

A perusal of the reply given by the CPIO dated 17.09.2014 to respondent No. 2"s application shows that there were in all 10 Board Meetings that had been held. Further details are not on record. In the facts of this case, it would be for the CIC to go into the minutes of the Board Meetings and of the AGMs and to determine as to which of the information which is contained in the minutes attracts the provision of Section 8(1)(d) of the Act, namely, are exempt from disclosure and which portion of the minutes can be given to respondent No. 2 in response to his application under the RTI Act. The CIC while looking at the aforesaid matter afresh may keep into account the above observations of the Supreme Court to determine as to whether the demand of respondent No. 2 for minutes of all the Board Meetings for the stated period would fall in the category of being counterproductive and a misuse/abuse of the RTI Act that was frowned upon by the Supreme Court.

HC found the impugned order contrary to the legal position and set aside the same. The matter is remanded back to the CIC for fresh consideration as above.

22. Bogus GST ITC- HC rejects bail to prevent Tampering of Evidence

Case Name : **Mr. Ashok Kumar Vs Commissioner CGST & Central Excise (Bombay High Court)**
Appeal Number : LD/VC/ABA No. 319 of 2020
Date of Judgement/Order : 18/08/2020

Taking into consideration, the facts of the case, though the officers under the CGST Act, cannot seek custody of the arrested persons for completing the investigation, respondent's contention that applicant's detention in custody is necessary to prevent him from causing the evidence of the offence to disappear or tampering such evidence is well founded. Counsel for the respondent has correctly placed reliance on Section 41 of the Criminal Procedure Code in support of his argument and also relied on the Clause-(VI) of notings dated 20th January, 2020 which suggest involvement of such two other persons.

In view of the facts of the case and in the larger interest of the public and the State, in serious cases like this, I am not inclined to exercise discretion under Section 439 of the Criminal Procedure Code in favour of applicant no.1. It is rejected.

So far as applicant no.2 is concerned, material on record indicates and suggest that, applicant no.2 is wife of applicant no.1 and is a dormant and sleeping partner and she is not participating in the day-to-day business of the firm. Applicant no.2 is a housewife. Having regard to these facts, in my view, custody of the applicants will not further the

case/investigation of the respondent and therefore pre-arrest bail is granted to the applicant no.2 and pre-arrest bail application of applicant no.1 is rejected.

23. Gujarat HC quashes VAT order passed due to Procedural Lapses

Case Name : **Vivaa Tradecom Pvt. Ltd. Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 8799 of 2020
Date of Judgement/Order : 18/08/2020

The Gujarat High Court quashed the order and the demand notice passed by the respondent authority because of the procedural lapses and remitting the matter back to the respondent authority for fresh hearing.

The first writ applicant, M/s Viva Tradecom Pvt. Ltd is a company inter alia engaged in the business of manufacturing and sale of readymade garments and fabrics. The writ applicant No.1 is duly registered under the Value Added Tax Act. The second writ applicant carried out the assessment proceedings under Sub-section (2) of Section 34 of the VAT Act for the period 2015-16.

The respondent authority assessed total dues of Rs.56,12,988/-, which includes the **value-added tax (VAT)** to the tune of Rs.17,43,164/-, interest of Rs.12,55,078/- thereon and the penalty of Rs.26,14,746/- imposed at the rate of 150% under Section 34(12) of the VAT Act vide the impugned assessment order passed in form No.304 under Section 34 of the VAT Act.

The writ applicants argued that the respondent authority failed to provide the copies of assessment orders including the order of cancellation of registration of vendors from whom the writ applicants purchased the goods. In such circumstances, his clients had no opportunity to prove the genuineness of such a transaction.

It was further argued that the disallowance of Input Tax Credit without providing a copy of the order of cancellation of the registration certificate of the vendor is in gross violation of the principles of natural justice.

The respondents have vehemently opposed this writ application and has raised a preliminary objection with regard to the maintainability of the present writ application on the ground that the writ applicants have an alternative efficacious remedy of preferring an appeal against the impugned order under Section 73 of t**he Gujarat Value Added Tax Act, 2003.**

The division bench headed by Chief Justice Vikram Nath while going root to the matter noted many procedural lapses on the part of the respondent authority.

“There is no escape from the fact that the hearing for the purpose of imposing penalty under the Act, 2003 pursuant to the notice issued in that regard in Form No.309 was fixed on 24th March 2020. The notice in Form No.309 is dated 17th March 2020. However, it appears that when the representative of the writ applicants appeared before the respondent No.2 on 17th March 2020, a copy of the Form No.309 was served upon him and on the very next date i.e. 18th March 2020, the hearing was

undertaken and the order also came to be passed on the very same date including the order of penalty," the bench observed.

Therefore, the bench quashed the order and remitted the matter to the respondent authority for its fresh consideration, on merits. The claim of Input Tax Credit shall be considered fresh after giving due opportunity of hearing to the writ applicants.

24. Perishable Goods in Transit Can't Seized, if applicable IGST paid with valid E-way Bill & Invoice

Case Name : **Venkateshvara Logistics Fleet Owners and Transport Contractors Vs Assistant Commissioner (Karnataka High Court)**
Appeal Number : WP No. 202433 of 2019
Date of Judgement/Order : 19/08/2020

The issue under consideration is whether the department is entitled to seize a consignment of perishable goods in transit more particularly when it is accompanied by a lawful e-way bill, invoice and when it has paid the applicable IGST?

In the present case, the vehicle and the goods were intercepted at Sagar for the first time for checking the e-way bills, purportedly in exercise of power under Section 68 of the CGST Act. The driver of the vehicle was carrying documents of another consignment and thus there was a mismatch. Thus, the vehicle was searched, the statement of the driver was recorded and the vehicle was detained and a notice under Section 129(3) was issued. The authorized representative appeared before the authorities at Sagar and handed over the correct e-way bill and the corresponding invoice. Yet, the authorities insisted and the petitioner paid the applicable IGST and the penalty. The vehicle was later released on 08.03.2019. Later, on a "reason to believe" that the registered supplier at Nelamangala was not existing at the registered address and that the said supplier had made supplies, some of which were suspicious, the Deputy Commissioner of Central Tax, Shivamogga, addressed a letter dated 09.03.2019 (Annexure-R14) to the Assistant Commissioner of Central Tax, Bijapur to intercept and detain the vehicle for further investigation. It is therefore clear that the department has initiated an action under Section 67 of the CGST Act to identify the fraudulent issue of invoice by the supplier to avail input tax credit. The respondent was not able to indicate the status of the enquiry under Section 67 of the CGST Act namely whether it had determined the input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

High Court states that, in a proceeding under Section 67 of the CGST Act against the supplier, the respondent was not justified in seizing the perishable goods in transit, more so when the goods had suffered tax and penalty. Hence, this writ petition is allowed and the respondent is directed to forthwith release the lorry bearing registration number HR-55-AF-7882 and the goods carried by it which is covered by the E-Way bill 181110112217. However, liberty is reserved for the proper authority under the CGST Act to continue the proceedings initiated under Section 67 and determine the amount of tax payable on the previous supplies made under Section 74

or initiate any penal action under Section 132 of the CGST Act against the supplier or the registered recipients for the alleged fraudulent availing of input tax credit or the wrongful generation of invoices.

25. Goods Can't be detained for mere non-mention of Applicable GST on E-Way Bill

Case Name : **Krishnakumar Vs Asst. State Tax Officer (Kerala High Court)**
Appeal Number : WP(C).No. 16961 of 2020(U)
Date of Judgement/Order : 19/08/2020

The issue under consideration is whether goods can be detained merely because IGST applicable is not mentioned in the e-way bill?

High Court states that, as per the SGST Act and Rules, there is no requirement to mention the details of the tax payment in the copy of the **e-way bill** that accompanies the goods. It is not in dispute that the details of the tax paid were shown in the invoice that accompanied the transportation and there is no dispute raised by the respondents with regard to the accompaniment of the invoice along with the transportation. Under such circumstances and taking note of the judgment of this Court dated 12.08.2020 in W.P(C).No.16356 of 2020, HC allow this Writ Petition by quashing detention notices and directing the respondent to release the goods and the vehicle to the petitioner.

26. HC set aside order in Form GST DRC-01A passed without sufficient Opportunity

Case Name : **Formative Tex Fab Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 9527 of 2020
Date of Judgement/Order : 20/08/2020

Issue was without giving proper opportunity the officer had issued DRC-01A and attached the property. Hon'ble Court was pleased to Quash and set aside the Form DRC-01A.

27. Validity of GST Assessment Order served by uploading it on Web Portal

Case Name : **K.U. Niyas Vs Assisstant Commissioner (Kerala High Court)**
Appeal Number : W.P.(C) No. 13647 of 2020
Date of Judgement/Order : 20/08/2020

The issue under consideration is whether the serving of assessment order by uploading it on web portal and not communicated separately to the assessee will be considered as valid under law?

High Court states that, as per Section 169(c) and (d) of the GST Act the service of any communication to the e-mail address provided by an assessee at the time of

registration, as also by making available the communication in the common portal of the department, is to be treated as an effective communication under the statute. Therefore, the petitioner cannot wish away the fact that the assessment orders were brought to his notice on 25.11.2019 and 27.11.2019 respectively. Inasmuch as the returns filed by the petitioner for the period covered by the assessment orders were belated in that they were filed more than 30 days after the date of service of the orders on the petitioner via the web portal of the department, he cannot aspire for the benefit of withdrawal of the assessment orders as mandated under Section 62 of the GST Act. The Writ Petition in the challenge to the assessment orders and demand notices therefore fails and is accordingly dismissed.

28. Fake GST Invoices – HC reduces Bail bond for accused

Case Name : **Ranjit Singh Vs State of Haryana (Punjab and Haryana HC)**
Appeal Number : CRM.M No. 14856 of 2020
Date of Judgement/Order : 21/08/2020

This Court is of the opinion that since the maximum punishment which can be awarded is upto 5 years and the petitioner has almost undergone a period of one year having been arrested on 06.09.2019. The onerous conditions would thus violate Article 21 of the Constitution of India as the liberty of the petitioner is being deprived. It is settled principle that bail is the rule and jail is the exception and mere seriousness of the charge is not a factor to be taken into account while denying the valuable right of liberty. The basic principle being the man is innocent till he is found guilty. The factum of the investigation being complete and enquiry having been completed and the relevant documents being in possession of the prosecution, the petitioner thus cannot be detained during the trial only on account of the fact that a bail order in the form of a recovery proceedings has been passed against him to pay the outstanding worth almost Rs. 2 crores along with interest.

The Learned Additional Sessions Judge though came to a finding that the offence would be for liability of M/s Maa Karni Yarns for Rs.1,94,78,017/- which would thus make the offence bailable under Section 69(3) and Section 132(4) but inspite of that imposed the onerous condition which has led to the petitioner continuing to be in incarceration. The said condition thus suffers from the vice of unreasonability and cannot stand the test of judicial scrutiny in view of the law discussed above.

Accordingly, the present petition is accepted. The condition of payment of Rs.1,94,78,017/- along with interest is set aside. The bail bonds of Rs.50 lakhs with one surety are reduced to Rs.25 lakhs which shall be in the form of immoveable property, to the satisfaction of the Ilaqa/Duty Magistrate, Panipat. The order of the Addl.Sessions Judge dated 08.04.2020 (Annexure P-2) is, accordingly, modified, whereas the other conditions shall remain intact.

29. GST -Section 50 CGST Act, 2017 – Interest liability for delayed payment of GST on net cash tax liability

Case Name : **Prasanna Kumar Bisoi Vs Union of India (Orissa High Court)**
Appeal Number : W.P.(C) NO.13190 OF 2020
Date of Judgement/Order : 21/08/2020

In a recent ruling passed by Hon'ble Orissa high court, held that w.r.t. interest liability for delayed payment of GST under Section 50(1) of the **CGST Act, 2017,** is required to be paid on net cash tax liability in view of the decision taken by the GST council in its 39th Meeting held on 14 March 2020. The summary of the case is enumerated herein below:

Facts of the case:

- The grievance of the petitioner in this Writ Petition was that he is registered under Central Goods and Service Tax. He had filed the GST returns for the financial year 2017-18, 20018-19 and 2019-20 at a belated stage and availed Input Tax Credit at the time of filing GSTR-3B returns, as Works Contractor.
- The Superintendent, Central GST and Central Excise, Berhampur ("Respondent no. 3) demanded interest under Section 50 (1) of the CGST Act, 2017 in respect of the above three financial years on the head that demand of interest is payable on ITC set off.
- The Learned counsel for the petitioner submitted that in the 39th meeting of the GST Council held on 14 March 2020, it was decided that interest for delay in payment of GST is to be charged on the ***Net Cash Tax Liability w.e.f. 01.07.2017 retrospectively*** but not in the Input Tax Credit.
- The Learned counsel further submitted that the petitioner has filed a representation before the Respondent no. 3 with a prayer not to charge the interest on the availed Input Tax Credit and to drop the proceeding in view of the decision taken in the 39th meeting of GST Council. However, no action was taken till date.

Hon'ble Orissa High Court decision:

- The Hon'ble High court, ***held that the Respondent No.3 is directed to dispose of the representation filed by the petitioner keeping in view the decision taken in the 39th meeting of GST Council, as expeditiously as possible,*** preferably within a period of eight weeks from the date of receipt of this order. The decision is taken, if any, be communicated to the petitioner.

30. Goods cannot be detained merely because Consignee mentioned as Unregistered Person in E-Way Bill

Case Name : **ABCO Trades (P) LTD Vs The Assistant State Tax Officer (Kerala High Court)**
Appeal Number : WP (C).No. 17377 of 2020(V)
Date of Judgement/Order : 21/08/2020

The issue under consideration is whether detention of goods merely because the consignee is mentioned as an unregistered person in the e-way bill is justified in law?

High Court states that, the reasons shown for detaining the consignment are not sufficient to attract the provisions of Section 129 of the GST Act. The detention in the instant case cannot, therefore, be seen as justified. I therefore allow the writ petition by directing the 1st respondent to immediately release the goods and the vehicle covered by a detention notice.

31. GST: Taxpayers can demand copies of Seized Documents during Search: HC

Case Name : **Rajive And Company Vs. Assistant Commissioner (Kerala High Court)**
Appeal Number : WP(C). No. 14144 of 2020
Date of Judgement/Order : 24/08/2020

Petitioners will no doubt be entitled to seek copies of the documents seized from their premises, if and when they are confronted by the respondents with any notice or other proceeding, wherein reliance is placed on the said seized documents. I, therefore, make it clear that in the event of any notice or other proceedings being issued to the petitioners in connection with the investigation that is currently ongoing, wherein reference is made to any document seized from the petitioners, the respondents shall permit the petitioners to take copies of those documents relied upon in the said notice/proceedings, before proceeding further in the matter. After the stage of investigation, the respondents shall return to the petitioners, all such seized documents as are not relied upon by them for proceeding further against the petitioners.

32. Cash can be Seized in GST Search Since Its Included in Definition of 'Things'

Case Name : **Kanishka Matta Vs Union of India and Others (Madhya Pradesh High Court)**
Appeal Number : WP No. 8204/2020
Date of Judgement/Order : 26/08/2020

The issue under consideration is whether seizure of the cash amount to the tune of Rs 66 lakhs by Senior Intelligence Officer at the time of Search Operation is justified in law?

In the present case, the documents and cash were seized in terms of Section 67(2) of the CGST Act, 2017 and the Order of Seizure in Form GST INS-02 was issued. This is mainly because, Shri Sanjay Matta, the husband of the petitioner, made a voluntary statement stating categorically that the said cash of Rs.66 lakhs was the sale proceeds of the illegally sold Pan Masala without payment of GST. Further, the statement made in the case diary reveals that Shri Sanjay Matta, a Pakistani National, was involved in illicit supply of Pan Masala of various brands without invoices and without payment of applicable GST.

High Court states that, the core issue is that whether expression "things" covers within its meaning the cash or not. In the considered opinion of High Court, the CGST Act,

2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) defines “business” and Section 2(31) defines “consideration”. In the considered opinion of High Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer. Resultantly, keeping in view the totality of the circumstances of the case, the material available in the case diary and also keeping in view Section 67(2) of the CGST Act, 2017, High Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise. The writ petition is dismissed.

33. GST refund: HC instructs revenue to pass appropriate order

Case Name : **Uni Well Exim Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Appeal No. 9955 of 2020
Date of Judgement/Order : 26/08/2020

1. Heard Mr. Hardik Modh, learned advocate appearing for the petitioner and Mr. Dharmesh Devnani, learned AGP on advance copy for respondent State.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has mainly prayed as under:

“11(a) That this Hon’ble Court be pleased to issue a Writ or Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Order or direction for calling upon the refund application dated 24.12.2019 **(Annexure – F)**, Show Cause Notice dated 11.01.2020 for rejection of the application for refund **(Annexure – I)** and reply to the Show Cause Notice dated 25.01.2020 **(Annexure J)** and after going through the same, order the Respondents to sanction refund claim provisionally in terms of Section 54(6) of the **CGST Act, 2017**/SGST Act, 2017, read with Rule 91(2) of the **CGST Rules, 2017;**

(b) That this Hon’ble Court be pleased to issue a Writ or Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Order or direction directing the Respondents, their servants, agents or representatives to adjudicate the Show Cause Notice issued in prescribed Form GST-RFD-08 dated 11.01.2020 (Annexure – I) forthwith without any further delay.”

3. Mr. Modh, learned advocate for the petitioner has further submitted that even though repeated requests have been made by the petitioner to decide the show cause notice and additional issue of refund, the authorities have not…….. , was required to be filed.

4. Dharmesh Devnani, learned AGP submitted that because of present situation of Pandemic Covid-19, the respondents could not give any priority to the same.

5. Having heard learned counsels appearing for the parties, without any opinion on merits of the show cause notice dated 11.1.2020 issued by respondent authorities to the petitioner, at this stage, interest of justice would be served, if the concerned

respondent authorities shall hear the petitioner on the issue of show cause notice and after hearing the petitioner, pass necessary orders. Such exercise may be preferably undertaken by the concerned authority as expeditiously as possible latest by 09.10.2020. The authority shall pass an appropriate order in accordance with law, without being any influenced by this order.

6. Petition is disposed of accordingly. No costs. The petitioner shall serve copy of this order by e-mail upon respondent authority.

34. Allow petitioner to upload appeal on GST Web Portal on payment of agreed tax, interest & penalty: HC

Case Name : **Sanyog Construction Private Limited Vs State of Bihar (Patna High Court)**
Appeal Number : Civil Writ Jurisdiction Case No. 7195 of 2020
Date of Judgement/Order : 27/08/2020

Learned Counsel appearing for the State, states that if the petitioner deposits the amount towards tax, interest, fine, fee and penalty as admitted by him and also a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order, the concerned authority will allow access to the petitioner for uploading the statutory appeal on the GST Web Portal as is required under Section 107 of the **Central Goods and Services Tax Act, 2017**/ **Bihar Goods and Services Tax Act, 2017**.

Let the needful be positively done within a period of four weeks from today.

If the petitioner complies the undertaking as given before this Court within a period of four weeks from today, we direct the appellate authority to hear the appeal through virtual mode on account of circumstances arising from the current Pandemic Covid-19 and decide it expeditiously, preferably within a period of three months from the date of its filing.

35. No Coercive Action by DGGI Without a Weeks Prior Notice: Delhi HC

Case Name : **Directorate General of GST Intelligence Vs Mukesh Garg (Delhi High Court)**
Appeal Number : CRL.M.C. 1692/2020
Date of Judgement/Order : 27/08/2020

In the present case, the respondent, Mukesh Garg submits that the petitioner has been forum hunting. He had approached this Court by filing a writ petition praying that appropriate directions be issued restraining the petitioner authority from infringing the fundamental right of life and liberty. He further stated that he would have no objection if the impugned order granting him bail is set aside subject to the condition that the petitioner shall issue a one week's notice in case the petitioner or its officers propose to take any coercive action against the respondent.

High Court states that, considering the outbreak of COVID-19 and the prevalent restrictions on travelling, they had passed an order granting protection from the petitioner for a period of forty-five days. The Court had expressly permitted the petitioner to issue fresh summons requiring the respondent to appear at Indore after a period of forty-five days.