GST UPDATE
(September, 2020)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. CBIC further extends Due date of GST compliance to 30.11.2020

CBIC seeks to amend notification no. 35/2020-Central Tax dt. 03.04.2020 to extend due date of compliance under Section 171 which falls during the period from "20.03.2020 to 29.11.2020" till 30.11.2020

[Notification No. 65/2020-Central Tax dated 01.09.2020]

2. Time limit for issuance of invoice

Time limit for issuance of invoice in case of goods being sent or taken out of India on approval basis for sale or return which falls during the period from 20.03.2020 to 30.10.2020 has been extended up to 31.10.2020.

[Notification No. 66/2020-Central Tax dated 21.09.2020]

3. Late fees payable in case of delayed filing of GSTR-4

Late fees payable in case of delayed filing of GSTR-4 (for composition dealers) for the period July 2017 to March 2020 has been waived fully in case of Nil Return, and restricted to Rs. 500 per return in other cases if such GSTR-4 is furnished from 22th September, 2020 to 31st October, 2020.

[Notification No. 67/2020- Central Tax dated 21.09.2020]

4. Late fees payable for delayed filing of Final Return (GSTR-10)

Late fees payable for delayed filing of Final Return (GSTR-10) has been restricted to Rs. 500 if such GSTR-10 is furnished from 22th September, 2020 to 31st December, 2020.

[Notification No. 68/2020-Central Tax dated 21.09.2020]

5. Extension of due date for filing GST Annual Returns and Audit from September 30, 2020 to October 31, 2020

CBIC vide **Notification No. 69/2020-Central Tax dated 30.09.2020** has extended the due date for filing of GSTR-9 and 9C for the year 2018-2019 from September 30, 2020 to October 31, 2020.

[Notification No. 69/2020-Central Tax dated 30.09.2020]

6. Amendment in Notification No. 13/2020-Central Tax dated 21.03.2020

Notification No. 13/2020-Central Tax dated 21.03.2020 notifies registered person whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice and other prescribed documents as per Rule 48(4) in respect of supply of goods / services to a registered person.
Now, financial year has been substituted by 'any preceding financial year from 2017-18 on words' and exports has also been included in supply.

[Notification No. 70/2020-Central Tax dated 30.09.2020]

7. Due date extension for Quick Response Code

Provision	***Applicable to***
Invoice should contain a Quick Response(QR) Code ***(supplies made to unregistered person i.e. B2C invoice)***	Registered person having aggregate turnover in any preceding financial year from 2017-18 onwards ***exceeding Rs. 500 crores***

If a Dynamic QR code is made available to the recipient through a digital display, then such B2C invoice issued containing the cross reference of payment using Dynamic QR code, shall be deemed to be having QR code. This provision shall be applicable **w.e.f. 01.12.2020**

[Notification No. 71/2020-Central Tax dated 30.09.2020]

8. Change in CGST Rules in relation to tax invoice and E-way Bills

CGST Rules, 2017 have been amended in relation to :
(a) Rule 46, tax invoice
It should also contain QR Code, having embedded invoice number (IRN) in it, in case invoice has been issued as per rule 48(4).

(b) Rule 48, manner of issuing invoice
Commission may exempt a person or class of persons form issuance of invoice for a specified period on conditions or restrictions as may be notified.

(c) Rule 138A documents / devices
Documents / devices to be carried by a person-in-charge of conveyance QR code may be produced electronically for verification by proper officer in lieu of physical copy of tax invoice.

[Notification No. 72/2020-Central Tax dated 30.09.2020]

9. CBIC extends exemption on transportation Services of goods to a place outside India

CBIC extends exemptions on supply Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India and Services by way of transportation of goods by a vessel from customs station of clearance.

[Notification No. 04/2020 – Central Tax (R); Dated 30.09.2020]

(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. 65/2020 – Central Tax

New Delhi, the 01st September, 2020

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (i), the following proviso shall be inserted, namely: -

"Provided that where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of November, 2020.".

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

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 55/2020 – Central Tax, dated the 27th June, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 416(E), dated the 27th June, 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. 66/2020 – Central Tax

New Delhi, the 21st September, 2020

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (i), after the first proviso, the following proviso shall be inserted, namely: -

"Provided further that where, any time limit for completion or compliance of any action, by any person, has been specified in, or prescribed or notified under sub-section (7) of section 31 of the said Act in respect of goods being sent or taken out of India on approval for sale or return, which falls during the period from the 20th day of March, 2020 to the 30th day of October, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall stand extended upto the 31st day of October, 2020.".

[F.No.CBEC-20/06/08/2019-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 65/2020 – Central Tax, dated the 1st September, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 542(E), dated the 1st September, 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 67/2020 – Central Tax

New Delhi, the 21st September, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 73/2017– Central Tax, dated the 29th December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1600(E), dated the 29th December, 2017, namely :–

In the said notification: -

(ii) after the second proviso, the following proviso shall be inserted, namely: –

"Provided also that late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who failed to furnish the return in **FORM GSTR-4** for the quarters from July, 2017 to March, 2020 by the due date but furnishes the said return between the period from 22th day of September, 2020 to 31st day of October, 2020.".

[F. No. CBEC-20/06/08/2019-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 73/2017-Central Tax, dated 29th December, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended *vide* notification number 77/2018 – Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R 1254(E), dated the 31st December, 2018.

[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. 68/2020 – Central Tax

New Delhi, 21st September, 2020

G.S.R……(E):- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby waives the amount of late fee payable under section 47 of the said Act which is in excess of two hundred and fifty rupees, for the registered persons who fail to furnish the return in **FORM GSTR-10** by the due date but furnishes the said return between the period from 22th day of September, 2020 to 31st day of December, 2020.".

[F. No. CBEC-20/06/08/2019-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. 69/2020 – Central Tax

New Delhi, the 30th September, 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), read with rule 80 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of Government of India in the Ministry of Finance (Department of Revenue), No. 41/2020-Central Tax, dated the 5th May, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 275(E), dated the 5th May, 2020, namely:-

In the said notification, for the figures, letters and words "30th September, 2020", the figures, letters and words "**31st October, 2020**" shall be substituted.

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

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 41/2020 - Central Tax, dated the 5th May, 2020, was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 275(E), dated the 5th May, 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. 70/2020 – Central Tax

New Delhi, the 30th September, 2020

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

In the said notification, in the first paragraph, -

(i) for the words "a financial year", the words and figures "any preceding financial year from 2017-18 onwards" shall be substituted;

(ii) after the words "goods or services or both to a registered person", the words "or for exports" shall be inserted.

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

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 196(E), dated 21st March, 2020 and was subsequently amended *vide* notification No. 61/2020-Central Tax, dated the 30th July, 2020, published *vide* number G.S.R. 481(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. 71/2020 – Central Tax

New Delhi, the 30th September, 2020

G.S.R.....(E).—In exercise of the powers conferred by sixth proviso to rule 46 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.14/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 197(E), dated the 21st March, 2020, namely:–

In the said notification,–

(i) in the first paragraph, for the words "a financial year", the words and figures "any preceding financial year from 2017-18 onwards" shall be substituted;

(ii) in the second paragraph, for the figures, letters and words "1st day of October", the figures, letters and words "1st day of December" shall be substituted.

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

(Pramod Kumar)
Director, Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 14/2020-Central Tax, dated the 21st March, 2020, published vide number G.S.R. 197(E), dated the 21st March, 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. 72/2020 – Central Tax

New Delhi, the 30th September, 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. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2020.

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

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 46, after clause (q), the following clause shall be inserted, namely:-

"(r) Quick Reference code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48.".

3. In the said rules, in rule 48, in sub-rule (4), the following proviso shall be inserted, namely:-

"Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.".

4. In the said rules, in rule 138A, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.".

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

(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 62/2020 - Central Tax, dated the 20th August, 2020, published vide number G.S.R. 517 (E), dated the 20th August, 2020.

(III) CENTRAL TAX (RATE) NOTIFICATIONS

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

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 04 /2020 - Central Tax (Rate)

New Delhi, the 30th September, 2020

G.S.R. -----(E). - In exercise of the powers conferred by sub-section (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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.12/2017- 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. 691(E), dated the 28th June, 2017, namely:—

In the said notification, in the Table, -

(i) against serial number 19A, in the entry in column (5), for the figures "2020", the figures "2021" shall be substituted;

(ii) against serial number 19B, in the entry in column (5), for the figures "2020", the figures "2021" shall be substituted;

2. This notification shall come into force with effect from the 1st day of October, 2020.

[F. No.354/123/2020 -TRU]

Pramod Kumar

(Pramod Kumar)
Director to the Government of India

Note: -The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 12/2017 - Central Tax (Rate), dated the 28th June, 2017, *vide* number G.S.R. 691 (E), dated the 28th June, 2017 and was last amended by notification No. 28/2019 - Central Tax (Rate), dated the 31st December, 2019 *vide* number G.S.R. 970(E), dated the 31st December, 2019.

(IV) IGST TAX (RATE) NOTIFICATIONS

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

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 04/2020- Integrated Tax (Rate)

New Delhi, the 30th September, 2020

G.S.R.....(E).- In exercise of the powers conferred by sub-section (3) and (4) of section 5, sub-section (1) of section 6 and clause (xxv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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.9/2017- 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. 684 (E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(i) against serial number 20A, in the entry in column (5), for the figures "2020", the figures "2021" shall be substituted;

(ii) against serial number 20B, in the entry in column (5), for the figures "2020", the figures "2021" shall be substituted;

2. This notification shall come into force with effect from the 1st day of October, 2020.

[F. No.354/123/2020 -TRU]

Pramod Kumar

(Pramod Kumar)
Director to the Government of India

Note: -The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 9/2017 - Integrated Tax (Rate), dated the 28th June, 2017, *vide* number G.S.R. 684 (E), dated the 28th June, 2017 and was last amended by notification No. 27/2019 - Integrated Tax (Rate), dated the 31st December, 2019 *vide* number G.S.R. 972 (E), dated the 31st December, 2019.

(V) ADVANCE RULINGS

1. AAR application dismissed as investigation was already initiated

Case Name : **In re Tirumala Milk Products Pvt. Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 43/2020
Date of Judgement/Order : 02/09/2020

In the instant case, the Deputy Commissioner, Office of the Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bangalore have reported vide their letter dated 18.08.2020 that the Directorate of GST Intelligence, Bangalore Zonal Unit have initiated the investigation against the applicant, with regard to mis-classification of "flavoured milk", under Incident Report No.35/2019-20, which is under progress. DGSTI has recorded the statements of the authorised representatives of the applicant and the applicant has also paid Rs.2.97 Lacs towards pre-deposit. Further it is an admitted fact that the initiation of investigation was done prior to filing of the instant application, by issuing summons dated 18.02.2019, 15.03.2019 & 14.08.2019. Thus all the required three conditions have been satisfied in the instant case and hence the application is liable to be treated as inadmissible.

2. ITC restriction against diagnostic or investigative services

Case Name : **In re Siddalingappa Palalochana Rakshit (Bangalore Medical System) (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 44/2020
Date of Judgement/Order : 07/09/2020

In the instant case the applicant established a medical diagnostic laboratory to carry out diagnostic or investigative services of diseases. Thus the applicant qualifies to be a clinical establishment.

It is clear, from the foregoing, that the services provided by the applicant are covered under clause (a) of Entry no. 74 of the **Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017** and hence is exempt from tax under the **CGST Act 2017**. Similarly, they are also exempted from tax under the KGST Act, 2017 and also under the Integrated Goods and Services Tax Act, 2017. The applicant is involved in taxable as well as exempted supplies.

Sub-section (2) of section 17 of the CGST Act, 2017 stipulates that the amount of credit be restricted to the input tax attributable to the taxable supplies including zero rated supplies

Therefore, the applicant need to restrict the credit to the amount attributable to taxable supplies including zero rated supplies in the case of both capital goods as well as reagents/consumables or drugs. Further if the applicant claims depreciation on the tax component of capital goods and plant & machinery, under Income Tax Act 1961, the

input tax credit on the said tax component shall not be allowed, in terms of Section 16(3) of the CGST Act 2017.

Hence in view of the above, the applicant is eligible for input tax credit on the tax paid on the purchases of goods, i.e. equipments, furniture, etc. which are purchased for this project and also on the reagents / consumables which are used for performing the test, subject to the restriction of the same in terms of Section 17(2) of the CGST Act 2017.

3. No GST on Scanning of answer sheets for educational institution

Case Name : **In re Datacon Technologies (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 47/2020
Date of Judgement/Order : 11/09/2020

Applicant were awarded a contract by the Bihar School Educational Board (BSEB) vide Work Order No. ST/281/18 DT dated 16.12.2018 for scanning of OMR Flying slip, OMR Marks Foil, OMR attendance sheet, OMR absentee sheet and finalisation of data.

In view of the above, the applicant sought Advance Ruling in respect of the question that Whether the services performed by them are exempted by virtue of item (b) of Sr. No. 66 of **Notification No. 12/2017-CT (R) dated 28.06.2017?**

The Applicant submits their interpretation of law, on consideration of the Bihar School Education Board as an educational institution, that their services are in relation to conduction of examination & hence are exempted from GST, in terms of item (b) of SI. No. 66 of **Notification No. 12/2017-CT (R) dated 28.06.2017** Further they also intend to rely upon the ruling of the Advance Ruling Authority of Maharashtra, in the case of M/s Orient Press Ltd., wherein the identical service was held to be exempted from GST payment.

Held by AAR

It is an undisputed fact that the process of conducting examination is not limited/ restricted to a test centre. Examination is an incomplete activity without assessment. Scanning of answer sheets and quantifying marks is an essential part albeit main objective of the examination process. Educational institutions or the examinees do not look at these activities in isolation. We therefore observe that the stated activity of the applicant is exempted by virtue of Sr. No.66 of **Notification No. 12/2017-CT (R) dated 28.06.2017**.

The activity of the applicant, is covered under “Other Educational Support services”, under SAC 999299, and is related to conduct of examination and hence is exempted, in terms of Sl.No.66 of **Notification No. 12/2017-CT (R) dated 28.06.2017**.

4. Land filling Pit is not a plant & machinery but a civil structure

Case Name : **In re Mother Earth Environ Tech Pvt Ltd. (GST AAR Karnataka)**

Appeal Number : Advance Rulings No. 46/2020
Date of Judgement/Order : 11/09/2020

The applicant is into the business of Treatment, Storage and Disposal Facility (TSDF) of hazardous waste and has constructed a Land filling Pit for processing and Treatment, Storage and Disposal of Hazardous Waste. The applicant has capitalized the land filling Pit as Plant and Machinery and consider itself to be eligible to claim ITC on the material and services utilized for its construction.

The explanation given at the end of Section 17(5) of **CGST Act, 2017** defines plant and machinery as 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 Land, building or any other civil structure. We find that land filling pit is a combination of earth work and other capital goods as given in the brief submitted by the applicant. It can't solely or in itself be identified as apparatus, equipment and machinery fixed to earth by foundation. It is also not a structural support for anything. Therefore, we do not agree with the applicant's view that the land filling pit falls under plant and machinery. However, the discussion would be incomplete without deciding the question of Civil Structure, i.e. whether the land filling pit is a civil structure or not.

Civil structure involves engineering work at both levels i.e above and below the ground. We find that the applicant has performed civil work to create the landfill pits below the ground and therefore it is a civil structure.

The applicant has further placed reliance on the judgment rendered by the Hon'ble High Court of Orissa in the case of "M/s. Safari Retreats Pvt. Ltd., and Another Vs Chief Commissioner of Central Goods & Service Tax & Others". It is seen that in the said case, the prayers are (a) eligibility to credit of input tax paid on goods/services used for construction which is rented for commercial purposes (b) to hold Section 17 (5)(d) as ultra vires. While the Hon'ble High Court has granted the prayer at (a) has not accepted the prayer at (b) stating that they are not inclined to hold the provision ultra vires. On a case to case basis, the Hon hie High Court has granted the credit. Inasmuch as the said section is found to be valid by the Honhle High Court, we do not find any reason to go beyond the Statutory Provisions. However, since the appeal against the High Court order supra is pending before the Honhle Supreme Court, we refrain from commenting on the eligibility of the ITC in the instant case.

5. GST on services provided by Housing Society to Members

Case Name : **In re Gnanaganga Gruha Nirmana (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 45/2020
Date of Judgement/Order : 11/09/2020

1. The activity of maintaining the facilities at the layout from the funds collected from the members of the Society is a service attracting GST. The answer is Yes.

2. The contributions collected by the applicant from the member of the housing society either annually or once in ten years, if such amount when utilized for sourcing of goods

or service from the third person for the common use of its member, the amount utilised in that particular tax period, from both individual contributions and from the endowment fund, must be divided by recipients of such service in the society and if the said amount per member does not exceed Rupees Seven thousand five hundred in that tax period, such amount is exempted from tax as per entry No.77 of **Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017** as amended by the **Notification No.2/2018-dated 25-01-2018**. Suppose if that amount per member in that tax period exceeds Rupees Seven thousand five hundred, then entire amount is taxable.

3. The water charges collected separately on monthly basis is exempt from the levy of GST as per entry 99 of the **Notification No. 2/2017 -Central Tax (Rate) dated 28th June, 2017** . If the applicant collects water charges as a part of service provided without being shown separately on the basis of usage and sourcing it from both the contributions and endowment fund, then the same should be added to the total consideration of services and apportioned which determining the threshold for the purpose of taxing or exemption as per the entry No.77 of **Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017** as amended by the **Notification No.2/2018-dated 25-01-2018**.

4. The amount collected from the member who is selling the site and ceases to be a member, as endowment fund is liable to tax under GST.

5. The entry No.77 of **Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017** as amended by the **Notification No.2/2018-dated 25-01-2018** is applicable to the applicant only to the extent of amount of Rupees Seven thousand five hundred per month per member collected by way of reimbursement of charges or share of contribution for sourcing of goods or services from a third person for the common use of its members.

6. GST can be levied on notional interest on security deposit: AAR

Case Name : **In re Midcon Polymers Pvt. Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 48/2020
Date of Judgement/Order : 16/09/2020

Q1. For the purpose of arriving at the value of rental income, whether the applicant can seek deduction of property taxes and other statutory levies?

A1. The applicant can't deduct the property taxes and other statutory levies for the purpose of arriving at the value of rental income.

Q2. For the purpose of arriving at total income from rental, whether notional interest on the security deposit should be taken into consideration?

A2. Notional interest has to be considered as part of value of supply of service, if and only if the said notional interest influences the value of supply i.e. value of RIS service / monthly rent and is leviable to GST along with monthly rent at the rate applicable to monthly rent.

Q3.Whether the applicant is entitled for exemption of tax under the general exemption of Rs.20 lakhs?

A3. The applicant is entitled for exemption of tax under the general exemption of Rs.20 lakhs, subject to the condition that their annual turnover, which includes monthly rent and notional interest, if it influences the value of supply, does not exceed the threshold limit

7. There cannot be two GTAs in single transportation of goods

Case Name : **In re Liberty Translines (GST AAAR Maharashtra)**
Appeal Number : Advance Rulings No. MAH/AAAR/SS-RJ/26 /2019-20
Date of Judgement/Order : 17/09/2020

The Maharashtra Appellate Authority confirmed the Maharashtra Advance Ruling Autority Order by holding that the activities of the Appellant would not be classified as GTA service under the Head 996791 as there cannot be two GTAs in the single transportation of the goods.

8. Advance ruling obtained by suppression of material facts is void ab initio

Case Name : **In re ID Fresh Food (India) Pvt. Ltd (GST AAAR Karnataka)**
Appeal Number : Order No.KAR/AAAR/02/2020-21
Date of Judgement/Order : 21/09/2020

We find that Section 100 of the CGST Act provides for an appeal to be filed by any party who is aggrieved by the advance ruling given by the lower Authority. In this case, the Department is not aggrieved by the ruling given by the lower Authority. It is also observed that there is no provision in the statute for a cross appeal/cross objection to be filed before the Appellate Authority in the appeal against the advance ruling. While Section 112(5) of the CGST Act explicitly provides that the party against whom an appeal has been filed before the GST Appellate Tribunal may file a cross objection/cross appeal notwithstanding that they may not have appealed against that order, there is no such similar provision for filing a cross appeal in the case of an appeal against an advance ruling. The Department has brought to our notice the fact that the advance ruling has been obtained by suppression of material facts and we are inclined to take cognisance of this information placed before us. It is trite law that when one comes for justice one should come with clean hands. This is not the case here. The Appellant is indeed guilty of having not revealed the fact of an investigation pending against them by the DGGI, Chennai Zonal Unit on the issue of classification of Parota at the time of applying for an advance ruling. We, therefore, invoke the provisions of Section 104 of the CGST Act, and declare the advance ruling order dated 22nd May 2020 as void ab initio.

Having held that the order of the lower Authority is void ab initio, the question of addressing “Whether the preparation of Whole Wheat parota and Malabar parota be

classified under Chapter heading 1905, attracting GST at the rate of 5%? ” does not arise.

We dismiss the appeal filed by M/s ID Fresh Foods (India) Pvt Ltd on all counts. The order No KAR ADRG 38/2020 dated 22.05.2020 passed by the Authority for Advance Ruling is declared void ab initio as it is vitiated by the process of suppression of material facts. We, however, do not give a ruling on the question ” Whether the preparation of Whole Wheat parota and Malabar parota be classified under Chapter heading 1905, attracting GST at the rate of 5%? ” since the matter is pending in a proceeding under this Act.

9. GST on residential affordable housing project

Case Name : **In re Primarc Projects Pvt Ltd (GST AAR West Bengal)**
Appeal Number : Order No. 09/WBAAR/2020-21
Date of Judgement/Order : 28/09/2020

Whether the applicant is eligible for tax concession for its RREP named Akriti being an affordable housing project?

The works contract service for the construction of those dwelling units in the project named ‘Akriti’ (WBHIRA Registration No. HIRA/P/PUR/2018/000003) that are affordable residential apartments in terms of clause 4(xvi) of **Notification 11/2017 Central Tax (Rate) dated 28/06/2017**, as amended time to time, are taxable under Entry No. 3(v)(da) of the said notification, provided the applicant does not opt for paying tax at the rate specified in Entry No. 3(ie) or 3(if).

(VI) COURT ORDERS/ JUDGEMENTS

1. Reversal of ITC Merely by Adopting Uniform or Ad-hoc Percentage is unsustainable

Case Name : **Sri Ranganathar Valves Private Limited Vs The Assistant Commissioner (CT) (FAC) (Madras High Court)**
Appeal Number : W.P.Nos. 38488 to 38493 of 2015
Date of Judgement/Order : 02/09/2020

The present Writ Petitions relate to restriction of the amount of Input Tax Credit (ITC) predominantly on the head of (a) Prior sufferance of Taxes; (b) ITC on reversal on wastage; and (c) Ineligible claim of ITC on goods.

High Court states that, Input Tax Credit cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser. As such, restriction of the amount of Input Tax Credit on this ground, cannot be sustained and requires re-consideration. Further, with regard to reversal of input tax credit claim on wastage under Section 19(9) of the State Act, under which, there are two subsidiary issues namely invisible loss and visible loss, the respondent adopted a percentage of 5% and 1% respectively. It is held that the assessing authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed of to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either four per cent or five per cent or on ad hoc percentage stands set aside. Thus to ascertain as to whether there are quantum of loss of goods, which were purchased, on which, tax was paid, the Assessing Officer has to conduct an exercise, by which, he has to ascertain as to what would be the loss and uniform or ad hoc percentage cannot be adopted. To do so, it would be necessary for the Assessing Officer to conduct an inspection of the place of business of the petitioner to acquaint himself with the manufacturing process. However, since the respondent had adopted a uniform percentage, the same calls for interference. In the light of the above findings, the impugned orders are set aside and the issue with regard to restriction of the amount of Input Tax Credit for prior sufferance of taxes is remanded back to the Assessing Officer for fresh consideration. It is open to the Assessing Officer to issue a show cause notice to the petitioner calling for his objections with regard to “Input Tax Credit on reversal on wastage” and “Ineligible claim of ITC on goods” are concerned.

2. Penalty of twice the tax amount for mere delay in Entry Tax payment was unjustified

Case Name : **National Asphalt Products and Construction Company Vs State of Tamil Nadu (Madras High Court)**
Appeal Number : W.P. No. 11574 of 2006
Date of Judgement/Order : 02/09/2020

The issue under consideration is whether sales tax officer is justified in levying penalty at twice the amount of entry tax?

High Court states that, under the Act penalty may be imposed for failure to register as a dealer Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out. For all the foregoing reasons, this Court is of the affirmed view that the proposed levy of penalty is unjustifiable and opposed to the proposition laid down by the Hon'ble Apex Court in the aforesaid decisions. Accordingly, the impugned notice is set aside. Consequently, the Writ Petition stands allowed.

3. HC set aside Order passed on the basis of a report which was not provided to Appellant

Case Name : **T.V. Sundaram Iyengar & Sons Pvt Ltd Vs. Commissioner of CGST & Central Excis (Madras High Court)**
Appeal Number : W.P.(MD)No.16037 of 2019
Date of Judgement/Order : 03/09/2020

The issue under consideration is whether non furnishing of scrutiny report to the assessee and then passing an adverse order based on the said scrutiny report is justified in law?

High Court states that, they appreciate the contention of the learned standing counsel that the adjudication process cannot be stalled. But then, in the case on hand, the petitioner's demand is for the supply of a copy of the Scrutiny report prepared by the third respondent. It is admitted in the counter affidavit itself that verification exercise was undertaken. HC posed a specific question to the learned Standing Counsel as to whether there is such a report and whether the first respondent proposes to rely on the same. The answer is in the affirmative, then HC cannot agree with the contention of the learned Standing Counsel that the verification exercise undertaken by the third respondent is an integral part of the adjudication process. It cannot be. The first respondent is an independent adjudicating authority. He cannot delegate his adjudicating power to any one. It is true that the decision of the Honourable Division

Bench appears to in favour of the Department. But then, in that case, demand for supply of relied-on documents was made at the show cause notice stage itself. The case on hand is having a different flavour. The Scrutiny report was prepared after the submission of interim reply to the show cause notice. If the report in question is not furnished to the petitioner and if an adverse order based on the said report is passed, then the adjudication would be set aside on that sole ground. Therefore, by furnishing a copy of the report, the department is not going to suffer any prejudice, on the other hand, it will avoid multiplicity of proceedings. Therefore, the order impugned in the writ petition is quashed. The writ petition is allowed. The first respondent is directed to make available the Scrutiny report submitted by the third respondent to the petitioner.

HC accepts WRIT on ITC blockage due to non-filing of GSTR 3B
Case Name : **M/s Kalpsutra Gujarat Vs The Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 10562 of 2020
Date of Judgement/Order : 04/09/2020
HC issued notice to the department to understand from the respondents whether the omission on the part of the third party (Seller) in filing the GSTR-3B for the relevant period would be sufficient to block the Input Tax Credit of the writ applicant. We would also like to understand whether for such action, the Department has invoked Rule 86A of the **Central Goods and Services Tax Rules, 2017**.

4. GST ITC Rejection through a non speaking order is bad in law

Case Name : **Jay Jay Mills (India) Pvt. Ltd. Vs The State Tax Officer (Madras High Court)**
Appeal Number : W.P(C) No. 28003 of 2018
Date of Judgement/Order : 04/09/2020

In thie case Though the petitioner herein had raised several grounds challenging the impugned rejection orders, the learned counsel for the petitioner had predominantly stressed upon the ground that the rejection orders do not give reasons for inadmissibility of refund and therefore they are non speaking orders.

As rightly contended by the learned counsel for the petitioner, the respondent had, in a cryptic manner, rejected some of the proposals by stating that, as per Section 54 (8)(a), the ineligible goods or services are not directly used for making zero-rated supply. Apart from this, there is absolutely no other reasons adduced in the order.

t is a settled proposition of law that whenever an application of this nature is made, the statutory authority are bound to consider the claim made and pass a reasoned order. In the present case, the petitioner had made an application for refund under Section 54 of the Act and when the respondent had issued notice to them for rejection of the ineligible goods and services of SGST, CGST and IGST, they have given a detailed reply, objecting to the All these objections were required to be dealt with by the authority, before taking a final call, which is conspicuously absent. As such, the order itself can be termed to be “a non speaking order” and therefore, are liable to be set aside. However, if the respondent is granted an opportunity to pass fresh orders, after considering the objections of the petitioner, the ends of justice could be secured.

5. Revocation of Cancellation of GST Registration – HC found argument of erroneous exercise of jurisdiction untenable

Case Name : **M.S. Retail Private Limited Vs Union of India (Karnataka High Court)**
Appeal Number : W.P. No. 9041 of 2020
Date of Judgement/Order : 07/09/2020

It is not in dispute that the show cause notices, the order of cancellation and the order rejecting the application for revocation of cancellation are passed by proper officer. The show cause notice dated 18.03.2020 and the order of cancellation of registration dated 06.06.2020 have already been challenged before this Court in W.P.No.8167/2020 and cannot be challenged in the present writ petition. Pursuant to the order passed in W.P.No.8167/2020, respondent no.4 has issued the notice dated 03.07.2020 to the petitioner. There is no jurisdictional error in the said notice. The petitioner has made his representation on 06.07.2020 and has been given a personal hearing by respondent no.4 and thereafter, he has passed the order dated 10.07.2020. Thus, the said order is a speaking order and it records the reasons for rejecting the application of the petitioner for revocation of cancellation of registration. The intimation to the petitioner dated 21.07.2020 is pursuant to the order dated 10.07.2020 and it has to be construed as an intimation of the decision taken on 10.07.2020 by respondent no.4, though the reason assigned in the said intimation and the manner in which the same is styled may be erroneous. Even otherwise, the order dated 10.07.2020 is a reasoned order and the same cannot be held as without jurisdiction and in violation of any principles of natural justice. If the petitioner is aggrieved by the said order, it ought to have filed an appeal under Section 107 of the CGST Act. The petitioner cannot challenge the same by way of a writ petition.

However, it is noticed that the petitioner has filed the writ petition because it initially challenged certain provisions of the CGST Act and the CGST Rules which could not have been done by way of an appeal. However, for the reasons best known to the petitioner, it has given up the said prayer and has confined its arguments to erroneous exercise of jurisdiction by the respondents which this Court finds untenable for the aforementioned reasons. However, the Court is of the opinion that the petitioner cannot be bereft of its right of appeal as contemplated under the CGST Act.

Hence The writ petition is hereby dismissed. The petitioner is at liberty to prefer an appeal as contemplated under Section 107 of the **Central Goods and Services Tax Act, 2017**, if it so desires, within thirty days from today.

6. HC Allows Issuance of 'C' Forms against purchase of High Speed Diesel from Suppliers in Other States

Case Name : **Venkatramanaswamy Blue Metals Vs. Assistant Commissioner (Madras High Court)**
Appeal Number : W.P. Nos. 8671, 8672 & 9930 of 2020
Date of Judgement/Order : 07/09/2020

The instant petition is filed by the petitioner regarding difficulty in obtaining 'C' forms under the provisions of the Central Sales Tax Act, 1956 in order to avail concessional benefit of tax for purchase of High Speed Diesel from suppliers in other states.

High Court states that, the benefit of the concessional rate is available to dealers who purchase High Speed Diesel from neighbouring States by way of inter-state Reference is made to the decisions of other Courts that have considered an identical issue, holding the same in favour of the assessee. In fact, the decision of the Punjab and Haryana High Court has been carried to the Supreme Court in special leave and has been confirmed in State Of Haryana & Others Vs. Caparo Power Ltd. & Others in Special Leave Petition. The issue has also been considered in Hindustan Zinc Limited & Several Others Vs. The State of Rajasthan & others and Shree Raipur Cement Plant (A unit of Shree Cement Limited) Vs. State of Chhattisgarh, Finance department (Tax Division) and held in favour of the assessee. Therefore, following the rationale thereof, these Writ Petitions are allowed. The petitioners are entitled to the inclusion of 'High Speed Diesel Oil' as a commodity in the registration certificate. The request of the petitioner for issuance of 'C' Forms is allowed as a consequence thereof.

7. HC explains when effect of Section 83 of CGST Act comes to an end

Case Name : **UFV India Global Education Vs. Union of India (Punjab & Haryana High Court)**
Appeal Number : CWP No. 11961 of 2020
Date of Judgement/Order : 09/09/2020

The bare reading of Section 83 of the Act would show that the Commissioner has to form an opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to provisionally attach either the property or the bank account belonging to the taxable person by passing an order in writing but this exercise can be made by the Commissioner when any proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 is pending. The Legislature has cautiously used the word "or" for each and every Section of the Act for the purpose of giving powers to the Commissioner to initiate proceedings to provisionally attach the property or the bank account of the taxable person but it is not provided anywhere that the property or the bank account can remain attached under the order passed under Section 83 of the Act if the proceedings initiated under Section 67 is culminated into the proceedings under Section 63 or Section 74 i.e. Assessment of unregistered persons and Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.

In our considered opinion, the effect of Section 83 of the Act shall come to an end as soon as the proceedings pending in any of the aforesaid Sections i.e. 63 or 64 or 67 or 73 or 74 are over because pendency of the proceedings is the *sine qua non* and in case the Commissioner still feel or is of the opinion that it is necessary so to do in the interest of protecting the Government revenue, it still can pass an order in writing to attach any property or even the bank account of the taxable person if the proceedings

are initiated in any of the aforesaid provisions and are pending but for the provisions in which the proceedings have earlier been initiated and are over.

Thus, in view of the aforesaid facts and circumstances, we are of the considered opinion that the impugned orders passed by the respondents are patently illegal specially when the proceedings initiated under Section 67 of the Act has already been over and hence, the impugned orders Annexures P-1 to P-3 are hereby set aside with a direction to the respondents to release the aforesaid bank account of the petitioners forthwith which has been provisionally attached vide order dated 29.07.2020 (Annexure P-1), on the receipt of certified copy of this order.

8. GST: Section 67(6) application can be preferred only after appeal filing

Case Name : **Jay Goga Traders Vs. State of Gujarat (Gujrat High Court)**
Appeal Number : R/Special Civil Application No. 11029 of 2020
Date of Judgement/Order : 09/09/2020

High Court held that application u/s 67(6) **CGST Act, 2017** could have been preferred only after filing of the appeal under Section 107 of the Act. Be that as it may, if an appeal is filed, the authority concerned shall immediately take up the application filed by the writ applicant for provisional release of goods and conveyance under Section 67(6) of the Act and pass appropriate order in accordance with law, within a period of 8 days thereafter. We clarify that we have, otherwise not gone into the merits of the matter. In view of the above, the writ application stands disposed off. Mr. Chintan Dave, the learned Assistant Government Pleader is requested to communicate this order to the authority concerned so that there may not be any further delay in passing an order on the application under Section 67(6) of the Act.

9. HC Reject Bail Application against Offense of Creating Fake Firms & Claiming Fraudulent ITC

Case Name : **Commissioner, CGST, Delhi West Vs Amit Kumar Jain (Patiala House Court)**
Appeal Number :
Date of Judgement/Order : 09/09/2020

In the instant case, the petitioner is filing the petition for requesting to grant the bail against the offense committed under GST by creating fake firms and claiming such fraudulent input tax credit.

High Court states that, department has not sought custodial interrogation of the accused. However, in view of the allegations of creating fake firms and claiming such fraudulent input tax credit and routing them through various fake firms shows the propensity and wherewithal of accused in committing such crimes. HC satisfied if released on bail at this stage, the accused Amit Kumar Jain most likely will make an attempt to influence the proprietors / partners of the firms involved. The plea that

accused has no previous criminal antecedents is humbly rejected as it may also point out that similar crime of accused if any, committed previously remained undetected. The pre trial detention of accused Amit Kumar Jain is necessary at this stage as if released on bail, he will not only try to won over the public witness but may make an attempt to erase the money trail of the alleged crime, hence no ground for bail is made out at this stage. Bail application is accordingly dismissed.

10. HC Grants Release of Detained Goods on payment of Tax & Penalty alongwith Bank Guarantee

Case Name : **Radha Tradelinks Pvt Ltd Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 11067 of 2020
Date of Judgement/Order : 10/09/2020

The present writ petition is filed for requesting to quash the detention and confiscation order passed under GST Act.

The writ applicant, is engaged in the business of areca nut, spices, etc. A consignment of areca nut was transported from Karnataka so as to reach Ahmedabad. While the goods were in transit, the same came to be intercepted by the mobile squad of the GST at the Songadh Check Post. It appears that at the time of seizure and thereafter upon further inquiry many discrepancies were noticed by the authority as regards the documents etc. A final order came to be passed of confiscation of the goods and vehicles under Section 130 of the Act.

High Court states that, they should not interfere at the stage of adjudication of the confiscation proceedings under Section 130 of the Act. The adjudication proceedings shall proceed in accordance with law. However, HC are inclined to grant some relief to the writ applicant so as to protect the goods getting damaged, but at the same time keeping in mind the interest of the State also. Therefore, HC direct the writ applicant to deposit an amount of Rs.1,70,787/- towards tax and penalty with the authority concerned and also furnish a bank guarantee to the tune of Rs.17,07,876/- of any Nationalized bank. HC are asking the writ applicant to furnish the bank guarantee keeping in mind the value of the goods. The value of the goods is approximately Rs.34,15,752/-. With a view to protect the interest of the writ applicant as well as the State, HC direct the writ applicant to furnish bank guarantee equivalent to 50% of the value of the goods, which comes to Rs.17,07,876/-.

11. Director Bank Account Attachment for default in MVAT Payment by Public Company is unjustified

Case Name : **Girdhari Lal Lath Vs.State of Maharashtra & Ors. (Bombay High Court)**
Appeal Number : Writ Petition (L) No.988 Of 2020
Date of Judgement/Order : 15/09/2020

Since Sub Section (6) of Section 44 of the MVAT Act is subject to the **Companies Act, 2013** the definitions and distinctions laid down in the Companies Act, 2013 *vis-a-vis* public company and private company would be applicable to Section 44(6) of the MVAT Act as if by way of incorporation.

It is an admitted position, at least no dispute has been raised, that M/s. Birla Electricals Limited is a public company. If that be so, the fact that Petitioner was a director of the said company for the relevant period, though in a non-executive character and stated to have resigned, would have no bearing on fastening of liability on the Petitioner for the alleged default of M/s. Birla Electricals Limited. In such circumstances, attachment of the bank account of the Petitioner does not appear to be justified and is without any legal sanction.

12. HC directs GST Department to refund Amount of Bank Grantee Encashed

Case Name : **LM Wind Power Blades India Pvt. Ltd. Vs. State of Maharashtra (Bombay High Court)**
Appeal Number : Writ Petition No. 6968 Of 2019
Date of Judgement/Order : 15/09/2020

Learned counsel for the petitioner submits that action of respondent No. 4 in encashing the bank guarantees without waiting for expiry of the appeal period is wholly illegal and should be declared as such by this court. He submits that respondent No.4 has appropriated an amount much more than the demand and penalty put together which is required to be refunded back to the petitioner with applicable interest. Petitioner had paid the IGST and thereafter 30% of the said amount at two stages; firstly 10% while filing the first appeals before the first appellate authority and secondly, 20% at the stage of filing further appeals before the appellate tribunal under Section 112 of the CGST Act and which unfortunately in the State of Maharashtra has not yet been constituted. In the light of the above, he prays for return of the amount covered by the eight bank guarantees and further submitted that petitioner would secure the interest of the revenue by providing fresh bank guarantees to cover the balance amount of penalty imposed.

Learned special counsel representing respondent Nos.1,3 and 4 submits that the bank guarantees had to be invoked under special and compelling circumstances as validity of those were expiring on 31st March, 2019. The above action was done bonafidely to protect the interest of the revenue.

Admittedly, there is IGST demand of Rs. 2,36,63,256.00 with equal amount of penalty imposed, together the total dues comes to Rs.4,73,26,512.00.

The amount covered by the eight bank guarantees is Rs.4,73,26,512.00. If both the figures are added i.e., the amount covered by the bank guarantees and the dues paid by the petitioner, the amount would be Rs.7,80,88,745.00 (Rs.4,73,26,512.00 + Rs.3,07,62,233.00) which amount is now with the respondents as against demand and penalty of Rs.4,73,26,512.00. From the above, it is evident that an amount of Rs.3,07,62,233.00 (Rs.7,80,88,745.00 – Rs.4,73,26,512.00) is lying in excess with the

respondents. Even if the appeals filed by the petitioner under section 112 of the CGST Act are dismissed, petitioner would be required to pay a further amount of Rs.1,65,64,279.00 only whereas respondents are holding onto an amount of Rs.3,07,62,233.00 of the petitioner much in excess of the dues.

Section 107 of the CGST Act provides for appeals to appellate authority. Sub-section (1) says that any person who is aggrieved by any decision or order passed under the CGST Act may appeal to the prescribed authority within three months from the date on which the impugned decision or order is communicated. Sub-section (6)(b) provides that no such appeal shall be filed unless appellant has paid a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned decision or order. There is provision for filing further appeal to the appellate tribunal under Section 112. As per sub-section (1), any person who is aggrieved by an order passed against him under Section 107 or by the revisional authority under Section 108 may prefer appeal to the appellate tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the aggrieved person. As per sub-section 8(b), no appeal shall be filed under subsection (1) unless the appellant has paid a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of Section 107. Subsection (9) clarifies that when the appellant pays the pre-deposit as per sub-section (8), recovery proceedings for the balance amount shall be deemed to be stayed till disposal of the appeal.

Section 115 provides for payment of interest on refund of amount paid for admission of appeal. It say that where an amount paid by the appellant under sub-section (6) of Section 107 or sub-section (8) of Section 112 is required to be refunded consequent to any order of the appellate authority or of the appellate tribunal, interest at the rate specified under Section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount. Reverting to Section 56, we find that this section deals with interest on delayed refunds. Section 54, more particularly sub-section (5) thereof, deals with refund of tax. Section 56 says that if any tax is ordered to be refunded under sub-section (5) of Section 54, interest at such rate not exceeding six percent as may be specified shall be payable in respect of such refund.

That being the position and without entering into the controversy as to whether respondent No.4 received request of the petitioner for extension of the bank guarantees before encashment, we are of the view that having regard to the facts and circumstances of the case, the following directions will meet the ends of justice.

Accordingly, we direct as under :-

- Respondent Nos.3 and 4 shall refund the amount of Rs.4,73,26,512.00 covered by the eight encashed bank guarantees with applicable statutory interest thereon to the petitioner within a period of four weeks from the date of receipt of a copy of this order;
- Petitioner to furnish fresh bank guarantee(s) from nationalized bank to respondent No.4 for an amount of Rs.1,65,64,279.00 covering the balance amount of penalty imposed on the petitioner within a period of four weeks from the date of receipt of a copy of this order.

13. High Court Rejects Anticipatory Bail of GST Official in alleged Bribery Case

Case Name : **Gurvinder Singh Sohal Vs. Central Bureau of Investigation (Punjab High Court)**
Appeal Number : CRM-M-27988-2020
Date of Judgement/Order : 17/09/2020

The prayer in this petition is for grant of anticipatory bail to the petitioner regarding his alleged involvement in Bribery Case.

In the present case, the petitioner and the other officials has raided the premises of the complainant and on that day, 03 other co-employees of the petitioner, namely, Kuldeep Hooda, Superintendent; Rohit Malik, Inspector and Pardeep Inspector pressurised the complainant to pay Rs.09 Lacs as bribe. It is further the case of the CBI that the petitioner and co-accused demanded Rs.12 Lacs but a deal was settled for Rs.09 lacs and complainant was directed by the petitioner to pay Rs.04 lacs as part payment of bribe on that day. The complainant, however, handed over Rs.03 lacs in a polythene bag by keeping the same in the car of the petitioner and this fact is recorded in the CCTV.

High Court states that, as per the CCTV footage dated 6.8.2020, the complainant was keeping a polythene bag of Rs.03 lacs as bribe in the car of the petitioner, where the petitioner, along with three other co-accused was present. The argument raised by the counsel for the petitioner that the petitioner has been falsely implicated on account of a raid conducted by him for checking the difference of 6% GST to be paid by the complainant is a matter of evidence and It is undisputed fact that co-accused Kuldeep Hooda was arrested on the next day, and a huge unaccounted amount of Rs.64 lacs was recovered from his house. Therefore, looking into the serious allegations against the petitioner, which suggest his active involvement in the case, custodial investigation of the petitioner is required. Hence the anticipatory bail is not allowed.

14. HC orders to Deposit Profiteered Amount & Stays Interest & Penalty Imposed by NAA

Case Name : **Gaurav Sharma Food Industries Vs Union of India & Ors (Delhi High Court)**
Appeal Number : W.P.(C) 6671/2020
Date of Judgement/Order : 18/09/2020

In the present case, the NAA held that the petitioner has denied the benefit of tax reduction to the customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus resorted to profiteering. Hence, he has committed an offence under section 171 (3A) of the CGST Act, 2017 and therefore, he is liable to penal action under the provisions of the above Section.

High Court directed the petitioner to deposit principal profiteered amount but stayed interest and penalty imposed by National Anti-Profiteering Authority (NAA).

15. GST: HC refuses to entertain writs as alternate remedy against attachment order was available

Case Name : **Neutron Steel Trading Pvt. Ltd. Vs Commissioner CGST (Delhi High Court)**
Appeal Number : W.P.(C) No. 6609/2020
Date of Judgement/Order : 18/09/2020

Petitioners have a remedy against the order of attachment by way of filing objection under sub-rule (5) of rule 159 of the C**entral Goods and Services Tax Rules, 2017**, this court would be reluctant to entertain these petitions under Article 226 of the Constitution of India in view of the fact that the petitioners have an efficacious alternative remedy before the competent authority before whom all the contentions raised in the present petitions can be raised. This court is, therefore, not inclined to entertain these petitions.

We deem it appropriate to direct the respondent No.1 to treat the present writ petition as an objection under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 and decide the same within a week by way of a reasoned order after giving an opportunity of hearing to the petitioner.

16. GST-Inverted duty structure- Section 54 not violates Article 14- HC

Case Name : **Tvl. Transtonnelstroy Afcons Joint venture Vs Union of India (Madras High Court)**
Appeal Number : W.P No. 8596 of 2019
Date of Judgement/Order : 21/09/2020

Madras HC pronounces its conclusion on the batch of petitions on inverted duty structure (IDS) and arrived at the following conclusions:

(1) Section 54(3)(ii) does not infringe Article 14.

(2) Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.

(3) Therefore, there is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii).

(4) Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.

(5) As a corollary, Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii). Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

It Held as follows:-

(i) All the writ petitions challenging the constitutional validity of Section 54(3)(ii) are dismissed.

(ii) All the writ petitions challenging the validity of Rule 89(5) of the CGST Rules on the ground that it is ultra vires Section 54(3)(ii) of the CGST Act and/or the Constitution are dismissed.

(iii) Consequently, all the writ petitions for a mandamus to direct the refund claims to be processed are dismissed.

(iv) Hence, all the connected miscellaneous petitions are closed. There will be no order as to costs in the facts and circumstances.

, holding that section 54 of the CGST Act is not violative of Article 14 and also that Rule 89(5) is intra vires Section 54; Dismisses the challenge to said provisions which prevented a refund of ITC on input services to an assessee facing an IDS; Before the HC, Petitioner argued that Section 54(3) proviso creates a distinction between two assessees, which has no intelligible differentia or any nexus with the object sought to be achieved by the statute; On the other hand, Revenue submitted that goods and services form distinct class and legislature has wide latitude in matters of taxation in terms of granting of refunds and can pick and choose whom they can or cannot grant refund.

17. Pay GST on input services, Claim ITC & then claim Refund: HC to CDRSL

Case Name : **CIAL Duty Free And Retail Services Ltd (CDRSL) Vs. Union of India (Kerala High Court)**
Appeal Number : WP(C). No. 12274 OF 2020(H)
Date of Judgement/Order : 22/09/2020

Kerala High Court held that petitioner shall pay the GST on input services including Concession Fee and claim ITC of the entire tax amount and thereafter claim refund of the same by following the procedure prescribed under Section 54(3) of the **Central Goods and Services Tax Act, 2017** and Kerala Goods and Services Tax Act, 2017 read with Rule 89 of **Central Goods and Services Tax Rules, 2017** and Kerala Goods and Services Tax Rules, 2017.

18. HC Rejects Bail to Officer Involved allegedly in Bribery & Helping in GST Evasion

Case Name : **Ravi Nandan Vs. State of Punjab (Punjab High Court)**
Appeal Number : CRM-M-28797-2020

Date of Judgement/Order : 22/09/2020

In the instant case, the petition id filed to seek the bail to a person accused of tax evasion and bribery as per GST Act and Prevention of Corruption Act.

In the Instant case, he person Vijay Kumar resident of Khanna working in the field of transportation within cities of Khanna, Ludhiana, and others. He had been indulging in the tax evasion in connivance with the officers/ officials of Excise and Taxation Department. It is alleged that the tax was being evaded by ensuring that there is no checking or verification of the documents or the goods while being transported to and from State of Punjab. Heavy monthly amount were being paid as bribe to the officers and officials of taxation department.

The court noted that the nature of the allegation of evasion of GST requires a deeper probe. There are far-reaching ramifications which may vary from allowing input credit/ MODVAT of tax not paid to the Government to an eventuality that the credit of tax paid on some other product is used for something else. Not only this, someone later in the chain in spite of being a bona fide purchaser not aware of the earlier misdeed in the chain yet will have to suffer the consequences. If the dealer is sure that the goods sent in transit and the documents accompanying will not be checked or verified, he has leverage of playing havoc with the collection of tax. The goods can be sent by preparing the documents which are not even accounted for and on reaching the destination, the documents are done away with leaving no trail of the transaction. This enables usage of credit of the tax paid or suffered on the said goods in the manner which is suitable to the commercial interest of the dealer. The allegation in the present case are very serious. Therefore, considering the complexity of the issue, the tax impact on chain of sellers and purchasers, the material as on date with the investigating agency, the multi dimensional aspects involved which needs a deeper probe, no case is made out for grant of pre-arrest bail.

19. PIL cannot be filed for non-completion of GST crime investigation within time

Case Name : **Nitin Singh Bhati Vs. Union of India (Madhya Pradesh High Court, Indore Bench)**
Appeal Number : WP No. 13918/2020
Date of Judgement/Order : 23/09/2020

The petitioner before this court a practicing advocate has filed this present petition by way of Public Interest Litigation.

The contention of the petitioner is that a criminal case was registered against certain persons in the township of Indore i.e. Crime No. 23 of 2020 for offences u/s 132(1) (s) of GST Act, 2017 read with 409, 467, 471 and 120-B of IPC. Five persons were granted regular bail by order dated 27-07-2020 and 13-08-2020.

The petitioner’s grievance is that in respect of one of the co-accused, namely, Sanjay Matta as charge sheet was not filed within time an application was preferred u/s 167 (2) of Cr.PC and the same has been allowed by the trial court vide order dated 03-09-

2020. The petitioner's contention is that grant of bail to one of the co-accused as investigation was not completed is against public interest and the Investigating Agency should have completed the investigation, within time.

In the considered opinion of this court the present petition is certainly not at all the Public Interest Litigation. If the investigating agency was not able to conclude the investigation within time there can be a number of reasons for the same. No element of Public Interest is involved in the matter. The Code of Criminal Procedure is a complete code in itself and it provides for safeguards in respect of detention and it also provides for procedure in respect of investigation.

This court does not find any reason to interfere in the matter specially in a public interest litigation in respect of non filing of charge sheet, within time.

No case for interference is made out in the matter.

The admission is declined.

20. No taxable event under GST on mere inter-State transfer of goods – HC directs refund of Tax & Penalty

Case Name : **Same Deutzfahr India P Ltd Vs State of Telangana (Telangana High Court)**
Appeal Number : WP No. 13392 of 2020
Date of Judgement/Order : 23/09/2020

Once it is clear that petitioner has additional place of business in the State of Telangana in Bongulur village, Ibrahimpatnam Mandal and the goods were being transported to that address from its Corporate office at Ranipet, Tamil Nadu State, it cannot be said that the petitioner was indulging in any illegal activity when the tax invoice shows that the supplier is the petitioner's Corporate office in Ranipet, Tamil Nadu State and that it was shipped to its Depot in Bongulur village in Ibrahimpatnam Mandal.The payment by the petitioner of the tax and penalty demanded by 3rd respondent was obviously under economic duress apprehending that the 3rd respondent was likely to confiscate the goods and arrest its officials under the Act.

15. There was no occasion for the 3rd respondent to collect tax and penalty from the petitioner on the pretext that there is illegality in the transport of goods as it would merely amount to stock transfer and there is no element of sale of goods or services in it.

16. In any event, now that 3rd respondent is made aware that petitioner has the principal Office at Tamil Nadu and principal place of business at Hayatnagar and additional place of business at Bongulur village, Ibrahimpatnam Mandal, the tax and penalty collected from the petitioner cannot be allowed to be retained by respondents.

17. Accordingly, the Writ Petition is allowed; and respondents are directed to refund within four (04) weeks the sum of Rs.6,70,448/-collected towards CGST and State GST and penalty from the petitioner with interest @ 9%a. from 05-03-2020 till date of

payment to petitioner by the respondents. The 3rd respondent shall also pay costs of Rs.1,500/- (Rupees One Thousand and Five Hundred only) to the petitioner.

21. HC order release of goods & Truck on payment of GST & Penalty alongwith furnishing of Bank Guarantee

Case Name : **Arpit Parcel Service Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 11388 of 2020
Date of Judgement/Order : 23/09/2020

1. Heard Mr. Ashish B. Desai, learned advocate for the petitioner and Mr. Dharmesh Devnani, learned AGP for respondent State.

2. By way of this petition, under Article 226 of the Constitution of India, the petitioner has challenged the impugned notice dated 08.08.2020 in Form GST MOV-10 issued by respondent no. 2 and also prayed for release of Truck bearing registration No. MP-09-GF-9801.

3. Ashish B. Desai, learned advocate for the petitioner does not press the prayer challenging the impugned notice dated 08.08.2020 issued in Form GST MOV-10. As far as the prayer for release of truck as prayed for in para-16 (B) is concerned, Mr. Desai, learned advocate has relied upon the judgment and order dated 19.06.2020 passed in Special Civil Application No. 7519 of 2020 passed by the Division Bench of this Court and submitted that petitioner is ready and willing to deposit the tax and penalty and has also ready and willing to give bank guarantee for the amount for total value of confiscated conveyance as mentioned in Form GST MOV-10. It was further contended by Mr. Desai that similar order be passed in this matter also.

4. Per contra, Mr. Dharmesh Devnani, learned AGP submitted that as challenge to the show cause notice dated 08.08.2020 is not pressed, this court may pass appropriate order.

5. From the facts it appears that truck bearing registration No. MP-09-GF-9801 has been detained along with goods. It is the case of the petitioner that the petitioner is inter-alia engaged in the business of parcel services based upon E-bill. As stated in the petition, the truck in question has been seized by respondent authority on the ground that the goods were found without E-way bill and thereafter, the show cause notice dated 08.08.2020 in Form GST MOV-10 is issued.

6. This Court has provided that tax as well as penalty amount has to be deposited and the balance amount may be secured by way of bank guarantee.

7. Desai, learned advocate for the petitioner has submitted that the petitioner may be given an opportunity of being heard before passing any order under Section 130 of the Act.

8. In the facts of this case, we direct the petitioner to deposit an amount of Rs.39,512/- in cash towards tax and penalty and balance amount of Rs.3,95,098/- shall be by way of bank guarantee of any nationalized bank. On deposit of amount of tax and penalty

and furnishing of the bank guarantee of the balance amount, the respondent authority shall immediately release the goods as well as truck /conveyance.

9. It is however clarified that this Court has not gone into the merits of the matter and authority shall be at liberty to proceed further in accordance with law.

10. The petition is disposed of accordingly.

22. HC quashes order passed during Lokdown in breach of principles of natural justice

Case Name : **Gobind Enterprises Through Gurjinder Singh Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 11521 of 2020
Date of Judgement/Order : 24/09/2020

At the outset, it is contended by the petitioner that order is passed on 27.3.2020, when the whole nation was under lock down due to Covid19 and order is served upon the petitioner on 17.6.2020 and therefore, there was no effective hearing and the orders are passed in breach of principles of natural justice.

On verification of the said fact on the record of petition, it is clearly established that order is passed on 27.03.2020.

The petitioner has contended that no opportunity of being heard is given before passing the impugned order dated 27.02.2020.

In view of the aforesaid, the Court deems it fit to quash and set aside the order as well as consequential notices.

23. E-way bill did not mention correct details- Decide case on Merits: HC

Case Name : **M/s. Jaitron Communication Pvt. Ltd. Vs State Of U. P. (Allahabad High Court)**
Appeal Number : Writ Tax No. 231 of 2020
Date of Judgement/Order : 24/09/2020

Admittedly, in the facts of the present case the petitioner did accept that the e-way bill with the vehicle did not contain correct description with regard to movement of goods. Another e-way bill (though not available with the vehicle, at the time of detention) has also been produced along with details of job work executed in favour of the petitioner. The tax invoice which has been relied upon for determining the liability of tax admittedly is of the year 2018 and it is not the case of the Department that such amount of tax was not paid at the time when the machine was purchased in the year 2018 itself. It is also not the case of the Department that this machine has been sold to anybody. The specific case of the petitioner before the proper Officer was that this machine was being transported for performance of job work and not for any other work.

Perusal of the orders passed would clearly go to show that the claim set up by the assessee with regard to transportation of machine for performance of job work has not been examined on merits. There is also no consideration or finding in the orders passed by the authority which may suggest that this transportation of machine was for any other purpose. The proper Officer in terms of the scheme was expected to examine the specific defence set up by the petitioner and consequently determine the liability of tax payable by the petitioner. It is only after determining the liability to pay tax that the liability to pay penalty could be determined. This exercise does not appear to have been performed by the proper Officer in the manner expected by it in accordance with the Act. Petitioner's claim that no liability to pay tax had arisen till the time when the machine was being transported is also required to be examined. Such factual issues require proper determination at the level of the proper Officer, at the first instance. Since the exercise in that regard is not found to be in accordance with law the orders impugned dated 28.1.2020 and 6.2.2020 cannot be sustained and are accordingly quashed. Petitioner shall appear before the proper Officer on 5.10.2020 and shall furnish all such details as are available with it to substantiate its plea already been taken in its reply on 14.1.2020. The proper Officer is requested to examine such defence of the petitioner and thereafter determine the liability, if any, in accordance with law. It is made clear that this Court has not determined the liability of the petitioner on merits and all issues of fact are left open to be examined by the proper Officer, at the first instance. Such exercise be undertaken expeditiously by the proper Officer, preferably within a period of four weeks. Depending upon the outcome of such proceedings, it shall be open for the authorities to proceed further in accordance with law.

24. Taking of services of operating cranes not amounts to transfer of right to use

Case Name : **Sanghavi Movers Ltd. Vs. State of Maharashtra (MSTT)**
Appeal Number : Second Appeal No. 376 & 377 of 2017
Date of Judgement/Order : 25/09/2020

Maharashtra Sales Tax Tribunal held that taking services of operating cranes from appellant to carry out work does not amount to 'transfer of right to use' the cranes. it held as follows:-

i. VAT and CST levied by treating the transactions as transfer of right to use the goods i.e. cranes stands deleted.

ii. As a consequence of conclusion reached above penalty imposed under section 29(3) of the MVAT Act (under MVAT assessment) and section 9(2) of the CST Act read with section 29(3) of the MVAT Act (under CST assessment) stands deleted.

iii. Amount of interest levied under section 30(3) of the MVAT Act under MVAT) and under section 9(2A) of the CST Act read with section 30(3) of the MVAT Act (under CST) shall be re-calculated arid modified In accordance with this determination.

iv. The assessing authority shall, in view of this determination, recalculate the tax liability after taking into consideration the ount of part-payment already deposited by the appellant.

25. HC Grant Bail to Petitioner allegedly involved in GST Evasion of upto Rs. 18 Crore

Case Name : **Dhanraj Singhal Vs State of Rajasthan (Rajasthan High Court)**
Appeal Number : S.B. Criminal Miscellaneous Bail Application No. 6278/2020
Date of Judgement/Order : 28/09/2020

In the instant case, the petitioner is requesting for bail against the offenses under Sections 132(1), (b), and (c) of Rajasthan Goods and Services Tax Act, 2017.

High Court states that, the offences being compoundable and punishable with maximum sentence of five years, the absence of criminal antecedents; but, without expressing any opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail. Accordingly, the bail application is allowed and it is directed that accused-petitioner shall be released on bail provided he furnishes a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac only) together with two sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each to the satisfaction of the trial court with the stipulation that he shall comply with all the conditions laid down under Section 437(3) Cr.P.C.

26. Best Judgment Assessment cannot be Set Aside by Filing Return beyond specified Time Period

Case Name : **Softouch Health Care Private Ltd. Vs. State Tax Officer (Kerala High Court)**
Appeal Number : WP(C). No.15297 OF 2020(J)
Date of Judgement/Order : 29/09/2020

The issue under consideration is whether the best judgement assessment can be set aside by filing revised return beyond specified time period?

High Court state that the returns in respect of the period aforementioned were filed beyond the period of one month stipulated under Section 62 of the Act. Therefore, the petitioner cannot aspire for the benefit of getting the assessment orders passed on best judgment basis set aside, as contemplated under Section 62 of the Act. The remedy of the petitioner against the said assessment orders lies in approaching the statutory appellate authority against the said orders. HC, therefore, dismiss the writ petition in its challenge against the assessment orders without prejudice to the right of the petitioner to move the first appellate authority in its challenge against the said assessment orders.