GST UPDATE
(April, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. GSTR-3B & GSTR-1/ IFF, using EVC enabled for companies

The facility of filing GSTR-3B and GSTR-1/ IFF, using EVC instead of DSC, for companies has been provided vide Notification No. 07/2021- Central Tax dated 27.04.2021 for period upto 31.05.2021.

[Notification No. 07/2021- Central Tax dated 27.04.2021]

(II) PUNJAB GST NOTIFICATIONS

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 15th April, 2021

No. S.O. 49/P.A.5/2017/Ss. 9, 11, 15 and 148/2021.- In exercise of the powers conferred by sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) and all other powers enabling him in this behalf, the Governor of Punjab, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O 37/P.A.5/2017/S. 11/2017, dated the 30th June, 2017, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 30th June, 2017, namely:-

AMEMDMENT

1. In the said notification, in the Table,-
   (a) against serial number 19A, in the entry in column (5), for the figures "2020", the figures "2021" shall be substituted; and
   (b) 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.

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

2274/4-2020/Pb. Govt. Press, S.A.S. Nagar

(III) 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. 07/2021 – Central Tax

New Delhi, the 27th April, 2021

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 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 (Second Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, in rule 26 in sub-rule (1), after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of May, 2021, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** and the details of outward supplies under section 37 in **FORM GSTR-1** or using invoice furnishing facility, verified through electronic verification code (EVC).".

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the 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, published *vide* number G.S.R. 610 (E), dated the 19th June, 2017 and last amended *vide* notification No. 01/2021-Central Tax, dated the 1st January, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 2(E), dated the 1st January, 2021.

(IV) ADVANCE RULINGS

1. Supply made by Cost Centers of 'BEML' is composite supply

Case Name : **In re Bharat Earth Movers Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 20/2021
Date of Judgement/Order : 06/04/2021

Whether the supplies made by Cost Centres C,D, E and G are independent supplies of goods and services (as applicable) or composite supply with principal supply of goods?

The supplies made by the applicant under Cost Centres C, D, E and G form a composite supply and since the supply of intermediate cars is the principal supply, would be treated as the supply of intermediate cars as per section 8 of the CGST Act, 2017 and section 12 of the CGST Act, 2017 is applicable to the issues related to the time of supply.

2. GST on Rent received from Backward Classes Welfare Department

Case Name : **In re Puttahalagaiah G.H. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 19/2021
Date of Judgement/Order : 06/04/2021

Whether Rent received from Backward Classes Welfare Department, is taxable or not?

The applicant has rented his property to the Backward Classes Welfare Department, Government of Karnataka, who in turn is using the same for providing hostel facilities to the post metric girls of backward classes. This is in relation to the function entrusted to a panchayat under article 243G of the constitution which is covered by 27th entry of 11th schedule which says Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

Since the applicant is providing to the State Government pure services by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution, the same is covered under the entry number 3 of **Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017** and hence is exempted under the CGST Act, 2017. For the same reasons, the activity is also exempted under the KGST Act, 2017.

3. GST on contract relating to electrical works from sub-contractor for work of Government Company

Case Name : **In re Hadi Power Systems (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 18/2021
Date of Judgement/Order : 06/04/2021

Whether concessional rate of GST shall apply to the sub-contractor who is sub-contracted from a sub-contractor of the main contractor, the main contractor being provider of works contract to a Government entity?

It is observed that the privity of contract is between the applicant and the M/S Shaaz Electricals, however M/S Shaaz Electricals is not covered under Central Government, State Government, Union Territory, a local authority or a Governmental Authority or a Government Entity and hence the supply made by the applicant is not covered entry no.3 (iii) of **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017**

For the same reason, the activity of the applicant is also not covered under entry no. 3(vi) of the **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017** (as amended).

From the above it is observed that the activity under consideration undertaken by the applicant is not covered under entry no.3(ix) or under entry 3(iii) or under entry 3(vi)of **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017** (as amended) and hence applicant is not liable to charge concessional rate of GST@ 12% on the said supply, and the applicant has to discharge tax rate CGST @9% and KGST @ 9% each under the provision of the said Act.

4. Parboiling Rice & Drying plant classifiable under HSN 8419

Case Name : **In re SKF Boilers And Driers (P) Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 21/2021
Date of Judgement/Order : 06/04/2021

1. Whether parboiling and drier plant is part of rice milling machinery as specified in the Notification dated 28-06-2017 under HSN 8437 issued under the CGST Act, 2017 taxable at 5% (2.5% CGST + 2.5% SGST)?

2. If the above mentioned plant/machinery is not classified under HSN 8437, whether the same is to be taxed under HSN 8419 at the rate of 18% in the Notification dated 28.06.2017 (9% CGST + 9% SGST)?

Parboiling and Drying plant is classified under HSN 8419 Entry No.320 at the rate of 18% as per **Notification No. 1/2017 -Central Tax (Rate) dated 28th June, 2017** (9% CGST + 9% SGST) as amended vide **Notification No.41/2017-Centra1 Tax (Rate) dated the 14th November, 2017**

5. GST on pick-up charges paid to the owner / driver

Case Name : **In re Kou-Chan Technologies Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 22/2021
Date of Judgement/Order : 07-04-2021

1. Do the various supplies (of the applicant, the vehicle owner, the driver and the associate partner together) qualify as Composite supply?

No, it's not a composite supply.

2. Do the pick-up charges paid to the owner / driver fall under GST rate of 5%?

Yes, the pick-up service is incidental to the main service of transportation of passengers by radio taxi and hence the pick-up charges form part of the service of transportation of passengers by a radio taxi and hence the applicant is liable to pay GST @ 5%, on such pick-up charges.

3. The Associate Partner renders services to the passengers and to the drivers/ vehicle owners directly, and in that case does any supply of service exist between the applicant /aggregator and the Associate partner, and if yes, what is the rate at which GST has to be collected and remitted?

18 % by associate partners in case the associate partner is registered under GST. Where the associate partners are not registered under GST, no GST is leviable on the amount remitted to the associate partner.

4. Does the amount received from drivers/ owners towards bidding get covered in the 5 % GST or should it be separately charged at 18%?

It should be paid at 18%.

5. Does the goodwill bonus being paid by passenger to the driver and on which the applicant collects the service charges, attract GST and if so at what rate?

Yes at 18 %.

6. Do the charges for cancelling the trip for any reason attract GST liability?

Yes at 18 %.

7. Do the charges for insurance come under composite supply?

8. If the principal supplier / applicant collects GST, say at 5% along with fare from passengers (as mentioned in the Table submitted by the applicant), does it amount compliance of the GST Rules?

No. the applicant needs to discharge 18% on its other income as discussed above.

6. ITC not eligible on Promotional Products used in promotion of own Brand

Case Name : **In re Page Industries Ltd. (AAAR GST Karnataka)**
Appeal Number : Order No. KAR/AAAR/05/2021
Date of Judgement/Order : 16/04/2021

The Appellate Authority set aside the **ruling No. KAR ADRG 54/2020 dated 15.12.2020** passed by the Advance Ruling Authority and answer the question of the Appellant as follows:

The Promotional Products/Materials & Marketing items used by the Appellant in promoting their brand & marketing their products can be considered as "inputs" as defined in Section 2(59) of the CGST Act, 2017. However, the GST paid on the same

cannot be availed as input tax credit in view of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act, 2017.

7. Pharmaceutical Reference Standards classifiable under CTH 38220090

Case Name : **In re Analytica Chemie Inc. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 25/2021
Date of Judgement/Order : 16/04/2021

The Pharmaceutical Reference Standards (Prepared Laboratory Reagents) imported and supplied by the Appellant and classified under Tariff Item 3822 00 90 of the Customs Tariff Act, 1975 is covered under Entry No. 80 of Schedule-II to **Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017** attracting a levy of Integrated Tax at the rate of 12%.

8. GST on Pharmaceutical Reference Standards (Prepared Laboratory Reagents)

Case Name : **In re M/s Kaustubha Scientific Research Laboratory Private Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 24/2021
Date of Judgement/Order : 16/04/2021

Pharmaceutical Reference Standards (Prepared Laboratory Reagents) imported and supplied by the Appellant and classified under Tariff Item 3822 00 90 of the Customs Tariff Act, 1975 is covered under Entry No. 80 of Schedule-II to **Notification No. 1/2017-Integrated Tax (Rate), dated 28th June, 2017** attracting a levy of Integrated Tax at the rate of 12%.

9. No GST on Books delivered from warehouse located in USA to customers outside India

Case Name : **In re Guitar Head Publishing LLP. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 23/2021
Date of Judgement/Order : 16/04/2021

A. Whether the supply of books from the warehouse located in USA (non-taxable territory) to the customers located in USA, UK and Canada (non-taxable territory) without such books entering into India by the applicant are treated as supply under GST?

The supply of books from the warehouse located in USA (non-taxable territory) to the customers located in USA, UK and Canada (non-taxable territory) without such books entering into India by the applicant does not amount to supply under GST.

B. Whether GST is levied on the shipping charges collected by the applicant from the customers located in USA, UK and Canada (non-taxable territory) for the delivery of books from the warehouse located in USA (non-taxable territory) to the customer located in USA, UK and Canada (non-taxable territory)?

The shipping charges collected by the applicant from the customers located in USA, UK and Canada (non-taxable territory) for the delivery of books from the warehouse located in USA (non-taxable territory) to the customer located in USA, UK and Canada (non-taxable territory) are not exigible to GST.

C. Whether printing charges for printing of books charged by the Printer located in USA (non-taxable territory) is taxable under Reverse Charge Mechanism under GST, where only content is supplied by the applicant?

The printing charges, for printing of books, charged by the printer located in USA (non-taxable territory) are taxable under Reverse Charge Mechanism under GST, where only content is supplied by the applicant

D. Whether the services received by the applicant from Foreign service provider such as warehousing of printing books located in USA (non-taxable territory) is taxable under Reverse Charge Mechanism under GST?

The services received by the applicant from foreign service provider such as warehousing of printed books located in USA (non-taxable territory) is not taxable under Reverse Charge Mechanism under GST.

E. Whether input tax credit can be availed, to the extent of inputs and input service on the transaction covered in Question 1 above?

The input tax credit can't be availed, to the extent of inputs and input service on the transaction covered in first question as the said transaction does not amount to supply under GST.

10. Recipient of services cannot file AAR Application

Case Name : **In re Hubli-Dharwad Municipal Corporation (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 26/2021
Date of Judgement/Order : 19/04/2021

Any person registered or desirous of obtaining registration under CGST Act 2017 can seek advance ruling only in relation to the supply of goods or services or both being undertaken or proposed to be undertaken.

In the instant case, we observe that M/s HDMC, who have filed the instant application is not a supplier of either goods or services or both but is a recipient of services. Thus the instant application is not admissible and liable for rejection in terms of Section 98(2) of the CGST Act 2017.

11. No GST on membership subscription fees collected from members

Case Name : **In re Bowring Institute (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 27/2021
Date of Judgement/Order : 22/04/2021

1. Whether amount collected as membership subscription fees paid by the members of the applicant towards facilities provided by the applicant are liable as supply of service under GST?

2. Whether amount collected as infrastructure development fund for the development and maintenance of the facilities provided by the applicant are liable as supply of service under GST?

We observe that **Finance Act, 2021** has over ruled what the Courts have held till now and has countered the Principle of Mutuality by way of Explanation which states that the members or constituents of the club and the club are two separate entities and persons for the purpose of Section 7 of CGST Act, 2017 which defines Supply.

We also note that by virtue of Section 1 of Finance Act, 2021, the amendment brought in Section 7 of CGST Act, 2017 by way of Section 108 of Finance Act, 2021, will only come into effect on the date when Central Govt notifies the same and then the same will be notified with the corresponding amendments passed by the respective States and Union territories in respective SGST/ UTGST Act.

Therefore, we conclude that unless the amended Section 7 of CGST Act, 2017 is notified, the applicant is not liable to pay GST on subscription fees and Infrastructure development fund collected from the members as per the Hon'ble Supreme Court judgment in the case of M/s. Calcutta Club Ltd.

The applicant is not liable to pay GST on subscription fees and Infrastructure development fund collected from the members and this ruling is subject to the amendment to the CGST Act by section 1 of the Finance Act 2021, as and when it is notified.

(V) COURT ORDERS/ JUDGEMENTS

1. All stake holders are treading in new GST regime with uncertainties: HC

Case Name : **H.R. Enterprises Vs State Of Rajasthan (Rajasthan High Court)**
Appeal Number : S.B. Civil Writ Petition No. 5266/2021
Date of Judgement/Order : 01/04/2021

High Court observed that The assessees and the authorities under CGST/SGST/IGST are giving their own interpretation of the provisions of the Act relating to Goods in Transit.

All stake holders are treading in the new GST regime with uncertainties as the path is comparatively unfamilier, unmarked and unpaved. The parameters of the authorities' powers and dealers' duties/responsibilities/liabilities are yet to be demarcated.

Notice dated 18.03.2021 (Annex.9) is an example of such uncertainty. A perusal of the said notice issued in MOV-07 shows that respondent No.2 has jumped to propose penalty under clause (b) of Section 129(1)(a) on the pretext that as per petitioner No.2, no-one has appeared for the owner of goods and proposed penalty as high as 50% of the value of goods. As against this, he was firstly required to propose penalty under clause (a) of Section 129(1), which would have been equal to the amount of tax. Given that the penalty under clause (a) would have been Rs.1,93,460/-and proposed penalty under clause (b) is Rs.10,74,780/-, in the opinion of this Court, the statutory remedies will be inefficacious. Even, remedy relating to release of goods under Section 129(1)(c) of the Act of 2017 would be illusory.

Having regard to the fact that goods and vehicle are lying stationed/detained with the respondent No.2 since 11.03.2021; inspection and physical verification of the goods including its weighment has already been done. Hence, goods and vehicle are not required, at least for the purpose of inquiry. If they are detained for indefinite period, the condition of stationary truck with weight of 38.120 MT on its tyres, and loss of business of hopeless driver will be irreversible. Besides this, the kind of interim order, which this Court proposes to pass, would not amount to final relief, hence, the judgment cited by learned counsel for the respondents does not apply in the facts of the present case.

In view of what has been stated hereinabove and in the interest of justice it is deemed expedient and hence, respondent No.2 is directed to release the goods and vehicle in question forthwith, in case petitioner No.1 furnishes two solvent sureties to the tune of Rs.15 lakhs executed by dealers registered in the State of Rajasthan. He shall not insist upon furnishing of bank guarantee or cash security.

The petitioner No.1 shall further be required to file an undertaking before this Court that in the event of dismissal of the writ petition and/or upon final determination of liability (if any), subject of course to their rights of availing appropriate remedies, the amount would be paid.

2. GST: HC allows operation of Bank account over and above the amount of revenue

Case Name : **Bytedance (India) Technology Pvt. Ltd. Vs Union of India (Bombay High Court)**
Appeal Number : Writ Petition (L) No. 8555 of 2021
Date of Judgement/Order : 06/04/2021

1. The petitioner is before the court aggrieved by two communications both dated 18th March, 2021 issued by the Principal Director General of Goods and Service Tax Intelligence, Mumbai ("DGGI") provisionally attaching petitioner's bank accounts maintained with respondents No. 5 and 6.

2. Learned senior advocate Mr. Rafiq Dada appearing along with Mr. Vikram Nankani, learned senior advocate, submits that a very drastic order has been passed affecting the petitioner severely stating that the petitioner has a staff of about 800-1000 employees. They have to be maintained, their salaries are required to be paid. He submits that the matter would emerge to be revenue neutral. The orders do not have any foundation. He submits that having regard to that dire consequences are being faced by the petitioner, it would be imperative that petitioner be able to operate bank accounts to bear necessary expenses over salary.

3. Mr. Pradeep Jetly, learned senior counsel for the Respondents submits that it is not the case that the attachment orders have been passed without any authority. Action has been taken pursuant to section 83 of the **Central Goods and Services Tax Act, 2017** (CGST). The Petitioner has remedy under Rule 159(5) to object to the orders. He submits that the D.G.G.I. had initiated inquiry to verify the correctness of payments of goods and services taxes by the petitioner. It transpires that the petitioner has received taxable services from a concern located outside India without any consideration as per schedule I of C.G.S.T Act, 2017 and as such the petitioner would be liable to pay tax on import of services. He further refers to certain statements and submits certain aspects have also come to the fore lending substance to the purpose underlying the investigation. He submits that a huge revenue to the tune of Rs. 78.91 crores is at stake in the matter which the petitioner does not intend to bear. He submits that looking at the scenario, it would not be feasible to recover dues from tax payer, as the petitioner is in the process of closing its business.

4. Learned senior counsel appearing for the petitioner submits that petitioner would secure revenue's concern of Rs. 78.91 crores by depositing additional amount in attached/frozen bank accounts and the bank accounts to remain attached/frozen to the extent of Rs.78.91 crores and petitioner may be allowed to operate the bank accounts over and above the amount of Rs. 78.91 crores over the concerns expressed by the petitioner.

5. Learned Senior Advocate Mr. Jetly on instructions from the officers present in the court states that the revenue has no particular objection on aforesaid arrangement as long as the revenue interest is secured.

6. The counsel for the banks notes the aforesaid position and having regard to the statements made by the counsel appearing for the Petitioner and the Revenue states

that if that be so, the petitioner may be able to operate the bank account, for the amounts over and above the amount of revenue of Rs.78.91 crores.

7. The statements made on behalf of the parties, are accepted.

8. At this stage, learned senior counsel for the petitioner submits that fixed deposit of the amount of Rs. 78.91 crores may be considered. It may be in the interest of all to have the same in a nationalized bank. The petitioner is at liberty to approach the respondent No. 2 for the same.

9. In view of the above, the Petition is disposed of.

3. Orissa HC stays payment of IGST on Ocean Freight subject to SC decision

Case Name : **Indian Farmers Fertilizers Co-operative Ltd. Vs Union of India (Orissa High Court)**
Appeal Number : W.P.(C) No. 14456 of 2020
Date of Judgement/Order : 06/04/2021

1. This matter is taken up by video conferencing mode.

2. On the previous date, the Court had passed the following order:

“Heard Mr. P.K. Jena, learned counsel for the Petitioner and Mr. R.S. Chimanka, learned Standing Counsel for the Opposite Parties.

The Court has been shown the copy of the order passed by the Supreme Court of India on 6th January, 2021 in Special Leave Petition (Civil) No.13958 of 2020 (Union of India vs. M/s. Mohit Minerals Pvt. Ltd.) whereby notice has been issued. The said SLP has stated to be still pending consideration in the Supreme Court. Also it is noticed that no order staying the judgment of the Gujarat High Court in the case of M/s. Mohit Minerals Pvt. Ltd. vs. Union of India has been granted.

As regards the prayer of some of the Petitioners before this Court that they should not be hereafter asked to pay GST on ocean freight. Mr. Chimanka, learned Standing Counsel for the Opposite Parties prays for some more time for instructions.

At his request, list on 6th April, 2021.”

3. In W.P.(C) No.14456 of 2020, today Mr. Chimanka states that he still does not have any instructions as regards the Petitioners not being asked to pay IGST on ocean freight.

4. Learned counsel for the Petitioner in W.P.(C) No.1684 of 2019 has filed a memo drawing the attention to the Court to the fact that the Special Leave Petitions pending the Supreme Court are now listed for hearing on 20th April, 2021. It is also clear that there is no interim order passed by the Supreme Court staying operation of the judgment of the Gujarat High Court in the case of ***M/s. Mohit Minerals Pvt. Ltd. v. Union of India*** or the subsequent judgment in the case of ***Bharat Oman*** **Refineries Ltd. Pvt. Ltd. v. Union of India** reported in 2020 (41) GSTL 292 (Guj.).

5. In that view of the matter, it is clarified that while the question of the Petitioner being entitled to refund will await the final decision of the Supreme Court in the aforementioned SLPs, the Opposite Parties will not require the Petitioners before this Court hereafter to pay IGST on ocean freight until further orders.

6. These writ petitions are adjourned sine die with liberty to the parties to mention them for listing after disposal of the SLPs pending before the Supreme Court.

7. As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25th March, 2020.

4. No GST to be paid during Search & Seizure unless accepted as GST liability

Case Name : **Shri Nandhi Dhall Mills India Private Limited Vs Senior Intelligence Officer (Madras High Court)**
Appeal Number : W.P. No. 5192 of 2020
Date of Judgement/Order : 07/04/2021

The Hon'ble Madras High Court in ***Shri Nandhi Dhall Mills India Pvt. Ltd. v. Senior Intelligence Officer, DGGST & Ors. [W.P. No. 5192 of 2020 and WMP. No. 6135 of 2020]*** directed the Revenue Department to refund the amount of INR 2 crore collected from the assessee during the investigation. Held that, merely because the assessee had signed a statement admitting tax liability under the stress of investigation and had also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment.

Facts:

Shri Nandhi Dhall Mills India Pvt. Ltd. (**"the Petitioner"**) is registered as a Small Scale Industry and is engaged in the business of dealing in pulses, dhals, and flour and also manufactures food products, grain mill products and dal.

An investigation was conducted by the officials of the Director General of Goods and Services Tax (**"the Respondents"**) in the premises of the Petitioner on October 22, 2019 and various documents and registers were seized. In the course of the investigation, a statement was recorded to the effect that the Petitioner has not discharged its GST liability correctly and it had accepted that there has been a mistake in computation of GST liability and assured the Respondents that the liability would be discharged along with applicable interest.

Further, a scheme of payment was set out and the undertaking was signed by the Managing Director of the Petitioner on October 22, 2019. Further, the Petitioner remitted a sum of INR 1 crore in FORM GST DRC-03 corresponding to Rule 142(2) and Rule 142(3) of the **Central Goods and Services Tax Rules, 2017** (**"CGST Rules"**) read with Section 74(5) of the **Central Goods and Services Tax Act, 2017** (**"CGST Act"**) on the same day. The second installment of the tax amounting to INR 1 crore was paid on October 30, 2019.

Further, the Managing Director of the Petitioner vide letter dated November 05, 2019 retracted its earlier statement and stated that there is no tax liability and that the Managing Director and employees of the Petitioner were forced to accept the liability to tax and the admission was, by no means, voluntary but under the influence of coercion, threat and in a state of panic without giving an opportunity to read the content of the Mahazar and without providing the workings of the actual determination of tax liability.

This writ petition has been filed to restrain the Respondents from demanding any amount from the Petitioner except by following the due process of law and to refund a sum of INR 2 crores along with statutory interest under the provisions of the CGST Act.

Issue:

Whether the Petitioner is entitled to refund of INR 2 crores paid during investigation along with interest?

Held:

The Hon'ble Madras High Court in ***W.P. No. 5192 of 2020 and WMP. No. 6135 of 2020 decided on April 07, 2021*** held as under:

- Analyzed the provision of Section 74 of the CGST Act and noted that, Section 74(5) read with Section 74(6) of the CGST Act, provides an opportunity for the assessee and/or the revenue to ascertain the proper amount of tax, interest and penalty and amicable settlement for an assessment. At this stage the proceedings are closed on the basis of either a self-ascertainment by an assessee and acceptance of the same by the revenue or vice versa. However, if where there is no such closure then it provides for an avenue to the revenue to continue the proceedings. Further, where the proper officer, on receipt of the self- ascertainment believes that such ascertainment is incorrect and the amount falls short of the amount actually payable, he shall proceed to issue a Show Cause Notice (**"SCN"**) as provided for under Section 74(1) of the CGST Act.
- Observed that, Section 74(5) of the CGST Act is not a statutory sanction for advance tax payment, pending final determination in assessment and is contrary to the scheme of assessment set out under Section 74 of the CGST Act. Section 74(5) of the CGST Act provides the first opportunity to an assessee to pay tax, interest and penalty liability even prior to the issuance of a SCN and such acceptance will have to be in the form of either self-ascertainment or an ascertainment by the proper officer.
- Stated that, the records must contain material to show following:
  - the assessee accepts the ascertainment made by it.
  - the revenue has applied its mind and arrived at the position that the self-ascertainment by the assessee is inadequate.
  - An ascertainment by the officer, of the the balance tax liability, is to be made by the officer.

  However, statement recorded at the time of search, admitting GST liability and setting the scheme of instalments have been retracted by the Petitioner and the Petitioner has consistently and vehemently contested the liability to tax. With this, the requirement of 'ascertainment' under Section 74(5) of the CGST Act fails.

- Held that, merely because an assessee has signed a statement admitting tax liability under the stress of investigation and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment. The ascertainment contemplated under Section 74(5) of the CGST Act is of the nature of self-assessment and amounts to a determination by it which is unconditional, and not one that is retracted.
- Further held that, had such self ascertainment/self-assessment been made, there would be no further proceedings, as Section 74(6) of the CGST Act states that with ascertainment of demand in Section 74(5) of the CGST Act, no proceedings for SCN under Section 74(1) of the CGST Act shall be issued. However in the present case, the enquiry and investigation are on-going, personal hearings have been afforded and both the parties are fully geared towards issuing/receiving a SCN and taking matters forward. Thus, the understanding and application of Section 74(5) of the CGST Act is wholly misconceived.
- Directed the Respondents to refund the amount of INR 2 crore collected during investigation within a period of 4 weeks of the judgment. Further, restrained the Respondents from demanding any amount from the Petitioner except by following the due process of law.

Comments:

To know more, kindly watch our video on **"No GST to be paid during Search & Seizure unless accepted as GST liability"** by CA Bimal Jain: **https://www.youtube.com/watch?v=tOnb5p6z1os**

Relevant Provision:

Section 74 of the CGST Act:

"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 wilfull-misstatement or suppression of facts.

74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.- For the purposes of section 73 and this section,-

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in

the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

5. GST registration cancellation for issue of invoice without supply of goods is valid

Case Name : **Om Trading Company Vs Deputy Commissioner of State Tax and others (Madhya Pradesh High Court)**
Appeal Number : Writ Appeal No.1823/2019
Date of Judgement/Order : 07/04/2021

Learned Single Judge came to the conclusion that a detailed enquiry was conducted by the Commercial Department Range Agra and that the fact regarding issuance of invoices/e-way bills without any transportation of physical goods came into picture, therefore, verification in this regard was also done wherein it was actually found that the goods were not physically transported and that before initiating the proceeding against the appellant proper opportunity of hearing/show cause notice was issued and only thereafter the order cancelling the GST registration was passed. The appellant had failed to produce the said documents to prove that the goods in question was physically transferred from Agra to Gwalior. As such finding no error in the judgment rendered by the appellate authority, writ petition was dismissed.

On going through the order passed by the appellate authority it appears that the detailed enquiry was conducted before passing the impugned order, in which certain discrepancies were found with regard to the business of the appellant. It was found that the appellant had failed to prove e-way bill transaction details, therefore, the registration was cancelled. A proper opportunity of hearing was afforded to the appellant. No cogent documentary evidence is available on record to justify the stand taken by the appellant. The learned Single Judge has rightly come to the conclusion and dismissed the writ petition.

In view whereof, no fault can be found in the finding recorded by the learned Single Judge as well as learned appellate authority. Accordingly, the writ appeal fails and is hereby dismissed.

6. Refund of Inverted Duty on Input Services: SC to hear on 28th April Finally

Case Name : **Union of India & Anr. Vs. The Quarry Owners Association & Ors. (Union of India)**
Appeal Number : Petition(s) for Special Leave to Appeal (C) No.16003/2020
Date of Judgement/Order : 08/04/2021

SC held on the issue of ' Validity of Refund of Inverted Duty on Input Services' held that Since a large number of petitions are pending in the various High Courts on the same issue, it is appropriate that we list the present batch of cases at an early date,

which we do by posting the cases for final hearing on 28 April 2021. The entire batch of petitions shall be listed at the top of the Board on that date.

7. CST Assessment without giving sufficient opportunity is invalid; HC imposes Cost

Case Name : **Spacewood Furnishers Pvt. Ltd. State of Telangana (Telangana High Court)**
Appeal Number : WP. No. 9165 of 2021
Date of Judgement/Order : 09/04/2021

In the last one year, we have noticed at least 200 cases where the Assessing Officer under the CST Act has not issued show cause notice or if they issued notice, they have not considered the response of the assessees, and mechanically confirmed the demand mentioned in the show-cause notice and we have had to set aside all such orders and make a remand to the Assessing Officers.

In spite of specific warning by this Court to the Standing Counsel for the Commercial Taxes Department that this kind of conduct by the Assessing Officers will not be countenanced, it appears that she same thing is continuing obviously because this Court has taken a lenient view in the earlier matters and had avoided imposing costs.

This Court is being burdened time-and-again to decide the correctness of such assessment orders being passed by the Assessing Officers in violation of principles of natural justice.

In this view of the matter, the Writ Petition is allowed; the impugned assessment order is set aside; the matter is remitted back to the 2nd respondent for fresh consideration; 2nd respondent is directed to provide personal hearing to the petitioner and consider the response of the petitioner along with supporting material, and then pass a reasoned order in accordance with law and communicate the same to the petitioner. The 2nd respondent shall also pay costs of Rs. 10,000/- (Rupees Ten thousand) personally to the petitioner within a period of four (04) weeks.

8. HC allows Interim release of goods as petitioner already paid Tax & Penalty

Case Name : **Mahakali Transport Vs State of Punjab (Punjab High Court)**
Appeal Number : Case No. CM 5455-CWP-2021 & CM-5485-CWP-2021 in CWP-4939-2021
Date of Judgement/Order : 09/04/2021

The resolution is not clear as to how the interim release of the goods can be given as at the time of filing of the appeal, the petitioner has deposited the entire 100% of the tax, 100% of the penalty and 10% of the fine amount also. It seems that provisions of Sections 130 and 140 of **Punjab Goods Service Tax Act, 2017** are not clear with respect to the release of the confiscated goods. Hence the orders dated 19.03.2021 is being clarified that subject to furnishing of bonds to the satisfaction of the

respondents, the confiscated goods be released, keeping in view the petitioner has deposited 100% tax, 100% penalty and 10% of the fine amount. This order be complied with.

The application stands disposed of.

9. GST department withdraws summon issued without application of mind

Case Name : **Ankit Bindal Vs Pr. Commissioner of Central Goods And Services Tax Delhi North (Delhi High Court)**
Appeal Number : W.P.(C) 3968/2021
Date of Judgement/Order : 12/04/2021

Delhi HC Stays Impugned Summons and Withdrawn Finally Being Indiscriminate

A. Petitioners' challenged summons issued by CGST, North Delhi Commissionerate on the grounds that:-

1. Summons are vague and require Petitioners' to produce documents and records for the period from date of GST registration to till date – which shows that the summons have been issued without application of mind.

2. Summons have been issued in Petitioners' own case and require Petitioners' to depose against themselves.

3. Summons can be issued to be called as a witness in some other case

B. Considering all these grounds, the Hon'ble High Court had been pleased to stay the proceedings till the next date of hearing being 12/04/2021. Read **:GST: HC stays summon issued without application of mind**

On the date of hearing, 12/04/2021 the Respondents withdraw the summons qua the Petitioners before the Hon'ble Delhi High Court.

C. Far Reaching Implications:

This DHC order should stop the wrong process of issuing summons indiscriminately.

10. Running of Business by Manager not sufficient ground for Bail in GST Evasion Case

Case Name : **Smt. Chhaya Devi Vs Union Of India (Andhra Pradesh High Court)**
Appeal Number : Criminal Misc. Bail Application No. 15190 of 2021
Date of Judgement/Order : 13/04/2021

Admittedly in the case in hand the applicant is the proprietor of the company and is responsible to the company for conduct of the business of the company, even if the business is being managed by the so-called manager.

The offence alleged against the applicant is economic offence in which the evasion of duty amounting Rs.62,10,28,165/- is made against the applicant. Although the offence is punishable with imprisonment of five years yet the evasion of huge amount of duty is a great loss to the Government Exchequer. As such the alleged offence is economic.

In view of the facts and circumstances of the case and the submissions made by learned counsel for both sides and going through the record, without commenting on the merits of the case, I do not find it a fit case for bail.

11. GST Payable on License fees from contractors for vehicle parking on Railway premises

Case Name : **M. Srinivasan Vs Union of India (Madras High Court)**
Appeal Number : WP Nos. 446, 6124, 29797 & 30685 of 2018
Date of Judgement/Order : 17/04/2021

Conclusion: Southern Railways had to pay the GST Tax with reference to the license fee collected from the contractors and the contractors were liable to pay the service tax with reference to the parking fee collected from the customers, who all were end users. Thus, both the Railways as well as the contractors were bound to pay, if they were falling within the ceiling contemplated under the provisions of the CGST Ac**t.** However, exemption would be applicable only in respect of the services provided by the contractors to the customers/end users and in such cases, the contractors were not liable to pay taxes directly to the GST Department. This being the clarification only with reference to the exempted services under the provisions of the CGST Act, the non-exempted cases, could not seek any exoneration.

Held: Assessees were Contractors, who were granted license to run parking areas for vehicles in the Railway premises by the Southern Railway. However, in respect of expired license, Southern Railways was not refunding the deposit amount and therefore, they were constrained to move the present writ petitions. The deposits were not refunded on the ground that they were liable to pay CGST/SGST at 18% as per the terms and conditions of the agreement. The demand was made by Southern Railway to pay 18% of GST in respect of license fee granted to Private Contractors to run parking of vehicles. Assessees mainly contended that the Statute did not contemplate such payment of 18% CGST/SGST. When there was no provision to collect the GST from the contractors on the license fee, then the terms and conditions of the agreement became null and void and therefore, the conditions imposed in the agreement would not be binding on the contractors. In this regard, assessees relied on Section 32 and sub-clause (2) to Section 32 stipulates that “no registered person shall collect tax except in accordance with the provision of this Act or the Rules made thereunder. In the present case, even before the introduction of the present CGST Act, the Contractors were paying the taxes based on the erstwhile Act, mainly Service Tax Act. After the implementation of the CGST Act, when there is prohibition of unauthorised collection of tax, the demand now made by the Southern Railways is in violation of the provisions of the CGST Act and therefore, the writ petitions were to be allowed. It was made very clear that the Southern Railways was bound to pay service

tax on the license fee collected from the contractors for whom license was granted to run vehicle parking in the premises of the Southern Railways and such contractors, who all were the licensees, were bound to register their names under the CGST Act and on such registration, they were bound to pay service tax for the parking fee collected from the end users. Thus, there were two services involved in the entire transactions and the first service was from the Railway to the contractors and the second service was from the contractors to the customers/ end users. As far as the exempted services under the provisions of the Act, were concerned provided by the contractors to the customers/end users, in such an event, the contractors were not liable to pay tax to the GST Department. However in respect of the license fee, the Railway was liable to pay service tax to GST by collecting from the contractors on the license fee. However, exemption would be applicable only in respect of the services provided by the contractors to the customers/end users and in such cases, the contractors were not liable to pay taxes directly to the GST Department. This being the clarification only with reference to the exempted services under the provisions of the CGST Act, the non-exempted cases, could not seek any exoneration. Whether such services rendered by assessees were exempted or not, was to be verified by the Competent Authorities of the GST Department and accordingly suitable orders might be passed.

12. HC imposes cost for passing order without considering material filed by petitioner

Case Name : **Akzo Nobel India Limited Vs Commercial Tax Officer (Telangana High Court)**
Appeal Number : Writ Petition No. 9736 of 2021
Date of Judgement/Order : 19/04/2021

Commercial Tax Officer shall pay costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to the petitioner, which shall be recovered from the salary of the 1st respondent, and disciplinary action shall be initiated against 1st respondent for non-consideration of material filed by petitioner before passing the impugned Assessment Order on 31-03-2021.

13. GST: Section 83 not permit freezing of account of third party

Case Name : **Bhavesh Kiritbhai Kalant Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 16360 of 2020
Date of Judgement/Order : 19/04/2021

1. There are no proceedings against the present petitioner under Sections 62, 63, 64, 67, 73 and 74 of the Act.

2. There is no reason therefore, to invoke section 83 against the writ applicant and proceedings.

3. Since the proceedings are initiated by the authorities in connection with the third parties, invocation of powers under Section 83 are not available with the respondents.

4. Thus, being a drastic power, the authority concerned cannot be oblivious of the serious consequences of provisional attachment of the bank account.

5. The bank ought to have applied its mind and more so when even under the RTI Act, the bank had been requested to furnish the details.

6. Section (1)(C)(iii) also provides that in case of a person to whom the notice has been issued, fails to make the payment in pursuance to thereof of the government despite of the notice, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow.

7. The petitioner is permitted to operate his bank account.

14. Rajasthan HC declines Bail in Alleged Fake ITC case of Rs. 47 crore

Case Name : **Sumit Dutta Vs Union of India (Rajasthan High Court)**
Appeal Number : S.B. Criminal Miscellaneous Bail Application No. 5371/2021
Date of Judgement/Order : 20/04/2021

1. Petitioner has filed this bail application under Section 439 of Cr.P.C.

2. Complainant No. IV(06)157/AE/JPR/2020 was registered at Central Goods and Service Tax & Central Excise Commisionrate, Jaipur, for offences under Section 132 of **CGST Act, 2017.**

3. It is contended by counsel for the petitioner that petitioner was an employee in M/s Veto Merchandise and resigned in Feb. 2020. It is also contended that petitioner has also furnished details to establish that there was actual movement of the goods. It is further contended that co-accused Bhasker Jangir has been given benefit of bail by this Court. It is contended that offence is punishable by five years imprisonment and is triable by Magistrate.

4. Learned Public Prosecutor has opposed the bail application. It is contended that at the relevant time petitioner was partner in M/s Veto Merchandise and a sum of Rs. 47 crore was claimed as Input Tax Credit without any transportation of goods. It is also contended that on the basis of fake bills and invoices input tax credit was passed on to firms which were existing in papers. It is contended that the sum involved is to the tune of Rs.47 crore.

5. I have considered the contentions.

6. Considering the contentions put forth learned Public Prosecutor, I am not inclined to grant bail to the petitioner.

7. Criminal Misc. Bail Application is accordingly, rejected.

15. SC explains law for provisional attachment of Bank Account under GST

Case Name : **Radha Krishan Industries Vs State of Himachal Pradesh (Supreme Court of India)**
Appeal Number : Civil Appeal No. 1155 of 2021
Date of Judgement/Order : 20/04/2021

(i) The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);

(ii) The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;

(iii) The High Court has erred in dismissing the writ petition on the ground that it was not maintainable;

(iv) The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;

(v) The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

(vi) The expression “necessary so to do for protecting the government revenue” implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;

(vii) The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue;

(viii) In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal;

(ix) Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:

(a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and

(b) An opportunity of being heard;

There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard;

(x) The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;

(xi) A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end; and

(xii) The appellant having filed an appeal against the order under section 74(9), the provisions of sub-Sections 6 and 7 of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.

16. GST Payable on Rice Sell even if Brand name not registered

Case Name : **Sarvasiddhi Agrotech Pvt. Ltd Vs Union of India (Tripura High Court)**
Appeal Number : W.P. (C) No.279/2021
Date of Judgement/Order : 20/04/2021

We do not find any error in the view of the authorities. Firstly, the conclusions of these authorities are based on assessment of materials on record. Secondly, the seizure of sizable quantity of packaged branded rice was an indication of the petitioner dealing in such product. Thirdly, the tax is not demanded on rice stored and seized but on the quantity of rice already supplied which was assessed from the bill books and invoices seized from the premises of the petitioner-company. Further, the petitioner"s defence that the quantity of rice lying in the godowns was merely for internal use was also not backed by any evidence. Close to three thousand bags of rice were found lying in the godown. The petitioner"s bare contention that it was not meant for supply but only for internal purposes of grading the rice or part of the stock was lying because of quality disputes, was not backed by any evidence and was therefore correctly not accepted by the authorities. Lastly, the petitioner"s contention that the brand was not a registered brand and therefore the petitioner had no liability to pay tax also was rightly not accepted. As pointed out by the counsel for the petitioner himself under a Notification dated 22.09.2017 issued by the Government of India, following amendment in the previous Notification was made:

“(v) in S. No. 49, in column (3), for the words “put up in unit container and bearing a registered brand name”, the words brackets and letters “put up in unit container and, –

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE]”, shall be substituted;”

As per this amendment, thus, for the original expression of “put up in unit container and bearing a registered brand name” what is now substituted is that it should be put in unit container and may be bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available. Thus, from the previous requirement of supply of goods in unit container and bearing a registered brand name, the expanded requirement is of the same either bearing of registered brand name or bearing a brand name on which actionable claim or enforceable right in a court of law is available. Thus, the requirement of the brand name being registered is no longer necessary. This Notification itself, however, provides that the exemption could be availed where such actionable claim or enforceable right in respect of such brand name has been voluntarily forgone subject to the conditions specified in the Notification.

The brand names under which the petitioner was selling the rice may not have been registered, nevertheless it could lead to an actionable claim in a court of law. In order to avoid inviting liability of tax, the petitioner had to forgone such actionable claim which also the authorities found the petitioner had not done.

17. HC directs GST Department to furnish detailed order to Appellant

Case Name : **Anish Infracon India Pvt. Ltd. Vs Union of India (Gujarat High Court)**
Appeal Number : Special Civil Application No. 6677 of 2021
Date of Judgement/Order : 22/04/2021

It is the grievance on the part of the petitioner that summary notice in the form of GST/DRC/07 dated 06.01.2021 culminated into the physical summary order of FORM GST DRC-07 dated 18.02.2021 demanding sum of Rs.81,72,530/- with a specific direction to make the payment in 30 days. On 26.03.2021 detailed submissions have been made and request also was made not to initiate the recovery proceedings. He has approached this Court on the ground that the detailed order is not being made available and what has been issued is the physical summary order dated 18.02.2021. This non-supply of the order without any explanation or reasons for raising huge demand is the ground of Appeal.

We have heard learned advocate for the petitioner. He has fairly pointed out the statutory provision of section 107 of CGVAT which provides for the appeal to the Appellate authority, if any person is aggrieved by the decision or order passed under CGST Act or the SGST Act or the UTGST Act by the adjudicating authority, within three months from the date on which the decision of the order is communicated to the person concerned.

He, in the very breath, though has added that absence of detailed order is the hampering ground for the petitioner to move such an appeal and on a query raised by this Court.

On hearing the learned Advocate for the petitioner, it is deemed appropriate and justifiable to relegate the Petitioner to the appellate authority prescribed under the statute without entering into the merits of the matter. All issues, which have been

raised before the Court can be raised before the appellate Authority within the prescribed time of three months, raised in this petition, on seeking a reasoned order from the concerned authority.

Let the reasoned order, if not already supplied to the petitioner, be provided within 07 days of the receipt of the copy of this order.

18. Gujarat HC issues notice on artificial deduction of value of land

Case Name : **Karma Buildcon Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 6840 of 2021
Date of Judgement/Order : 22/04/2021

For Builders, Real Estate developers, Para 2 **Notification No.11/2017 Central Tax (Rate) dated 28.6.2017** provides for deduction of 33% from the value of supply as deemed value of land. In some of the cases due to this artificial deduction of value of land, even land is getting taxed under GST which is in contravention of the provisions of Section 7(2) read with Schedule III. Therefore the validity and vires of entry 3(if) of notification is challenged before Gujarat HC by M/s Karma Buildcon.

19. Anticipatory Bail granted to person accused of non-payment of GST & non-filing of returns

Case Name : **Abdul Shaji Vs Commissioner of Central Tax And Central Excise (Kerala High Court)**
Appeal Number : Bail Appl. No. 220 of 2021
Date of Judgement/Order : 22/04/2021

Conclusion: Anticipatory bail was granted to the person accused of non-payment of GST to the tune of Rs 17.53 Crores and non-filing of GSTR 3B returns as it was settled position that the applicant apprehending arrest need not be made an accused in a crime to seek the relief of anticipatory bail and it was sufficient in case he succeeded in establishing that his apprehension of arrest was reasonable.

Held: Applicant apprehended arrest for an offence of alleged non payment of GST to the tune of Rs 1 7.53 Crores and non -filing of GSTR 3B returns for the period from October onwards. The proprietor of M/s A.R. Agencies, Shri. R, and his primary colluder, Shri. Abdul Saleem were proceeded against and their business and residential premises searched. Both of them were arrested and remanded to judicial custody. When questioned, Abdul Saleem stated that he had shared the GST login credentials of M/s A.R. Agencies with the applicant and it was the applicant who had filed the GSTR-I returns for A.R Agencies. It was also contended that the applicant had prepared GST invoices valued at Rs. 348.7 crores using the credentials of the Agency. Accordingly, search of the applicant's residence was also conducted. Certain blank cheques and documents which were incriminating were recovered from his house. He was not present therefore, a summons was sent to him under Section 70 of the CGST Act, directing him to appear before the Superintendent of Central Tax

and Central Excise with the relevant documents. Applicant stated that he was innocent and had nothing to do with M/s A.R Agencies, and did not even know its proprietor Rajoob. He admitted of having acquaintance with Abdul Saleem. Applicant stated that he had no business at present, and was not having any **GST registration**. It was held that the applicant had not yet been made an accused and no concrete evidence sufficient either to implicate him as an accused or proceed against him had been collected. Applicant had nothing to do with the Agency and had not gained any income from that business. His Bank accounts were available for scrutiny, and the applicant was willing to cooperate by producing those documents. His custodial interrogation may not be necessary under the circumstances. Applicant's apprehension of arrest was reasonable, because Abdul Saleem, who was also not a proprietor, had been arrested. It was settled position that the applicant apprehending arrest need not be made an accused in a crime to seek the relief of anticipatory bail. Its was sufficient in case he succeeded in establishing that his apprehension of arrest was reasonable. Thus, the applicant was entitled to the relief of anticipatory bail. The bail application was allowed and the applicant was directed to appear before the investigating officer within three weeks. He was directed to cooperate with the investigation and produce all documents called for. After interrogation, in the event of his arrest, he should be released on bail on execution of a bond for Rs 5,00,000/- (Rupees five lakhs only) with two solvent sureties each for like sum to the satisfaction of AO, and on further conditions that he should appear before for investigating officer as and when called for, and shall refrain from tampering with evidence or witnesses.

20. SC Grants conditional Bail in GST Evasion Case

Case Name : **Chhaya Devi Vs Union of India & Anr. (Supreme Court of Court)**
Appeal Number : Special Leave to Appeal (Crl.) No(s). 3313/2021
Date of Judgement/Order : 22/04/2021

Supreme Court Grants Bail to petitioner Chhaya Devi in Alleged GST Evasion Case who is a widow with five daughters and claimed that her business was being looked after by the Manager who was in-charge of the business. Bail is Subject to deposit of Rs. 1 crores and giving affidavit that there would not be any encumbrance on any of the properties.

21. Tripura VAT: No penalty for not getting accounts audited as audit report format was not notified

Case Name : **Pankaj Behari Saha Vs State of Tripura (Tripura High Court)**
Appeal Number : WP(C) No.1106 of 2019
Date of Judgement/Order : 26/04/2021

Analysis of Section 53 of the TVAT Act would show that as per sub-section (1) thereof, for a dealer whose turnover crosses the prescribed threshold limit for any year, has to get his accounts audited within six months from the end of that year and obtained the

report in the prescribed form setting forth such particulars as may be prescribed. Such report has to be furnished to the Commissioner by the end of the month after expiry of the period of six months allowed for completing the audit. It is when the dealer fails to do this, that under sub-section (3) of Section 53 he exposes himself to penalty at the prescribed rate. In order to invoke the penal provision of sub-section (3) of Section 53 thus it must be first established that the dealer failed to get his accounts audited as provided in sub-section (1) and furnish a copy thereof within prescribed time as provided in sub-section (2) of Section 53. Under sub-section (1) of Section 53 what the dealer is required to do is to obtain a report of audit in prescribed form and which would set forth such particulars as may be prescribed. Thus for a dealer to obtain an audit report, not only the format in which such report would be obtained, the particulars which such report must contain, were also the matters to be prescribed. As provided in sub-section (19) of Section 2 such prescription has to be made under the Rules. Admittedly, in the present case, in the Rules framed by the State Legislature in exercise of rule making powers under the TVAT Act, no such form was prescribed nor obviously the particulars which such report would contain were prescribed. In absence of any such prescription, the Superintendent could not have invoked the provision of sub-section (3) of Section 53 of the TVAT Act. Since as noted, under the Rules neither the form of audit report nor the particulars which such audit report would contain having been prescribed, the question of the dealer having failed to furnish the report would not arise.

The court held that when the Statute provides certain things to be done in a particular manner, the same must be done in that manner or not at all. The Court rejected the contention of the State that the report ought to have been submitted in the form prescribed under the Chartered Accountants Act.

22. GST: Assessment order passed without supplying third party evidence relied on: Set aside by Madras HC for violation of principles of natural justice

Case Name : **Sri Muniappa Steels Vs Assistant Commissioner (Madras High Court)**
Appeal Number : W.P. No. 10489 of 2019
Date of Judgement/Order : 27/04/2021

An assessment order passed under the GST laws, based on a statement given by a third party dealer for which the assessee has no access is totally unsustainable before law since it is passed in gross violation of the principles of natural justice, is the ratio laid down by the Hon'ble High Court of Madras in Sri Muniappa Steels Vs. The Assistant Commissioner (ST) Singanallur North Circle, Coimbatore (No.- W.P. No.10489 of 2019 And WMP No.11086 of 2019 dated: 27.04.2021)

Facts of the case

- The Assessing Officer has issued a notice in terms of the **Tamil Nadu Goods and Services Tax Act, 2017** (TNGST Act, 2017) dated: 14.12.2020 to the petitioner. This notice has reference of a notice dated: 29.05.2020 which indicates certain discrepancies in the invoices accompanied by e-way bills. In the show cause notice,

the Assessing Officer alleges that the supplier (a third party dealer as far as the petitioner is concerned) had admitted in his statement recorded by the Central GST Authorities, stating that they had neither received any inward nor engaged in outward supply.

- The officer thus proposes to arrive at a conclusion that the transaction was not genuine and the petitioner was engaging in bill trading. In response, the petitioner has filed a reply on 23.12.2020 specifically requiring a copy of the statement relied upon by the Assessing Officer for the proposed assessment, reserving his right to cross examine the dealer as well as to file objections to the same. The impugned order has come to be passed without hearing the petitioner and admittedly, without supplying the statement relied upon by the Officer.

Held by the High Court

- That, the conclusion in the assessment order, in fact, mentions the statement recorded by the third party dealer and in the light of the fact that this statement forms the basis of assessment, the petitioner ought to have been granted opportunity to peruse the statement and put forth its objections to the same. This has not been done, which constitutes violation of the principles of natural justice.
- The impugned order is thus set aside. Let the statement and other particulars relied upon by the Officer in the impugned order of assessment be supplied to the petitioner within a period of three (3) weeks from the date of judgment. Thereafter, the petitioner shall be afforded an opportunity of hearing to put forth its submission and also file objections. Upon consideration thereof, a speaking order shall be passed by the Officer within a period of six (6) weeks from the date of first hearing.

23. No Set Formula for Offloading Consignment Truck: Telangana HC

Case Name : **Vijay Metal Vs Deputy Commercial Tax officer (Telangana High Court)**
Appeal Number : Writ Petition No. 2869 of 2021
Date of Judgement/Order : 28/04/2021

1. The point that Hyderabad comes first and Adoni comes later; ignoring the operational convenience of the transporter; is not justifiable. HC not accepted the contention of the officer that even if the goods meant to be delivered at Adoni were loaded on top of the conveyance, the said goods should have been unloaded and then reloaded after unloading the goods intended for the petitioner at Hyderabad. Such view, in their opinion, is utterly perverse and cannot be accepted.

2. There is no prohibition for a consignor to load the consignments to two different destinations intended for two different parties in two different States on a single conveyance.

3. There is no rule that consignments intended for a party at a shorter distance should be offloaded first.

4. That the respondent had acted mechanically without application of mind to the operational convenience of the transporter.

5. That the transaction involving the petitioner was 'suspicious' and that the transporter was found 'without proper documents' is perverse and cannot be sustained in these circumstances.

24. Delhi HC stays double proceedings by State & Central GST Officers

Case Name : **Koenig Solutions Private Limited Vs Union Of India & Ors. (Delhi High Court)**
Appeal Number : W.P.(C) 5040/2021
Date of Judgement/Order : 28/04/2021

Delhi High Court by order dated 28.04.2021 granted stay on the proceedings/ summons by CGST officer, when proceeding already conducted by State Tax Officer.

1. Delhi High Court by order 28.04.2021 in WP (C) No 5040/2021 in the matter of M/s. Koenig Solutions Pvt. Ltd Vs. Union of India & Ors has stayed the proceedings initiated by the Central Tax Officers against the Petitioner company whose jurisdiction has been assigned to the State Tax officer, Delhi, who have also exercised the jurisdiction. Mr. J.K. Mittal represented the Petitioner in this case.

2. The High Court granted the stay and also recorded the submission of bar under section 6(2)(b) of the Central Tax Officer.

3. The High Court also took cognizance of the fact that summons have been issued by using the language that Petitioner representative should not leave the office without completion of the inquiry or without leave permissions of the officer or till the inquiry/ case is adjourned, which is contrary to the format for the summons prescribed by the Central Government.

4. The High Court, while granting the stay, has found that prima facie there is lack of jurisdiction by the Central Tax officer, and issued notice and granted time to file reply by the Respondents/ Department and fixed up next date July 20, 2021.

25. GST Evasion of Rs. 6.31 Cr : HC grants bail to alleged Kingpin

Case Name : **Sanjay Prahladbhai Patel Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Criminal Misc. Application No. 6001/2021
Date of Judgement/Order : 29/04/2021

It is submitted that the applicant is arrested in connection with the alleged demand by the GST authorities without determining the extent liability of the said alleged demand. It is submitted that the arrest of the applicant in the alleged offence is effected only on the ipse dixit of the Tax Department and in colourable exercise of powers under section 69 of the Act. It is submitted that the very basis for arriving at a quantified sum of Rs.6.31 crores of the alleged tax evasion is obscure and no detail whatsoever has been provided in support thereof, which clearly shows that the same is a result of figment of imagination of the tax authorities. It is submitted that in absolutely unprecedented manner, the department has clubbed demands and liabilities in respect

of 13 different entities, for making out a case of evasion against the applicant, which is absolutely foreign to tax law. It is also submitted that though the demands in respect of 13 different entities were clubbed to arrive at alleged amount of tax evasion of Rs.6.31 crores against the accused, nevertheless separate complaint is filed against the accused, wherein some of the accused are even shown as witnesses in the chargesheet.

Learned advocate for the applicant has submitted that the investigation in the case is over and the chargesheet in the form of complaint has already been filed. It is submitted that a complaint is filed on conclusion of the investigation. It is submitted that present case is based on documentary evidence which may at best attract a punishment maximum up to 5 years. It is submitted that the present offence is triable by the Magistrate and considering the burden of work and pending cases in trial court the applicant may be released on bail as the applicant is in jail since 14.12.2020. It is also submitted by the learned Advocate on instructions of the applicant, that the applicant is ready and willing to deposit a reasonable amount as suggested by this Court.

Learned Additional Public Prosecutor appearing on behalf of the respondent State has opposed grant of regular bail considering the nature and gravity of the offence. It is submitted that the present applicant is one of the kingpin and mastermind of the whole racket involving 13 fictitious firms leading to evasion of tax to the tune of Rs.6.31 cores.

Having perused the materials placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, this Court is inclined to grant regular bail to the applicant.

In the result, the present application is allowed. The applicant shall deposit an amount of Rs.2,00,000/ before the State Tax Officer and on depositing the aforesaid amount and producing appropriate document with regard to the depositing of the amount the applicant is ordered to be released on regular bail in connection with the Arrest Memorandum being CCST/STO/FSU11/SANJAY PATEL/202021/22 dated 14.12.2020 and further the applicant shall also file an undertaking to deposit the remaining amount of Rs.13,00,000/ within the period of 08 (eight) weeks. It is clarified that if the aforesaid order of the Court is not complied with, the bail granted to the applicant shall automatically stands cancelled. It is also clarified that the aforesaid conditions will be without prejudice to the right and contentions of the present applicant before the appropriate authority. Further, the applicant is released on bail on executing a personal bond of Rs.10,000/ (Rupees Ten Thousand Only) with one local surety of the like amount to the satisfaction of the learned Trial Court and subject to few conditions.

26. Officer cannot deny Revocation of GST Registration for alleged incorrect ITC availment

Case Name : **Ramakrishnan Mahalingam Vs State Tax Officer (Madras High Court)**
Appeal Number : WP No.15081 of 2020

Date of Judgement/Order : 30/04/2021

An assessment would have to be made by the authority in terms of Section 73 or other applicable provision after following the procedure set out therein, and it is only in the course thereof that the officer may consider and decide questions of leviability of tax and claim of input tax credit.

Thus to state that registration will not be revived since the petitioner has incorrectly availed of ITC would be putting the cart before the horse. In fact, it is seen that the petitioner has filed monthly returns as well as annual returns for the periods January 2017-18 to September 2019-20 and for financial years 2017-18 and 2018-19 and has also remitted late fee for filing of belated returns. Thus, and these being the only conditions that are to be satisfied by the petitioner for grant of revocation of registration, I am of the view that the cancellation of the registration in this case is incorrect and improper.

Let the first petitioner forthwith. Needless to say, the respondent is at liberty to take up matters of assessment thereafter, in accordance with law.

27. MVAT assessment order passed manually should be served Manually too: HC

Case Name : **Greatship (India) Ltd. Vs State of Maharashtra (Bombay High Court)**
Appeal Number : Writ Petition (Stamp) No. 92630 of 2020
Date of Judgement/Order : 30/04/2021

1. Manual Assessment order under Maharashtra VAT Act for Year 2015-16, purported to be passed on 20/03/2020 and served through email on 14/07/2020, held to be barred by limitation in absence of manual service in view of provisions under Maharashtra VAT Act.

2. Held to be non est on the eyes of law

3. Internal Circulars issued by the Commissioner of Sales Tax and the discrepancies found in the assessment record.

4. Mere writing of the order and keeping in the file for record would be no order.

5. The order must be communicated either directly or constructively.