DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT,

PUNJAB, PATIALA

GST UPDATE

(APRIL 2023)

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(II) Advance Rulings

1. GST on wooden ice cream sticks and wooden ice cream spoons

Case Name : In re Ragu Packaging (GST AAR Karnataka)
Appeal Number : Kar Adrg 18/2023
Date of Judgement/Order : 13/04/2023
Courts : AAR Karnataka (436) Advance Rulings (3165)

In re Ragu Packaging (GST AAR Karnataka)

AAR held that wooden ice cream sticks and wooden ice cream spoons merit classification under HSN code 4419.90.90 and thus are exigible to GST @ 12%, in terms of Sl.No.99B of Schedule II to the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 as amended.

2. GPA holder liable to Pay GST on Renting of Immovable commercial Property

Case Name : In re Nagabhushana Narayana (GST AAR Karnataka)
Appeal Number : KAR ADRG 17/2023
Date of Judgement/Order : 13/04/2023
Courts : AAR Karnataka (436) Advance Rulings (3165)

In re Nagabhushana Narayana (GST AAR Karnataka)

In the instant case, vide GPA registered on 22.05.2022, Shri Nagabhushana Narayana, a non-resident Indian, who is the absolute owner of the scheduled property, due to reasons of being working out of country, has appointed his mother Smt Prabhavathi, resident of Bengaluru, to manage the property including induction of tenants, creating tenancy and to execute necessary deeds or documents either registering before the jurisdictional sub-registrar and to receive all profits, rents, lease advance money, advance security deposit amount from the existing tenant and also from the prospective tenant and to take care all necessary action regarding tenancy of the said scheduled property, except for to mortgage or sell or alienate the scheduled property. In pursuance of the provisions of GPA, Smt Prabhavathi has created tenancy and inducted various tenants by way of leasing out the scheduled property for commercial purposes.

From the said facts, it is evident that though Shri Nagabhushana Narayana, is the absolute owner of property, the act of leasing of immoveable property was taken up by Smt Prabhavathi as a GPA holder of the said property. Also the incomes from the property, including the rent are received and

retained by the GPA holder. The activity of leasing or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services in terms of entry 2(b) of Schedule II to Section 7 of CGST Act, 2017. Further in terms of Section 2(105) of CGST Act, 2017 'supplier' in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. Thus from the said provisons, Smt. Prabhavathi, the GPA holder is the supplier of service of leasing of the building for commercial purposes.

Since Smt Prabhavathi is a resident of Bengaluru, Karnataka and a supplier of taxable service, is liable to take registration under Section 22(1) of the CGST Act, 2017.

In the instant case, since the supply of service is directly in relation to immoveable property, in terms of Section 12(3) of IGST Act, 2017, the place of supply of service shall be the location of the said immoveable property i.e., in Bangalore, Karnataka. Since the place of supply and location of supplier are both in Karnataka the said supply amounts to intra-state supply in terms of section 8(2) of IGST Act, 2017 and the taxable person, i.e Smt. Prabhavathi is liable to pay CGST and KGST of 9% each on the taxable value in terms of entry no 16(iii) (SAC heading 9972) of Notification No. 11/2017 dated 28.06.2017, as amended.

3. Bio-Phosphate merits classification under HSN code 31039000

Case Name : In re Criyagen Agri & Biotech Private Limited (GST AAR Karnataka)
Appeal Number : KAR ADRG 16/2023
Date of Judgement/Order : 13/04/2023
Courts : AAR Karnataka (436) Advance Rulings (3165)

In re Criyagen Agri & Biotech Private Limited (GST AAR Karnataka)

What is the HSN Code & GST rate applicable to our new product by name Bio-Phosphate? The product "Bio-Phosphate" merits classification under HSN code 3103 90 00 and thus are exigible to GST @ 5%, in terms of Sl.No.182B of Schedule I to the Notification No. 1/2017-Central Tax(Rate) dated 28.06.2017, as amended.

4. GST on Government subsidy – Advance ruling filed by recipient dismissed

Case Name : In re Chinnapuri Silks (GST AAR Karnataka)
Appeal Number : KAR ADRG 15/2023
Date of Judgement/Order : 12/04/2023
Courts : AAR Karnataka (436) Advance Rulings (3165)

In re Chinnapuri Silks (GST AAR Karnataka)
Whether subsidy received from the Central / State Government to be excluded from the value for the purpose of arriving at the GST liability? In the instant case, we observe that M/s. Chinnapuri Silks, who have filed the application, is not a supplier of goods but is a recipient of goods. Thus the instant application is not admissible and liable for rejection in terms of Section 98(2) of the CGST Act 2017.

5. GST Rate on Bonus for Employees of Company Providing Canteen Services paid by recipient

Case Name : In re Foodsutra Art of Spices Private Limited (GST AAR Telangana) Appeal Number : TSAAR Order No.07/2023 Date of Judgement/Order : 12/04/2023 Related Assessment Year : Courts : AAR Telangana (136) Advance Rulings (3176)

In re Foodsutra Art of Spices Private Limited (GST AAR Telangana)
1. M/s. Foodsutra Art Of Spices Private Limited, D No 7-2-1813/5, Flat No 304, SVSS Nivas, Road No 1, CzechColony Santhnagar Hyderabad, Telangana – 500018 (36AADCF9198C1ZE) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same exceptfor certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. TheApplicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

4.1 The applicant M/s. Foodsutra Art of Spices Private Limited is providing canteen services to ITC limited. The applicant has submitted that they have been issuing the invoices for their regular Canteen services @ 5%. Apart from that, they are also receiving a Lump Sum amount of bonus for paying their employees from their service recipient (i,e., they're compensating them in this form) , for that they are charging @18%. But, that their service recipient is not ready to accept the Invoice for charging @18%, instead of that they're asking them to charge@5%.

The applicant submitted that in their view according to Section 2 (32) of CGST Act, 2017 – "consideration" in relation to the supply of goods or services or both includes – (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

That their Service recipient is claiming that, they have to charge @5% by considering the reimbursement of expenses as Part of Canteen Service and they are not ready to accept it as separate service. That as the reimbursement of the bonus was not part of agreement; they agreed only for canteen service, so, the only service to be considered here was to be as canteen service by issuing Invoice @ 5%. But that the applicant's point of view is that, they are taking this consideration for paying their employees, by acting as an intermediary, so they are ready to issue Invoice by applying 18% GST Rate. Hence the applicant requested clarification regarding relevant rate of tax under GST.

4.2 Company Background:

The applicant M/s. Foodsutra Art Of Spices Private Limited is a Private incorporated on 20 November 2019. It is classified as Non-govt company and is registered at Registrar of Companies, Hyderabad. Its authorized share capital is Rs. 16,000,000 and its paid up capital is Rs. 16,000,000. It is inolved in Hotels; camping sites and other provision of short-stay accommodation Restaurant facilities operated in connection with the provision of lodging remain classified in this group. Also included are the operation of sleeping cars when carried on by separateunits.

5. QUESTIONS RAISED:

1. Which rate has to be taken for Reimbursement of bonus?
2. Whether they have to charge same GST rate as applicable for their main service of Canteen Service also forbonus reimbursement?
3. If they have to charge the same GST rate as like Canteen Service, please specify the provision, on what basisthey have to charge 5%, instead of 18 %?

6. PERSONAL HEARING:

The Authorized representatives of the unit namely Sri P. Vijaya Reddy, CA attended the personal hearing held on 24.01.2023.

1. The Authorised Representative reiterated the contentions already submitted along with the applicationand requested for early disposal of the case.
2. Further, the Authorised Representative/Applicant M/s. Foodsutra Art of Spices Private Limited,Hyderabad, reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and

have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

Opinion expressed by Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Member), on the issues raised by the applicant.

7. DISCUSSION & FINDINGS:

The applicant is receiving regular amounts for the bills raised by them on the canteen services and annually they are receiving further amounts with the nomenclature of bonus.

Under the Section 9(1) of the CGST Act, 2017 "…there shall be levied a tax called the Central Goods and Services Tax on all intra-State supply of goods or services or both…, on the value determined under Section15…"

The Section 15 of the CGST Act, 2017 at clause (b) of sub section (2) states that the value of supply shall include "Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;"

Similarly, the definition of consideration at sub section 31 of Section 2 of CGST Act, 2017 includes any payment made or to be made in response to the supply of goods or services.

A combined reading of Section 15 and definition of consideration in the CGST Act, 2017 reveals that all payments made in respect of a supply constitutes the value of supply on which tax shall be levied under the charging section i.e., Section 9 according to the rates applicable in the notifications issued under the Act.

According to the averments made by the applicant they are providing only canteen services to their recipient M/s. ITC Limited. There are no other ancillary or incidental services provided by them. Therefore the amounts received by them are in relation to supply of canteen services only. This amounts form the value of supply as defined in clause (b) of sub section (2) of Section 15 of the CGST Act, 2017 which are taxable under Section 9 of CGST Act, 2017.

In the explanation to Notification No. 11/2017 dt:28.06.2017 the restaurant services are defined as follows:

[(xxxii) ?Restaurant service? means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

Serial No. 7, SAC heading 9963 (Accommodation, food and beverage services) of Notification No. 11/2017 has prescribed a tax at the rate of 2.5% under CGST & SGST Acts respectively. Therefore the consideration received by the applicant as the value of supply including the amounts received in the name of bonus will be chargeable to tax at the rate of 2.5% under CGST & SGST Acts each in light of above discussion.

8. In view of the foregoing, the ruling is given by State Member as under:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions Ruling

1. Which rate has to be taken for Reimbursement of bonus? 2.5% CGST & 2.5% SGST.
2. Whether they have to charge same GST rate as applicable fortheir main service of Canteen Service also for bonus Yes. reimbursement
3. If they have to charge the same GST rate as like Canteen Service, please specify the provision, on what basis they have to Please see the discussion above. charge 5%, instead of 18 %?

Opinion expressed by Sri Sahil Inamdar, Additional Commissioner, (Central Member), on the issues raised by the applicant are as given below.

9. DISCUSSION & FINDINGS:

9.1 The applicant is receiving regular amounts for the bills raised by them on the canteen services and annuallythey are receiving further amounts with the nomenclature of bonus.

9.2 Under the Section 9(1) of the CGST/TGST Act, 2017

"(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."

9.3 The Section 15 of the CGST Act, 2017

"15. Value of Taxable Supply.— (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. (2) The value of supply shall include——

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force otherthan this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has beenincurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments."

Thus the Section 15 of the CGST/TGST Act, 2017 at clause (b) of sub section (2) states that the value of supply shall include "Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;"

9.4 Similarly, the definition of consideration at sub section 31 of Section 2 of CGST Act, 2017 includes any payment made or to be made in response to the supply of goods or services.

"consideration" in relation to the supply of goods or services or both includes– (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Similarly, the definition of consideration at sub section 31 of Section 2 of CGST/TGST Act, 2017 includes any payment made or to be made in response to the supply of goods or services.

9.5 A combined reading of Section 15 and definition of consideration in the CGST/TGST Act, 2017 reveals that all payments made in respect of a supply constitutes the value of supply on which tax shall be levied under the charging section i.e., Section 9 according to the rates applicable in the notifications issued under the Act.

9.6 According to the averments made by the applicant they are providing only canteen services to their recipientM/s. ITC Limited. There are no other ancillary or incidental services provided by them to M/s. ITC Limited. The applicant has submitted that the issue under consideration involves receipt of amounts from the service recipient as Bonus to be given to the employees of the service provider. Thus it is a fact that the amounts received are in relation to supply of Canteen service only and probably as an inducement/response to the employees of the service provider for providing the said canteen services with quality. Therefore the amounts received by them are in relation to supply of canteen services only. These amounts form the value of supply as defined in clause (b) of sub section (2) of Section 15 of the CGST Act, 2017 which are taxable under Section 9 of CGST Act, 2017 with certain conditions.

9.7 In the explanation to Notification No. 11/2017 dated 28.06.2017 the restaurant services are defined asfollows:

[(xxxii) ?Restaurant service? means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

Serial No. 7, SAC heading 9963 (Accommodation, food and beverage services) of Notification No. 11/2017 has prescribed a tax at the rate of 2.5% under CGST & SGST Acts respectively.

9.8 The applicant's point of view is that, they are taking the bonus consideration from service recipient which ismeant to be paid to their employees, by acting as an intermediary, because of which they are issuing Invoice, for the bonus amount to be received, with GST Rate of 18%. As per Section 2(13) of Integrated Goods and Services Tax ("IGST") Act, Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

9.9 As per Section 2(102) of CGST/TGST Act'2017 ? "services" means anything other than goods, money andsecurities but includes activities relating to the use of money or its conversion by

cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

[Explanation.— For the removal of doubts, it is hereby clarified that the expression ?services includes facilitating or arranging transactions in securities;]

9.10 The applicant's point of view is that, they are taking the bonus consideration from service recipient which ismeant to be paid to their employees, by acting as an intermediary, because of which they are issuing Invoice, for the bonus amount to be received, with GST Rate of 18%. If the applicant retains a portion of the Lump Sum amount received for payment of bonus, which is received from their service recipient to pay the same to their employees, in the form of commission then he is liable to pay GST at the rate applicable to Intermediary services on the commission retained and rest of the amount, after excluding the commission from the bonus, shall be included in the taxable value pertaining to the canteen services as the bonus is also paid by the service recipient in relation to the canteen services provided by the applicant to the recipient. He is liable to pay GST at rate of 5% on the rest of the amount, which is arrived after excluding the commission from the entire bonus, as it would be included as value of supply of canteen services in accordance with Section 15(2) of the CGST Act, 2017.

9.11 If the applicant does not retain a portion of the Lump Sum amount received for payment of bonus in theform of commission then the entire bonus amount shall be included in the taxable value pertaining to the canteen services as the bonus is also paid by the service recipient in relation to the canteen services provided by the applicant to the recipient. Therefore the consideration received by the applicant as the value of supply including the amounts received in the name of bonus will be chargeable to tax at the rate of 2.5% under each of CGST & SGST Acts each in light of above discussion. Therefore he is liable to pay GST at rate of 5% on the entire Lump Sum amount received for payment of bonus.

10. In view of the foregoing, the ruling is given by Central Member as under:

In view of the above discussion, the questions raised by the applicant are clarified as per the below rulings:

RULING

QUESTIONS

It is 5% on the entire bonus amount if no capacity as an intermediary, from the recipient as detailed in point no.9.11.

1.Which rate has to be taken for Reimbursement of bonus?

It is 18% on the commission if he take amount as an intermediary and 5% on the in point no. 9.10.

2. Whether they have to charge same GST rate as applicable for their main

It is detailed in the above points 9.10 and service of Canteen Service also for bonus reimbursement

3. If they have to charge the same GST rate as like Canteen Service, please

It is detailed in the above points 9.5, 9.10 specify the provision, on what basis they have to charge 5%, instead of 18% ?

From the above, the Authority for Advance Ruling concurred in the Ruling and has discussed it independently

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

6. 18% GST Payable on Aluminium composite panel/sheet

Case Name : In re Aludecor Lamination Private Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No.05/2023
Date of Judgement/Order : 12/04/2023
Courts : AAR Telangana (136) Advance Rulings (3176)

In re Aludecor Lamination Private Limited (GST AAR Telangana)

1. Whether Aluminium composite panel/sheet is covered under HSN 3920 or HSN 7610 or HSN 7606? As the Aluminium Composite Panel/Sheet attribute most of its characteristics to the two aluminium sheets from which it is made, the ACP has to be classified under the tariff heading 7606 as per Rule 3(b) of the General Rules for the interpretation of the Customs Import Tariff Schedule read with Notification No.1/2017-Central Tax (Rate) dated 28th June,2017.

2. Rate of SGST and CGST applicable on the same. 9% SGST and 9% CGST

7. Input Tax Credit on construction of shed using pre-fabricated technology

Case Name : In re Sanghi Enterprises (GST AAR Telangana)
Appeal Number : TSAAR Order No.04/2023
Date of Judgement/Order : 12/04/2023
Courts : AAR Telangana (136) Advance Rulings (3176)

In re Sanghi Enterprises (GST AAR Telangana)

1. M/s. Sanghi Enterprises, Survey No.15, 16, Mysireddypally, Medchal, Medchal Malkajgiri, Telangana-501401 (36ADLFS2549G1ZS) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same exceptfor certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. TheApplicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared

that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

4.1 The applicant M/s. Sanghi Enterprises has claimed that they are constructing shed on a leased land and that such property being constructed is a pre-fabricated shed system. They made the following submissions in their application:

Submission-1: It is fixed by anchor bolts to a low RCC platform embedded to the ground, and it is the only civil structure.

Submission-2:The rest of the structure, like columns, beams, rafters, wall sheets, roof shed etc. are all joined with one another by nuts and bolts, and can be easily dismantled and restructured at another location.

Submission-3:The low-rising RCC platform is, of course, permanently embedded to the ground. However Shed system built thereon, can be dismantled, and thus reduces repeated capital expenses in the event of a shift of location.

Submission-4: Shed is nothing more than an assembly of the System, which is pre-fabricated and preengineered components, fixed together in a modular form with nuts and bolts and without welding so that it can be easily unfixed.

Submission-5: The utility of the RCC platform on which the System is being fixed is limited to allowing the Shed to be set up and no further. It is the System that is beneficially enjoyed, not the RCC structure.

They further submitted that if the nature of annexation is such that an item so annexed can be removed without any damage and future enjoyment of that item in a similar capacity is not affected, such an item will not be considered to be immovable property. They relied on the Hon'ble Apex court's judgments in Solid & Correct Engineering Works [(2010) 252 ELT 481 (SC)] and Sirpur Paper Mills Ltd [97 ELT 3 (SC)].

5. QUESTIONS RAISED:

1. Whether Input Tax Credit is allowed for construction of shed using pre-fabricated technology?

6. PERSONAL HEARING:

The Authorized representatives of the unit namely Subodh Sanghi, Managing partner and Ankur, CA attended the personal hearing held on 15.12.2022. The authorized representatives reiterated their averments in the application submitted and averred as follows:

1. That they have taken land on lease and the lessor has constructed a basement on which the applicantintends to construct a shed using prefabricated technology.
2. That the prefabricated structure is erected on the basement by using nuts & bolts and that it can bedisassembled as and when required.
3. That this structure is therefore is not a permanent structure and it is a movable property and thereforethe AAR may issue appropriate ruling regarding such movable property.

Opinion expressed by Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax), on the issues raised by the applicant.

7. DISCUSSION & FINDINGS:

It is to inform that under clause (d) of sub-section (5) of Section (17) of the CGST Act, goods or services or both received by a taxable person for an immovable property or shall not be amenable for claiming input tax credit. Therefore the applicant desires to obtain a clarification whether the goods shed erected by him using prefabricated structures by way of nuts & bolts is an immovable property or a movable property. The applicant relies on the Hon'ble Apex Court's orders in the case of Solid & Correct Engineering Works [(2010) 252 ELT 481 (SC)] and Sirpur Paper Mills Ltd [97 ELT 3 (SC)].

As seen from the facts of the case the appellant erects a warehouse using prefabricates structures. The overlying structure along with the land on which it erected constitutes the warehouse. The warehouse is meant for storage activity and therefore is associated with the beneficial enjoyment of the land on which it is constructed.

It is seen from the Sirpur Paper Mills Ltd case that the facts of the case pertains to assembling of a machine from its components and attaching the same to the earth for the operational efficiency of that machine. Therefore the attachment made was not for the beneficial enjoyment of the land to which it was attached. Hence, the law laid down by the Hon'ble Supreme Court of India in this case is not applicable to the facts before this Authority for Advance Ruling.

It is seen from the Solid & Correct Engineering Works case that the Hon'ble Supreme Court of India has observed that "a hut is also a immovable property even if it is sold with the option to pull it down. A mortgage of the super structure of a house though expressed to be exclusive of the land beneath, create an interest in immovable property, for it is permanently attached to the ground on which it is build". Thus the Court was of the opinion that the "attachment in order to qualify the expression attached to earth, must be for the beneficial enjoyment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth. They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house."

Thus the Hon'ble Supreme Court considered even a temporary shelter such as a hut as an immovable property as long as it is for the beneficial enjoyment of the land to which it is attached. Applying this principle the Hon'ble Supreme Court of India held the doors, shutters which are generally fixed to the door frame in the wall with screws & nails to be immovable property.

Clearly the warehouse is erected to make use of the space created over the land on which it is built hence, in view of the law declared by the Hon'ble Supreme Court of India the ware houses erected by the applicant using prefabricated structures constitutes immovable property and are not eligible for input tax credit in terms of Section 17(5)(d) of the CGST Act, 2017.

8. In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
Whether Input Tax Credit is allowed for	
1. construction of shed using pre-fabricated technology?	No, input tax credit allowed for prefabricated technology. Is not

Opinion expressed by Sri Sahil Inamdar, Additional Commissioner, Central Tax on the issues raised by the applicant are as given below.

(S.V. KASI VISHWESWARA RAO) ADDL. COMMISSIONER (STATE TAX)

9. DISCUSSION & FINDINGS:

9.1.1 Section 16(1) of Central Goods and Services Tax Act/ Telangana Goods and Services Tax Act, 2017 ("CGST/TGST Act'2017") entitles a registered person to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business.

9.1.2 However, as per Section 17(5) of the CGST/TGST Act'2017 a restriction is imposed with respect to input tax credit (hereinafter referred to as "ITC") on procurement of goods and services or both received by the taxable person for construction of an immovable property.

The term 'construction' in this section is limited to supplies to the extent capitalized to an immovable property.

9.1.3 Therefore the applicant desired to obtain a clarification whether the prefabricated shed (hereinafter referred to as "PFS") erected by him using prefabricated structures by way of nuts & bolts is an immovable property or a movable property. The applicant relies on the Hon'ble Apex Court's orders in the case of Solid & Correct Engineering Works [(2010) 252 ELT 481 (SC)] and Sirpur Paper Mills Ltd [97 ELT 3 (SC)].

9.1.4 The applicant is engaged in construction of prefabricated shed (PFS). They procure goods and services from various contractors for fitting out the prefabricated shed (PFS). They discharge the GST liability with regard to such procurement. The applicant also submitted that the 'PFS' can be detached and reused. He stated that PFS are not considered to be permanent civil affects. The 'PFS' are pre-fabricated structures that are erected at the site by way of joining to bolts. The foundation is made of concrete and it rests on the earth, and is the only part in 'PFS' which is embedded in the earth, for permanent beneficial enjoyment. The applicant seeks ruling with regard to the availability of Input Tax Credit against the procurements pertaining to construction of 'PFS'.

9.2 It is important to discuss some of the relevant provisions contained in the CGST/ TGST Act, 2017 to clarify the contentions of the applicant.

Section 2(52) defines goods as "every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply".

9.3 Section 2(119) of the CGST/TGST Act, 2017 (119) states ? "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;.

9.4 Section 17 of the GST Act deals with Apportionment of credit and blocked credits.

Relevant extract of Section 17(5)(d) and 17(5)(c) is produced below:

Section 17(5) of CGST/TGST Act'2017 states:

Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(c) works contract services when supplied for construction of an immovable property (other than plantand machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property(other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression ?construction? includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

9.5 Now, as per the definition of goods in the Section 2(52) of the CGST/ TGSTAct, 2017 mentioned supra,some movable property is excluded from the category of goods whereas at the same time, some immovable properties are treated as goods. But the terms “movable property” and “immovable property” have not been defined under the GST Act.

9.6 In laymen terms, any goods that can moved is a movable property and which cannot be moved is immovableproperty. But the General Clauses Act 1897 and the Transfer of Property Act defines both these terms.

Section 3(26) of the General Clauses Act’1897 says:

[3. Definitions.—In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

(26) “immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth”.

(36) “movable property” shall mean property of every description, except immovable property;]

As per this to qualify as “immovable property” those things should be attached to the earth, or permanently fastened to anything attached to the earth.

Whereas, Section 3(36) defines movable property as “property of every description, except immovable property.

9.7 As per this definition, any property which does not qualify to be immovable property, is a movable property. This definition of immovable property under the General Clauses Act is affirmative in nature.

9.8 Definition of “attached to the earth” is not given in General Clauses Act 1897 but provided by Section 3 of the Transfer of Property Act, 1882.

Section 3 of the Transfer of Property Act, 1882 is produced below:

Interpretation-clause.—In this Act, unless there is something repugnant in the subject or context,—

“immoveable property” does not include standing timber, growing crops or grass; “instrument”, means a non-testamentary instrument;

[“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;]

“registered” means registered in [[any part of the territories] to which this Act extends] under the laws for the time being in force regulating the registration of documents;

“attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached; Section 3 of the Transfer of Property Act, 1882 says that for a thing to qualify as “attached to the earth” it should fulfil any of the below conditions:-

(a) rooted in the earth, as in the case of trees and shrubs;
(b) imbedded in the earth, as in the case of walls or buildings; or
(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

9.9 Section 3 of the Transfer of Property Act, 1882 gives clarity on the expression "attached to the earth" which in turn gives clarity on the definition of "immovable property" as defined under Section 3(26) of the General Clauses Act. It clarifies that anything attached to what is so imbedded for the permanent beneficial enjoyment, but does not include standing timber, growing crops or grass, comes under the category of "attached to the earth" which makes it to come under definition of `immovable property'. Section 3(26) of the General Clauses Act, 1897, provides "things attached to the earth, or permanently fastened to anything attached to the earth" as an exhaustive definition of the "immovable property".

9.10 As per the definition of immovable property contained in the General Clauses Act and the Transfer of Property Act, it is clear that things attached to the earth or permanently fastened to anything attached to the earth is immovable property. Anything imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, qualifies to be attached to the earth.

9.11 As far as the contention of the applicant regarding procurement of 'PFS' and subsequent fitting to be in the course of business is concerned, it is admitted that the same is in course of business but the question is whether the applicant is eligible to ITC in light of the provisions contained in section 17(5)(d) of the CGST/ TGST Act. The applicant shall be eligible to ITC only if it is so established that the 'PFS', which is constructed by joining pre fabricated structures, qualifies to be a movable property.

9.12 The Hon'ble Supreme Court in respect of Triveni Engineering & Industries Ltd. & Anr. V. Commissioner of Central Excise 2000 (120) ELT 273 (SC) observed that in order to determine whether an article is permanently fastened to anything attached to the earth, both the intention as well as the factum of fastening has to be ascertained from the facts and circumstances of each case. The following passage, in the judgement, is apposite in this regard:

"There can be no doubt that if an article is an immovable property, it cannot be termed as "excisable goods" for purposes of the Act. From a combined reading of the definition of "immovable property" in Section 3 of the Transfer of Property Act, Section 3(25) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the excise law. Whether an article is permanently fastened to anything attached to the earth requires determination of both the intention as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case."

9.13.1 The Allahabad High Court in S/S Triveni N L Limited has observed that "permanently fastened to anything attached to the earth" has to be read in the context for the reason that nothing can be fastened to the earth permanently so that it can never be removed. If the article cannot be used without fastening or attaching it to the earth and it is not removed under ordinary circumstances, it may be considered permanently fastened to anything attached to the earth.

9.13.2 The applicant has submitted that the concrete foundation/RCC platform rests on earth and it is attached and also imbedded in the earth. 'PFS' is attached to the RCC platform with an intention to perform the course of business permanently beneath it.

9.13.3 Even if the concrete structure is not imbedded in the earth but rests on the earth, it can be concluded that itis naturally attached to the earth by way of gravitational pull of the earth as they would not have allowed the structure to be placed on earth if it is not stable and without stability it would not serve the purpose of allowing the person to conduct business beneath it. A stable structure enables beneficial enjoyment of the land on which it is being built. There fore even if the structure is merely placed on earth and would remain stable and permits to conduct business operations beneath it, it shall be deemed to be attached to the earth as it is not removed under ordinary circumstances, it may be considered permanently fastened to anything attached to the earth. The structure, even if it is merely placed on land, enables beneficial enjoyment of the land on which it is being built.

9.14 Further, when any object is said to be imbedded in earth, it does not mean that a part of it is to be inserted/put deep beneath the earth by digging the earth for several meters. For laying any foundation especially in case of area of considerable dimension as in case of a 'PFS', the top soil has to be removed, surface has to be levelled and some part of foundation stone always rests with in the earth. So the support base of the 'PFS' is attached to and imbedded in the earth.

9.15 As regards the issue of the non-permanent nature of the 'PFS' structure is concerned, it has already been discussed that the degree and nature of annexation is vital to the decision whether a property is a movable property or an immovable property. In the case of applicant, the 'PFS' are meant for the purpose of conducting business. These 'PFS' cover considerably large area and caters to the need of business which in turn requires permanence and stability. So, it cannot be said that the 'PFS' constructed/ erected by way of fixing preengineered structures is non-permanent in nature.

9.16 As seen from the facts of the case the appellant erects a 'PFS' using prefabricates structures. The overlyingstructure along with the land on which it erected constitutes the 'PFS'. The 'PFS' is meant for business activity and therefore is associated with the beneficial enjoyment of the land on which it is constructed.

9.17.1 In the case of Sirpur Paper Mills Ltd. Vs. The Collector Of Central Excise, Hyderabad, the Hon'bleSupreme Court in its judgement dated 11/12/1997 has upheld the decision of the Customs, Excise and Gold Tribunal that a papermaking machine, attached to earth for operational efficiency, cannot be an immovable property merely because it is attached to a foundation embedded in the earth. The test is whether the machine can be dismantled and sold in the market. As the Tribunal has found a fact that it can be sold in the market which made the apex court to upheld the Tribunal order by taking a decision that just because a plant and machinery are fixed to the earth for better functioning, it does not automatically make them to become an immovable property. The test of whether the paper-making machine can be sold in the market has to be checked before deciding it to be an immovable property or not.

9.17.2 This judgment is based on the premise that the machine and not the foundation to which it is attached isthe property being used and enjoyed. It is not relevant in the present context where the Prefabricated shed is attached to RCC platform which is imbedded for the permanent beneficial enjoyment of that to which it is attached. Prefabricated shed, attached to RCC platform embedded on earth, forms an integral part of the property.

9.17.3 'PFS' structure does not fulfil the test of whether the "'PFS' structure can be dismantled and sold in themarket or not." This is because 'PFS' structure attached to the RCC platform is not Saleable like papermaking machine.

9.18.1 In the case of decision by Apex Court in respect of Commissioner Of Central Excise, Vs. Solid & CorrectEngg. Works & Ors, in Civil Appeal Nos.960-966 of 2003, the Apex Court, while examining whether a machine, fixed with nuts and bolts to a foundation, with no intent to permanently attach it to the earth, is an immovable property or not, has held that such an attachment without necessary intent to making it permanent cannot be an immovable property. The emphasis is on the intention of the party. The Apex Court observes that the machine in question can be moved and has indeed been moved after the road construction and repair project, for which it was installed, is completed. However, if a machine is intended to be fixed permanently to a structure embedded in the earth, the moveable character of the machine, according to the Supreme Court, becomes extinct.

9.18.2 A mortgage of the super structure of a house though expressed to be exclusive of the land beneath, createan interest in immovable property, for it is permanently attached to the ground on which it is build". Thus the Court was of the opinion that the "attachment in order to qualify the expression attached to earth, must be for the beneficial enjoyment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth. They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house."

9.18.3 'PFS' is attached to the RCC platform with an intention to perform the course of business permanentlybeneath it i.e. on the RCC platform. 'PFS' is meant to enable beneficial enjoyment, by way of conducting business on the RCC platform, which makes it to conclude that it is attached to the RCC platform thereby making it an immovable property as per provisions of Section 3 of the Transfer of Property Act, 1882 and Section 3(26) of the General Clauses Act'1897. If not for the purpose of beneficial enjoyment by way of conducting business on the RCC platform, the 'PFS' has no separate existence.

9.19 Decision of Hon'ble Supreme Court in Quality Steel Tubes (P) Ltd. V. CCE, U.P. 1995 (75) ELT 17 (SC) and Mittal Engineering Works (P) Ltd. V. CCE, Meerut 1996 (88) ELT 622 (SC) where it was held that tube mill and welding head erected and installed in the premises and embedded to earth ceased to be goods within the meaning of Section 3 of the Act as the same no longer remained moveable goods that could be brought to market for being bought and sold.

9.20 Clearly the 'PFS' is erected to make use of the space created over the land on which it is built hence, inview of the law declared by the Hon'ble Supreme Court of India the ware houses erected by the applicant using prefabricated structures constitutes immovable property and are not eligible for input tax credit in terms of Section 17(5)(d) of the CGST Act, 2017.

9.21 If the article cannot be used without fastening or attaching it to the earth and is not removed under ordinarycircumstances, it may be considered permanently fastened to anything attached to the earth.

9.22 Furthermore, in the context of the GST Act, if the article attached to the earth is not agreed to be severedbefore supply or under a contract for supply, it ceases to be goods and, for that matter, a moveable property.

9.23 In this connection, reference may be made to clause 4(v) of the Circular No. 58/1/2002-CX dated15/01/2002, where it is concluded that "if items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods." Clearly, the 'PFS' cannot be relocated by unfixing the pre-fabricated

structures alone. The dismantling of the floor, which is the most important component of the 'PFS', is not possible without substantial damage to the foundation.

9.24 The essential character of "immovable property", as emerges from the above discussion and relevant to thepresent context is that it is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply.

9.25 Now, section 17(5)(d) bars any taxpayer to avail the benefit of Input Tax Credit in case where the goods orservices or both received by the said person are used for the construction of an immovable property even if it is in the course or furtherance of business.

9.26 The contention of the applicant that the very reason why 'PFS' is preferred over conventional building isthat it offers movability doesn't make him eligible for availing ITC as per Section 17(5) of the CGST/TGST Act'2017. This is because when a 'PFS' is assembled in a place the intention is definitely not to make it a movable structure but rather to conduct the business permanently beneath it i.e. on the RCC platform to which it is attached. 'PFS' has more flexibility than the conventional structures in facilitating hassle-free shifting based on changing business requirements but that doesn't make it a movable structure as the intention of establishing shed or 'PFS' is to continue business permanently on the RCC platform to which it is attached.

9.27 The pre-fabricated movable components joined to make a structure do not constitute as separate property ofthe 'PFS'. They are building blocks applied to a civil structure attached to the land to construct a complete 'PFS'. They have no separate existence from the 'PFS'. The 'PFS' cannot be conceived without the beneficial enjoyment of the civil structure, which is an integral part of the property. On this basis, 'PFS' being constructed is classified as an "immovable property" and credit is not admissible on inward supplies which include prefabricated movable components and also on inward Works contract services pertaining to 'PFS' technology as per section 17(5)(c) and section 17(5)(d) of CGST/TGST Act'2017.

Questions Ruling

Whether Input Tax Credit is Applicant is constructing a Pre fabricated shed ('PFS') on land an to be used as a permanent structure for the purpose of condu which has beneficial enjoyment of the land on which it is be applicant intends to use technology, for the construction of the involves the application of pre-fabricated structures and also supporting the pre-fabricated structure and developing the RCC

10 In view of the above discussions, the question raised by the applicant is clarified as per the below ruling:

1. allowed for construction of shed using pre- 'PFS'. If not for the purpose of beneficial enjoyment by way fabricated technology? business on the RCC platform, the 'PFS' has no separate existen being constructed is, therefore, an immovable property and the inp not admissible on the inward supplies, which may include W services, for its construction, as the credit of such tax comes und blocked credits as per section 17(5)(d) and section 17(5)(c) of th Act'2017.

(SAHIL INAMDAR)

ADDL. COMMISSIONER (CENTRAL TAX)

From the above, the Authority for Advance Ruling concurred in the Ruling and has discussed it independently.

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

8. Advance Ruling obtained by suppressing the facts is void ab initio

Case Name : In re Srico Projects Pvt Ltd (GST AAR Telangana)
Appeal Number : TSAAR Order No.03/2023
Date of Judgement/Order : 03/04/2023
Courts : AAR Telangana (136) Advance Rulings (3176)
In re Srico Projects Pvt Ltd (GST AAR Telangana)

It is noticed by the Authority for Advance Ruling of Telangana State that the question raised by the applicant M/s. Srico Projects Pvt Ltd (GSTN: 36AAGCS7109F1ZD) in the Advance Ruling cited in 4th reference above was pending in a proceedings before Directorate General of GST Intelligence, Hyderabad Zonal Unit. It is seen from the material submitted by M/s. Srico Projects Pvt Ltd that this fact was never brought to the notice of the Authority for Advance Ruling by them. Therefore it was opined by the Authority for Advance Ruling that prima facie the applicant has obtained an Advance Ruling by suppression of this material fact and hence the advance ruling needs to be withdrawn as void ab initio u/s 104 of the CGST Act, 2017. Accordingly a notice was issued to the applicant on 18.01.2023 vide reference 1st cited above calling for attendance before the Advance Ruling Authority on 24.01.2023 at 3:30 P.M. The notice was served on their authorized representative Sri K. Ramesh, who has filed a letter on 21.01.2023 stating that they are unable to attend the personal hearing as their Director is out of Country and that orders may be passed as per merits and rules. As seen from the material on records in light of reference 2nd cited the questions raised by applicant are already under investigation by the DGGI and the DGGI has made the incidence report on 08.04.2022. Therefore the application is not liable to be entertained under Section 98(2) of the CGST Act, 2017. This was not brought to the notice of the Authority for Advance Ruling at any stage of the Advance Ruling proceedings including at the time of the personal hearing dt: 28.06.2022. Therefore the applicant has obtained the Advance Ruling by suppressing these facts and hence Orders issued in the reference 5th cited are declared as void ab initio. Section 98(2) of the CGST/TGST Act, 2017 states that Authority for Advance Ruling shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act. Therefore the application was liable to be rejected under Section 98(2) of the CGST/TGST Act, 2017. Taxpayer has not brought the issue to the notice of the Authority for Advance Ruling at any stage of the Advance Ruling proceedings including at the time of the personal hearing dated 28.06.2022. Therefore the applicant has obtained the Advance Ruling by suppressing the facts and hence the Order issued in the reference 5thcited is liable to be declared as void ab initio.

9. Nandini Ashram Trust liable for GST registration & Payment

Case Name : In re Nandini Ashram Trust (GST AAR Gujarat)
Appeal Number : Advance Ruling No. Guj/Gaar/R/2023/18
Date of Judgement/Order : 26/04/2023
Courts : AAR Gujarat (367) Advance Rulings (3177)

In re Nandini Ashram Trust (GST AAR Gujarat)

Brief facts:

Nandini Ashram Trust, 207, Sakar 5, B/h Natraj Cinema, Ashram Road, Ahmedabad, Gujarat 380 009 [for short -'applicant'] is registered under GST and their GSTIN is 24AAATN8773B2ZL.

2. The applicant is engaged in providing a wide range of professional consulting services viz architecture, engineering (MEPF), planning, urban design, landscape, sustainability, research and art, building design, interior design, surveying, environmental sciences, project management and project economics.

3. The applicant is a registered trust under the Bombay Charitable Trust Act. They also hold 12AA certificate issued by the Income Tax Authorities. In terms of the trust deed the applicant provides accommodation to pilgrims who visit the Amba ji Temple. The applicant further states that their room rent is Rs. 1000/-per day.

4. It is the applicant's averment that in terms of **notification No. 9/2017-Integrated Tax (Rate), dated 28.6.2017**, a registered trust holding 12AA certificate is exempt from GST. The applicant has further relied upon the GST Council meeting no. 47 held on 18.7.2022 to submit that GST tax is applicable to hotel guest house and Sarai whether the rent of room is Rs. 1000/- (sic). Thereafter on 4.8.2022, the applicant states that on twitter it was informed that Sarais run by religious or charitable trust are exempt from GST irrespective of rent.

5. In view of the foregoing, the applicant has filed this application seeking advance ruling on the below mentioned questions viz,-

1. Whether they are liable for GST registration?

2. Whether they are liable to pay tax under GST registration.

6. During the course of personal hearing held on 23.3.2023, Shri Moin Mansuri, the authorized representative ofthe applicant, reiterated the submission.

Discussion and findings

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the sameexcept for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

8. We have considered the submissions made by the Applicant in their application for advance ruling as well asthe submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

9. At the outset, we find that the submission made by the applicant is incomprehensible, lacking in facts, and atbest cryptic. We are therefore constrained to pass the ruling in terms of what is mentioned in the application filed before us.

10. Before adverting to the submissions made by the applicant, we would like to reproduce the relevantprovisions for ease of reference:

[Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017]

Exemption from CGST on specified intra-State services

In exercise of the powers conferred by sub-section (1) of section 11 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 exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

TABLE

SI. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(5)	(4)	(5)
1	Chapter 99	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of Nil charitable activities.	Nil	

Services by a person by way of

(a) conduct of any religious ceremony:

(b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub-clause (v) of clause (23C) of section 10 of the Income-tax Heading 9963 or – Act or a body or an authority covered under clause Heading 9972 or (23BBA) of section 10 of the said Income-tax Act:

13 Heading 9995 or any Nil
Provided that nothing contained in entry
(b) of this other Heading of exemption shall apply to, Section 9

(i) renting of rooms where charges are onethousand rupees or more per day:

(ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day:

(iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

(r) "charitable activities " means activities relating to –
(i) public health by my of-
(A) care or counselling of,-
(I) terminally ill persons or persons with severe physical or mental disability:
(ll) persons afflicted with HIV or AIDS;
III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
(B) public awareness of preventive health, family planning or prevention of HIV infection:-
(ii) advancement of religion, spirituality or yoga:
advancement of educational programmes or skill development relating to,-
abandoned, orphaned or homeless children:
(A) physically or mentally abused and traumatized persons:
(B) prisoners; or
(C) persons over the age of 65 years residing in a rural area;

(iii) preservation of environment including watershed forests and wildlife:

Note Sr. No. 1 and 14 of the notification No. 9/2017-IT (Rate) is pari materia to Sr. No. 1 and 13 supra.

11. In terms of Sr. No. I of the **Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017**, supra, services by an entity registered under section I2AA of the Income Tax Act, 1961, by way of

charitable activities is exempted. The applicant claims that he falls within the ambit of a similar serial number 1 and 14 of **notification No. 9/2017-IT (Rate)** which as is mentioned is pari materia to the serial number mentioned above. However, we find that the notification defines 'charitable activities' to include (i) public health, (ii) advancement of religion spirituality, yoga (iii) advancement of educational programmes or skill development and (iv) preservation of environment including watershed, forests and wildlife. The applicant, is a registered trust under the Bombay Charitable Trust Act. They hold 12AA certificate issued by the Income Tax Authorities and in terms of the trust deed, as per applicant, they provide accommodation to the pilgrims who visit the Ambaji Temple for which they charge room rent @ Rs. 1000/- per day. However, there is nothing on record to substantiate the claim that all the accommodation granted are to the pilgrims visiting the Ambaji Temple.

12. Our above findings are substantiated by chapter 39 of the GST flyer, relating to GST on Charitable andReligious Trusts, wherein it is mentioned as follows:-

> This notification makes the exemption to charitable trusts available for charitable activities more specific. While the income from only those activities listed above is exempt front GST, income from the activities other than those mentioned above is taxable. Thus, there could be many services provided by charitable and religious trust which are not considered as charitable activities and hence, such services come under the GST net. The indicative list of such services could be renting of premises by such entities, grant of sponsorship and advertising rights during conduct of events/functions etc.

13. We would now like to examine it in terms of serial number 13(b) of the notification, as mentioned supra. Wefind that the exemption is for the activity of **renting of precincts of a religious place** meant for general public, which is,-

- owned or managed by an entity registered as a charitable or religious trust under section I2AA of the Income-tax Act. 1961 (hereinafter referred to as the Income-tax Act) or
- a trust or an institution registered under sub-clause (v) of clause (23C) of section It) of the
- Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act

Further, as per the proviso, the exemption is not applicable in respect of three situations, wherein one of the situations is renting of rooms where charges are one thousand rupees or more per day.

14. Under chapter 39 of the GST flyer, relating to GST on Charitable and Religious Trusts, the clarificationgiven in respect of the said activity is as under;

> Thus, the law gives a limited exemption to renting of only religious precincts or a religious place meant for general public by the entity registered under Section 12AA of the Income Tax Ad. As per clause (zc) of the said notification, the term "general public " means "the

body of people at large sufficiently defined by some common quality of public or impersonal nature ".

The term "religious place " as per the clause (zy) of the said notification means "**a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality** ". Dictionary meaning of **precincts" is an area within the walls or perceived boundaries of a particular building or place, an enclosed or dearly defined area of ground around a cathedral, church, temple, college, etc.**

This implies that if immovable properties owned by charitable trusts like marriage hall, convention hall, rest house for pilgrims, shops situated within the premises o f a religious place are rented out, income from letting out of such property is exempt from GST. However, this exemption will not be available if charges for renting of rooms exceed 1000 per day or charges for renting of premises/kalyanamandapam etc exceed

10.000 per day or renting of shops/premises for business purposes exceed 10.000 per month. So also.if such properties are not situated in the precincts of a religious place meaning thereby not within walls or boundary walls of the religious place, income from such letting out will lose this exemption and income f. om it will he liable to GST.

15. The authorized representative of the applicant during the course of personal hearing held on 23.3.2023, wasspecifically asked as to whether the Nandini Ashram, was owned by the trust managing the Ambaji Temple, to which he answered in negative. On being further asked whether the rooms of Nandini Ashram which they were renting to pilgrims is located in the precincts of the Ambaji Temple, he informed that it was not within the boundary of the temple. Going by the definition of precinct as mentioned above, it is emphatically clear that the applicant is not eligible for the benefit of Sr. No. 13 of the notification supra.

16. Moving on to the second question as to whether they are liable to pay tax. We find that in terms of Sr. No. 14 of the **Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017**, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff below one thousand rupees per day or equivalent was exempted. However, in terms of notification No. 4/2022-CT (Rate) effective from 18.7.2022, serial number 14 and the entries relating thereto were omitted. Thereafter, vide **notification No. 20/2019-Central Tax (Rate) dated 30.9.2019** effective from 1.10.2019, the rate of CGST was fixed as under:

CGST rates for Intra-State supply of specified services – Amendment to Notification No. 11/2017-C.T.
(Rate)

In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 9, subsection (1) of section 11, subsection (5) of section 15, subsection (1) of section 16 and section 148 of the Central Goods and Services 'fax Act. 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public

interest so to do. hereby makes the following further amendments in the notification of the Government o f India. in the Ministry of Finance (Department of Revenue) **Notification No. 11/2017-C.T. (Rate)**, published in the Gazette of India. Extraordinary. Part II Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June. 2017. namely :-

In the said notification. –

(i) in the Table. –

(a) against serial number 7, for the entries relating thereto in column (3), (4) and (5), the following items and entries shall he substituted, namely, –

(3)	**(4)**	**(5)**
"(i) Supply of hotel accommodation' having value of supply of a unit of accommodation above one thousand rupees hut less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	–

This was further amended vide **notification No. 3/2022-CT (Rate) dated 13.7.2022**. as follows, viz

In the said notification. –

(A) in the Table, –

(II) against serial number 7, in column (3). in item (i), the words "above one thousand rupees hut " shall he omitted:

In view of the foregoing, we hold that the applicant is leviable to GST at the rate of 12% i.e. [CGST @ rate of 6% and SGST @ 6%].

17. In light of the fact that we have already held the applicant to be liable to pay GST, we now take up the firstquestion posed for ruling as to whether the applicant is liable for GST registration. In terms of section 22 of the CGST Act, 2017, every supplier shall be liable to be registered from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.

18. The applicant has also relied upon various tweets to put forth the averment that SGPC (ShiromaniGurudwara Prabhandak Committee) run sarais. collecting rents upto Rs 1000/- is exempt and on the same analogy, their supply is also exempt. The applicant himself further quotes a tweet stating that the precincts of a religious place has to be given broader meaning Io include a sarai even if it is located outside the boundary wall of a complex of a religious place in surrounding area and managed by the same trust/management. Having already stated during the course of personal hearing that Nandini Ashram, is not owned by the Ambaji Temple Trust ie Shri Arasuri Ambaji Mata Deva than Trust, the applicant's reliance on the tweets to substantiate his averment that they are eligible for exemption, is not relevant to the facts of the case.

19. In the light of the above, we rule as under:

RULING

The applicant is liable for GST Registration in terms of section 22 of the CGST Act, 2017 , subject however to the threshold limit of his aggregate turnover exceeding rupees twenty lac rupees.

The applicant is liable to pay GST in terms of **notification No. 20/2019-Central Tax (Rate) dated 30.9.2019** as amended vide **notification No. 3/2022-CT (Rate) dated 13.7.2022**, effective from 18.7.2022.

10. GST exempt on Architectural Consultancy Service to Surat Municipal Corporation for construction of SMIMER Hospital

Case Name : In re Ajit Babubhai Jariwala (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2023/17
Date of Judgement/Order : 26/04/2023
Courts : AAR Gujarat (367) Advance Rulings (3177)

In re Ajit Babubhai Jariwala (GST AAR Gujarat)
1. Whether the 'Architectural Consultancy Service' provided by the applicant to Surat Municipal Corporation for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. 12/2017-Central (Rate) dated 28.6.2017 & thus is exempt? The 'Architectural Consultancy Service' provided by the applicant to Surat Municipal Corporation [SMC] for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. 12/2017-Central (Rate) dated 28.6.2017 & thus is exempt from GST.
2. If the exemption under entry no. 2 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 is applicable to the applicant, accordingly will the 'pure services' provided by a sub contractor to the applicant also be covered under the said exemption? Or if the applicant provides sub contract of pure services to another contractor of the SMC will the exemption be available to the applicant provided that the exemption is available to the direct contractor of SMC? (i) In view of the findings listed in para 21 supra, we refuse to answer the question as to whether the exemption under entry no. 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 would be applicable to the sub-contractor of the applicant, if the same is available to the applicant. (ii) If the applicant provides sub contract of pure services to another contractor of the SMC the supply would not fall within the ambit of entry no. 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 and would be leviable to GST.
3. If the entry number 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 is not applicable to the applicant then accordingly the services provided by the applicant will be taxed under which HSN/SAC code and the rate of tax thereof? Since the first question is answered in affirmative, the third question becomes infructuous.

(III) JUDGEMENTS

1. GST registration cancellation for mere not replying SCN is invalid

Case Name : Technosun India Pvt. Ltd. Vs Union of India (Allahabad High Court)
Appeal Number : Writ Tax No. 145 of 2022
Date of Judgement/Order : 26/09/2022
Courts : All High Courts Allahabad High Court

Technosun India Pvt. Ltd. Vs Union of India (Allahabad High Court)

High Court held that impugned order does not assign any reason whatsoever for cancelling registration of the petitioner and is passed only on the ground that reply to the show cause notice is not given. The non-submission of reply to the show cause cannot be a ground for cancellation of the registration.

2. MVAT on registration/handling/insurance charges on Motor car sold by dealers – HC Quashes 69 Assessment Orders

Case Name : Modi Car Agencies Pvt. Ltd. Vs State of Maharashtra (Bombay High Court)
Appeal Number : Writ Petition No. 2512 of 2021
Date of Judgement/Order : 12/04/2023
Courts : All High Courts (10388) Bombay High Court (1580)

Modi Car Agencies Pvt. Ltd. Vs State of Maharashtra (Bombay High Court)

Bombay High Court sets aside 69 Assessment Orders under MVAT Act, 2002 levying MVAT on registration charges, handling charges, insurance charges and incentives collected from customers with a direction to Assessing Officer to reconsider the issue on the basis of the decision of Maharashtra Sales Tax Tribunal in BU Bhandari Auto which reversed the Advance Ruling on the basis of which Assessment Orders were passed.

3. Execution of Subsisting Government Contracts Awarded in pre or post GST Regime without updating Rate: HC directs to File representation before Additional Chief Secretary

Case Name : Classic Vs State of West Bengal (Calcutta High Court)
Appeal Number : WPA 5356 of 2023
Date of Judgement/Order : 27/03/2023
Courts : All High Courts (10397) Calcutta High Court (564)

Classic Vs State of West Bengal (Calcutta High Court) This writ petition has been filed for the relief by way of direction upon the respondents authority concerned to bear the additional tax liability for execution of subsisting Government contracts either awarded in the pre-GST regime or in the post GST regime without updating the Schedule of Rates (SOR) incorporating the applicable GST while preparing Bill of Quantities (BOQ) for inviting the bids. The petitioners have also prayed for relief of issuance of direction upon the respondents authority concerned to neutralize the impact of unforeseen additional tax burden on Government contracts since the introduction of GST w.e.f. 1st July, 2017 for ongoing contract awarded before the said date and to update the State SOR incorporating applicable GST in lieu of inapplicable West Bengal VAT henceforth.

Considering the submissions of the parties these writ petitions are disposed of by giving liberty to the petitioners to file appropriate representations in the aforesaid regard as referred in preceding paragraph of this order, before the Additional Chief Secretary, Finance Department, Government of West Bengal within four weeks from date. On receipt of such representations the Additional Chief Secretary, Finance Department shall take a final decision within four months from the date of receipt of such representation after consulting with all other relevant departments concerned.

Needless to mention that such representations shall be considered and final decision will be taken up by the Additional Secretary, after giving opportunity of hearing to the petitioners or their authorized representatives. Till the final decision is taken by the Additional Chief Secretary, no coercive action shall be taken against the petitioners. In case of default in making representations within the time stipulated herein this order will not have any force.

It is also recorded that the Additional Chief Secretary, while taking decision on the representations to be filed by the petitioners shall act in accordance with law and pass a reasoned and speaking order on merit and after considering all the judgements of different High Courts upon which petitioners intend to rely. With this observation and direction this writ petition being WPA 5356 of 2023 stands disposed of.

4. GST: HC directs release of vehicle on furnishing bank guarantee for Penalty

Case Name : Manish Kumar Jaiswal Vs State Tax Officer (Orissa High Court)
Appeal Number : W.P.(C) No. 10471 of 2023
Date of Judgement/Order : 06/04/2023
Courts : All High Courts (10397) Orissa High Court (189)

Manish Kumar Jaiswal Vs State Tax Officer (Orissa High Court)

It appears that the petitioner has not approached the authority, even though the authorities have expressed their view that the conveyance can be released on payment of penalty as per the demand order or after furnishing the bank guarantee of equal amount. Learned counsel for the petitioner undertakes that the petitioner shall furnish the bank guarantee of equal amount within a period of two days, so that the authority can release the vehicle. It is made clear that if the

petitioner fails to furnish the bank guarantee, it will be open to the opposite parties to confiscate the vehicle of the petitioner.

5. Non-Constitution of GSTAT: HC stays Demand subject to payment of 20%

Case Name : Arati Construction Vs Joint Commissioner of State Tax (Appeal) (Orissa High Court)
Appeal Number : W.P (C) No. 10008 of 2023
Date of Judgement/Order : 06/04/2023
Courts : All High Courts (10397) Orissa High Court (189)

Arati Construction Vs Joint Commissioner of State Tax (Appeal) (Orissa High Court)

In the event the petitioner wants to avail the remedy by preferring appeal before the 2nd appellate tribunal then the petitioner is liable to pay 20% balance disputed tax for consideration of its appeal by the 2nd GST appellate tribunal GSTAT). Since the petitioner wants to avail the remedy under the provisions of law by approaching 2nd appellate tribunal, which has not yet been constituted, as an interim measure subject to the Petitioner depositing entire tax demand within a period of four weeks from today, the rest of the demand shall remain stayed during the pendency of the writ petition.

6. Palpable error in e-way bill & Tax Invoice amount is human error: HC

Case Name : Jena Trading and Co. Vs CT and GST Officer (Orissa High Court)
Appeal Number : W.P.(C) No. 10627 of 2022
Date of Judgement/Order : 23/03/2023
Related Assessment Year : Courts : All High Courts (10397) Orissa High Court (189)

Jena Trading and Co. Vs CT and GST Officer (Orissa High Court)

HC finds that in tax invoice the amount has been mentioned as Rs.1,97,047.86 whereas in the e-Way Bill it has been mentioned as Rs.197047086.00. Thereby, there is palpable error in the e-way bill, which may be construed to be an human error. If this fact will be brought to the notice of the assessing authority, the same can be considered in accordance with law and fresh assessment order can be passed. As a consequence thereof, the assessment order under Annexure-7 is hereby quashed and the matter is remitted back to the assessing authority for reconsideration in accordance with law, keeping in view the request made by the petitioner, by giving opportunity of hearing to the petitioner.

7. GSTAT not constituted: Limitation for preferring appeal before GSTAT

Case Name : Amit Kumar Yadav Vs Union of India (Patna High Court)
Appeal Number : Civil Writ Jurisdiction Case No. 3499 of 2023
Date of Judgement/Order : 04/04/2023
Courts : All High Courts (10397) Patna High Court (82)

Amit Kumar Yadav Vs Union of India (Patna High Court)

The respondent State authorities have acknowledged the fact of non-constitution of the Tribunal and come out with a notification bearing Order No. 09/2019-State Tax, S. O. 399, dated 11.12.2019 for removal of difficulties, in exercise of powers under Section 172 of the B.G.S.T Act which provides that period of limitation for the purpose of preferring an appeal before the Tribunal under Section 112 shall start only after the date on which the President, or the State President, as the case may be, of the Tribunal after its constitution under Section 109 of the B.G.S.T Act, enters office.

8. GST Registration cancellation: HC allows petitioner to apply for revocation

Case Name : Allyssum Infra Vs Union of India (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 23556 of 2022
Date of Judgement/Order : 17/04/2023
Courts : All High Courts (10426) Gujarat High Court (1009)

Allyssum Infra Vs Union of India (Gujarat High Court) It was pointed out by learned advocates that the competent authority under the Goods and Services Tax Act, 2017 have issued notification No. 3/2023 dated 31.3.2023. It is contemplated in the said notification that on conditions being fulfilled, the cancellation of GST registration effected on the ground of non-filling of the GST returns, could be revoked. Notification No. 3/2023 dated 31.3.2023 stands to the benefit of the petitioners. It was submitted on behalf of the petitioners that the petitioners' case fall within the compass of notification No. 3/2023 dated 31.3.2023. In the aforesaid view, the petitioner is permitted to make application to the competent authority seeking the benefit of Notification No. 3/2023 dated 31.3.2023. As and when such an application is made, the competent authority shall deal with the same and give the benefit of this notification to the petitioner.

9. Authority directed to complete proceedings so provisional attachment will have its own fate in wrongful ITC matter

Case Name : Madhav Copper Limited Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 2776 of 2022
Date of Judgement/Order : 10/04/2023
Courts : All High Courts (10426) Gujarat High Court (1009)

Madhav Copper Limited Vs State of Gujarat (Gujarat High Court) Gujarat High Court held that in the case of wrongful availment of input tax credit matter under GST the proceeding for adjudication is commenced as show case notice is issued. Hence, court directed authorities to complete the adjudication proceedings in time-bound manner and completion of the proceedings, provisional attachment will have its own fate.

Facts- The petitioner company engaged in the business of copper and copper scrap faced certain serious allegations in respect of wrongful availment of Input Tax Credit in respect of F.Y. 2017-2018 to F.Y. 2020-2021 comprising of the period beginning from April 2021 to July 2021, thus extending to F.Y. 2021-2022.

Upon a search carried out against the petitioner, GST Authorities allegedly found that the petitioner was engaged in the purchase of goods from 39 fictitious business firms and fake purchases for all those financial years to the tune of Rs. 770.64 crores were wrongfully made to avail the Input Tax Credit of Rs. 138.71 crores. The authorities termed it as a financial scam committed by the petitioner company to decide to proceed against the petitioner in accordance with law.

The provisional attachment order dated 26.7.2021 invoking powers u/s. 83 of the CGST Act, 2017 was passed against the petitioner. While the said first petition is still pending, what is to be noticed from the said proceedings with relevance at this stage, is the interim order dated 4.5.2022 was passed by the court.

Section 83 of the Act, deals with the provisional attachment to protect the interest of revenue in certain cases, in its sub-section (2) provides that every such provisional attachment ceases to have its effect after the expiry of the period of one year from the date of the order made under subsection (1).

In view of the allegations levelled against the petitioner, the registration of the petitioner under the GST Act has been cancelled.

Conclusion- In other words, with the issuance of show cause notice as above under section 74 of the Act, there is no gainsaying that the proceedings for adjudication have commenced. As the adjudication proceedings have begun, and the petitioner would be participating in the said proceedings by filling its reply and availing reasonable opportunity of hearing, which will be extended by the authorities, the legality and validity of second provisional attachment order need not to be gone into.

It would be rather a proper course to be adopted to direct the authorities to complete the adjudication proceedings time-bound. Once the proceedings are over, the rights of the parties shall stand crystallized leaving the order of provisional attachment to its own fate.

10. GST: Deeming fiction of 70:30 formula attributable to construction service & land cost applies only when bifurcation is not provided

Case Name : Avigna Properties Pvt Ltd Vs State Tax Officer (Madras High Court)
Appeal Number : W.P. Nos. 6431 of 2023
Date of Judgement/Order : 24/04/2023
Courts : All High Courts (10506) Madras High Court (1177)

Avigna Properties Pvt Ltd Vs State Tax Officer (Madras High Court)

Deeming fiction of 70:30 formula attributable to construction service and land cost applies only when bifurcation is not provided Madras High Court held that methodology of deeming fiction set out under notification 11/2017-Central Tax (Rate) dated 28.06.2017 (70:30 formula) attributable to construction services and cost of land will not apply in cases where the assessee is in a position to supply the actual amount of the consideration received towards construction services and land cost.

Facts- The issues involved here is with regard to alleged short payment of output tax qua supply of construction services. The assessing authority refers to paragraph 2 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017. According to him, in the case of supply of construction services involving the transfer of property in land or undivided interest in land, as the case may be, the value of supply services and goods shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be. The value of land or undivided share of land shall, in such circumstances be deemed to be the development charges. He refers to the Explanation contained in paragraph 2 of the aforesaid Notification wherein 'total amount' has been defined to mean the sum payable to consider the charge for services as well as transfer of land or undivided share of land. In conclusion, he directs the assessee to show-cause why output tax to the extent of the differential tax liability as per aforesaid Notification not be imposed along with interest under Section 50(1) and applicable penalty.

Conclusion-The methodology set out under the Notification as relatable to construction services, is for bifurcation of the total consideration by way of a deeming fiction, to arrive at the deemed amount attributable to construction services and land costs. The deeming fiction would not apply in cases where the assessee is in a position to supply the actual amount of the consideration received towards construction services and land cost. In the present case, it is its consistent stand that such evidences are available with it, though, as learned Standing Counsel points out, such particulars do not appear to have been actually produced before the authority. The officer could well have sought such particulars instead of proceeding on the basis that the Notification would be applicable in all cases of property development as he has done.

11. Filing of Writ due to expiry of period of filing appeal is abuse of process of Court: HC

Case Name : Jagjit Enterprises Pvt Ltd Vs State Of U.P (Allahabad High Court)
Appeal Number : Writ Tax No. 71 Of 2023
Date of Judgement/Order : 10/04/2023
Courts : All High Courts Allahabad High Court

Jagjit Enterprises Pvt Ltd Vs State Of U.P (Allahabad High Court)

Allahabad High Court noted that against the order dated 21.05.2022 passed u/s 74 of GST Act, 2017, the appeal could have been filed within a period of 30 days, which was extendable for one month and no more. We find that this petition has been filed only on 21st March, 2023, meaning thereby the period for preferring the appeal had expired much prior to filing of this petition. Therefore, now we understand why the anxiety of the petitioner that this petition should be entertained on alleged grounds of violation of principles of natural justice instead of being relegated to the remedy of appeal. It is nothing but an abuse of process of Court. We, therefore, decline to exercise our extra-ordinary discretionary jurisdiction under Article 226 of the Constitution of India.

12. Section 107 of GST- 4 Months may be 121 or 122 days – HC

Case Name : Shri Ram Ply Product Vs Addl. Commissioner (Allahabad High Court)
Appeal Number : Writ Tax No. 96 of 2023
Date of Judgement/Order : 21/04/2023
Courts : All High Courts (10524) Allahabad High Court (553)

Shri Ram Ply Product Vs Addl. Commissioner (Allahabad High Court)

Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017 provides that an appeal, against any decision or order passed under this Act or the State Goods and Services Tax Act by the adjudicating authority, may be filed before appellate authority within the prescribed period of three months from the date on which the said order is communicated to the person concerned. Sub-Section (4) of Section 107 of the Act, 2017 provides that the appellate authority may, if it is satisfied that the appeal was prevented by sufficient cause from presenting it within the period of three months, may allow it to be presented within a further period of one month. Bare reading of the provisions of Section 107 of the Act, 2017 reflects that it is not 120 days, but it is four months and, therefore, it would depend upon the date on which date the adjudicating authority passes the order. The four months may be of 121 days or 122 days, as the case may be. In the present case, in four months, around 121 days come, and the appeal was filed on 121st day. The appellate authority should have entered into the merit of the application whether it disclosed sufficient cause for not filing the appeal within the period of three months instead of entering into merit of the application to find out whether the appellant, petitioner herein had sufficient cause which preventing him from presenting the appeal within a period of three months, the appeal has been summarily dismissed

only on the ground that it was beyond 120 days, and not within 120 days. Learned Additional Chief Standing Counsel, does not dispute either legal position or the factual position. In view thereof, the appeal is restored to its original number, and the appellate Authority is directed to proceed with the appeal, and decide the same on merit, expeditiously, in accordance with law.

13. Department directed to issue 'C forms' for inter-sate purchase of High Speed Diesel Oil

Case Name : Premier Tex Products Private Limited Vs Principal Commissioner &
Appeal Number : Commissioner of Commercial Taxes (Madras High Court)
Date of Judgement/Order : W.P. No. 12942 of 2023
Related Assessment Year : 25/04/2023
Courts : All High Courts (10524) Madras High Court (1178)

Premier Tex Products Private Limited Vs Principal Commissioner & Commissioner of Commercial Taxes (Madras High Court)
Madras High Court directed department to issue 'C forms' under the Central Sales Tax, 1956 for inter-state purchase of High Speed Diesel Oil. Facts- Petition filed under Article 226 of the Indian Constitution praying to issue writ of mandamus directing the first and second respondents to issue "C forms" under the Central Sales Tax, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957 to the petitioner for the inter-state purchase of High Speed Diesel Oil made by the petitioner. The Petitioner in these Writ Petitions has stated on affidavit that it is unable to download the 'C' forms from the websites as the same stand blocked from use. Conclusion- Held that the order of Division Bench has also been confirmed by a three-Judge Bench of the Apex Court and the Special Leave Petition filed by the State has been dismissed on 24.03.2021 in the case of Commissioner of Commercial Taxes and Anr etc v The Ramco Cements Ltd. Thereafter, the State of Tamil Nadu has also, having regard to the above order passed in S.L.P, issued Letter No.LW3/636513/2020 dated 15.04.2021 in line with the above orders. In light of the above discussion, this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

14. Cancellation of C-Forms with retrospective effect- HC remands matter back to AO

Case Name : Thermoking Vs Commissioner of State Goods And Service Tax (Delhi High Court)
Appeal Number : W.P.(C) 7179/2019
Date of Judgement/Order : 19/04/2023
Courts : All High Courts (10524) Delhi High Court (2429)

Thermoking Vs Commissioner of State Goods And Service Tax (Delhi High Court)
In this case concessional rate of duty had been denied to the petitioner on the ground that the C-Forms, relied upon by the petitioner, had been cancelled by the concerned tax authorities in

Haryana with retrospective effect. Mr. Rajesh Mahna submits that the said issue stands covered by a decision of a coordinate Bench of this Court in Surinder Pal and Sons-HUF v. Value Added Tax Officer (Ward 57) Department of Trade & Taxes, Government of NCT of Delhi & Ors.: W.P.(C) 12142/2018, decided on 14.11.2018 as well as the decision of this Court in Indo Silicon Electronics Pvt. Ltd. v. Commissioner Trade & Taxes & Ors. (Neutral Citation Number 2023:DHC:2605-DB). earned Counsel appearing for the respondent, submits that since the petitioner contends that it has documents to establish the inter State sales and there is no dispute that the adjudicating authorities have the jurisdiction to examine the relevant documents, the matter should be remanded to the concerned authority for deciding afresh, after affording the petitioner, an opportunity to be heard. In the aforesaid view, the present petition is allowed.The matter is remanded to the assessing authority to determine the petitioner's claim afresh and in the light of the decision of this Court in Indo Silicon Electronics Pvt. Ltd. (supra) and Surinder Pal and Sons-HUF (supra).

15. Non receipt of Notices: HC quashes Order of Maharashtra Sales Tax Tribunal

Case Name : Kirloskar Oil Engines Ltd. Vs State of Maharashtra and Ors. (Bombay High Court)
Appeal Number : Writ Petition No. 52 of 2019
Date of Judgement/Order : 28/04/2023
Courts : All High Courts (10524) Bombay High Court (1600)

Kirloskar Oil Engines Ltd. Vs State of Maharashtra and Ors. (Bombay High Court)
Heard learned Counsel for the parties.
2. By this Petition, the Petitioner has sought to quash and set aside the order passed by the Maharashtra Sales Tax Tribunal dated 11 July 2017 in Second Appeal No. 12A of 2016. By the impugned order the Tribunal has dismissed the appeal filed by the Petitioner for non prosecution.
3. The Tribunal while dismissing the appeal has noted that the Appellant did not attend the dates fixed for hearing i.e. on 20 June 2016, 11 August 2016, 26 October 2016, 6 December 2016, 9 February 2017 and on 13 April 2017.
4. This Petition had come up on Board on 21 June 2019, wherein the Petition was withdrawn to file an appeal against the order dated 11 July 2017. Thereafter, a Review Petition was filed, which was allowed by order dated 4 December 2019 and Petition was restored.
5. The only question, therefore, is whether the contention of Petitioner that Petitioner was unaware of these dates and therefore could not attend the appeal should be accepted.
6. An affidavit is filed by the Senior General Manager, Corporate Indirect Taxation, of the Petitioner, which is annexed to the Petition. In this affidavit, the officer of the Petitioner Company has asserted on oath that he did not receive notices and therefore, hearing could not be attended. Taking note of this limited submission, we had directed the Respondents to file a reply. Thereafter since reply was not filed, we granted time again putting Respondents Department to notice that if this assertion is not controverted, the Court will proceed on the basis that it is accepted.
5. Today when the matter is called out, the learned AGP sought to tender an affidavit of the Joint Commissioner of Sales Tax. The affidavit deals with the merits of the contentions. As regards the main issue of service of the notices, learned AGP submits that it is for the Registry of the Tribunal

to answer. We do not appreciate this contention. Respondent Department was the party Respondent before the Tribunal. It is contesting this Petition. It was expected that the Respondent Department will comment on the claim of the Petitioner of receipt of the notices. Respondent Department could have applied to the Tribunal to get the record, roznama etc. and then file reply to contest the claim of the Petitioner. Nothing is done in that regard. The proceedings are pending since the year 2016. Any further delay does not inure to anybody's benefit.

7. In light of the above position, we quash and set aside the order passed by the Tribunal dated 11 July 2017 and restore the Second Appeal No. 12A of 2016 to the file of the Tribunal to be considered on its own merits, as per law. The application filed for restoration before the Tribunal will not survive and the order passed thereupon on 28 June 2018 is set aside.

8. Writ Petition is accordingly disposed of.

16. Assessee can claim ITC for the period from cancellation of GST registration to restoration

Case Name : R. K. Jewelers Vs Union of India (Rajasthan High Court)
Appeal Number : D.B. Civil Writ Petition No. 4236/2023
Date of Judgement/Order : 26/04/2023
Courts : All High Courts (10524) Rajasthan High Court (306)

R. K. Jewelers Vs Union of India (Rajasthan High Court)

Availability of ITC during the period of GST Cancellation – Rajasthan HC Ruling Hon'ble Rajasthan High Court ('HC') in the case of M/s R. K. Jewelers "the petitioner" has ruled that the petitioner firm can approach the competent authority for restoration of GST registration in terms of Notification No. 03/2023-CT dated 31st March 2023. The Court further stated that the petitioner shall be entitled to lodge its claim for availment of ITC pertaining to the period of GST Cancellation. Captioned ruling has been analyzed in this update.

A. FACTS OF THE CASE (relevant extracts) The petitioner is a proprietorship firm. The GST registration of the petitioner was cancelled by GST department due to non-filing of GST returns. Appellate authority has rejected the appeal filed by petitioner against the order passed by department. The petitioner has challenged the aforesaid order of Appellate Authority before Hon'ble High Court under writ jurisdiction.

B. OBSERVATION AND DECISION BY HC That the case of the petitioner firm is covered in the notification dated 31.03.2023 and the petitioner firm can move an application before the competent authority for restoration of its GST registration. That when the competent authority considers the issue of revocation of cancellation of petitioner firm GST registration under the notification dated 31.03.2023, the petitioner-firm, shall be entitled to lodge its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored.

C. Our comments Captioned decision of Hon'ble Rajasthan High Court has cleared the air on availability of Input Tax Credit during the period of cancellation of GST registration and taxpayers would be entitled to lodge their claims post restoration of GST Registration.

17. Escapement of tax without reasonable cause is essential component of section 43(2) of OVAT Act

Case Name : Dhabaleswar Traders Vs State of Odisha (Orissa High Court)
Appeal Number : Strev No. 53 of 2017
Date of Judgement/Order : 17/04/2023
Courts : All High Courts (10525) Orissa High Court (197)

Dhabaleswar Traders Vs State of Odisha (Orissa High Court)
Orissa High Court held that the essential component of Section 43(2) of the OVAT Act for attracting the penalty, viz., the satisfaction of the Assessing Officer that the escapement of tax was without reasonable cause, is absent in the present case. Accordingly, imposition of penalty unjustified.
Facts- The assessee-petitioner being a registered dealer under the Odisha Value Added Tax Act, 2004 (OVAT Act), carries on its business in edible oil, pulses, dal, sugar, coconut oil, vanaspati ghee and wheat on wholesale-cum-retail basis. On the allegations contained in the Fraud Case Report bearing No.12/2011-12 submitted by the Assistant Commissioner of Sales Tax, Enforcement Range, Berhampur, proceeding for assessment under Section 43 of the OVAT Act was initiated. Consequent upon participation of the dealer in the said proceeding and furnishing explanation(s) in respect of the objection/allegation, the Joint Commissioner of Sales Tax passed Assessment Order dated 19.08.20 15 by raising demand to the tune of Rs.1,57,878/- comprising tax of Rs.52,626/- and penalty of Rs.1,05,252/- imposed u/s. 43(2). Aggrieved, the petitioner-firm availed the remedy under Section 77 of the OVAT Act by way of filing first appeal being No.AA (VAT) 41 of 2015-16. The Appellate Authority sustained the demand raised in the Assessment Order. Tribunal quantified total suppression to be Rs. 6,00,332/- and by applying rate of tax @4% tax was calculated to Rs. 24,013/- . Tribunal also imposed penalty of Rs. 48,027/- under section 43(2) of the OVAT Act. Still aggrieved, the petitioner filed the present writ.
Conclusion- In the case at hand, the learned Odisha Sales Tax Tribunal after computing the tax effect on establishing suppression of turnover to the tune of Rs.6,00,332/-, as if there is absence of discretion in invoking power under Section 43(2) and construing the provision as mandatory in every circumstance, without discussing anything more, simply imposed penalty equal to twice the amount of tax so determined. Such exercise of power, in the opinion of this Court, is arbitrary, illogical and indicative of non-application of mind. Held that the language of Section 43(2) in unequivocal terms spells out that satisfaction of the Assessing Authority as to the reasonableness of the cause is imperative. In absence of such material borne on record, the very invocation of exercise of power to impose penalty is considered to be flawed.

18. Goa Tax on Entry of Goods Act, 2000 is constitutionally valid

Case Name : Bharti Telemedia Ltd Vs State of Goa (Bombay High Court)
Appeal Number : Writ Petition No. 541 of 2010
Date of Judgement/Order : 24/04/2023
Courts : All High Courts (10525) Bombay High Court (1600)

Bharti Telemedia Ltd Vs State of Goa (Bombay High Court)
Bombay High Court held that the Goa Tax on Entry of Goods Act, 2000 is constitutionally valid. Accordingly, the state legislature has legislative competence to enact the Goa Tax on Entry of Goods Act, 2000.
Facts- The Petitioners challenge the constitutional validity of the Goa Tax on Entry of Goods Act, 2000 (impugned Act) for want of legislative competence and, in any case, for contravening Articles 14, 19(1)(g), 265, 301 and 304(a) of the Constitution of India and seek consequential relief of refund of entry tax recovered by the State from the Petitioners. The Goa Legislative Assembly enacted the Impugned Act after the bill was introduced with the previous sanction of the President. The Act provided 1st September 2000 as the appointed date on which it would come into force. The petitioner Bharti Telemedia Ltd. (BTL) is in the business of providing Direct Home (DTH) and cellular telecommunication services in various states in India, including the State of Goa, under a licence issued in terms of the Indian Telegraph Act 1885. The petitioners urged that the entry tax be related to the levy of import duties under Entry 41, read with Entry 83 of List I of the Seventh Schedule to the Constitution. The state legislature has no legislative competence to enact the Goa Tax on Entry of Goods Act, 2000. It was further contended that the Act and the levy of the tax violate Articles 14, 19(1)(g), 265, and 301 of the Constitution of India.
Conclusion- In the case of State of Kerala and ors. vs. Fr. William Fernandez and ors, the contention based upon such legislations being beyond the legislative competence of the State under Entry 52, List II of the Seventh Schedule, was rejected.
Thus, having regard to the decision of the Constitution Bench in Jindal Stainless Ltd., Fr. William Fernandez and ors, and Hindustan National Glass & Industries Ltd., and by following the reasoning therein, we dismiss these Petitions. Further, we adopt the reasoning in a separate Judgment and Order dated 24th April 2023 in Writ Petitions No. 471/2007 and Writ Petition No.417/2014 for disposing of these Petitions. Accordingly, these Petitions are liable to be dismissed and are, hereby, dismissed. Interim order, if any, is vacated. The rule in both these Petitions is discharged.

19. Government cannot usurp taxpayer money for clerical mistake in GST Invoice

Case Name : Dynasoure Concrete Treatment Private Limited Vs Chairman GSTN (Calcutta High Court)
Appeal Number : WPA No. 7406 of 2023
Date of Judgement/Order : 13/04/2023
Courts : All High Courts (10525) Calcutta High Court (581)

Dynasoure Concrete Treatment Private Limited Vs Chairman GSTN (Calcutta High Court)
This is a second round of litigation initiated by the petitioner making prayer for allowing it to rectify the GSTIN of service recipients in the relevant GST invoices at the GST portal.

After the order of this Court dated 8th June, 2022 petitioner approached the GSTN authority which has not granted any relief and simply asked the petitioner by order dated 3rd November, 2022 to approach the other authority for such relief. This is very unfortunate if the Government officers and authority under the GST Act themselves do not know that which is the specific authority who can grant relief to the petitioner.

Government cannot usurp taxpayer money for clerical mistake in GST Invoice

High court held that It is not a case that the claim asked for by the petitioner is not a genuine or the petitioner is not entitled to get the same. Only for the clerical mistake of GSTIN in invoice Government cannot usurp the money of a taxpayer and make him run to pillar to post for refund of the same.

20. Benefit of Section 80 of TNGST not available in case tax dues are not paid

Case Name : K.I. International (India) Ltd Vs Principal Secretary / Commissioner of Commercial Taxes (Madras High Court)
Appeal Number : W.P.No.10379 of 2020
Date of Judgement/Order : 05/04/2023
Courts : All High Courts (10525) Madras High Court (1178)

K.I. International (India) Ltd Vs Principal Secretary / Commissioner of Commercial Taxes (Madras High Court)
Madras High Court held that the object of Section 80 of the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST) is only to benefit an assessee who has been complaint in effecting payment of the admitted tax. Benefit of section 80 not available in case of amount due as per the liability self-assessed in any return.

Facts- The petitioner is a Company and an assessee to State Value Added Tax under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017. There was an inspection in the premises of the petitioner on 11.03.2019 when several discrepancies were noted. The petitioner

has unequivocally admitted to those discrepancies even at the time of inspection as revealed from communication dated 22.10.2019 wherein it accedes to the position that there has been non-payment of GST for the period in question. At the time of inspection, sworn statement has also recorded wherein the petitioner has likewise admitted liability for the period in question. They conclude with a plea for mercy assuring the respondents that they would remit the amounts due in 24 instalments along with interest. This request has come to be rejected on 31.10.2019 by the Commissioner holding that the facility of grant of instalments under Section 80 is only in respect of disputed tax and not admitted tax.

Conclusion- The object of Section 80 is only to benefit an assessee who has been complaint in effecting payment of the admitted tax. In this case, while the petitioner has filed returns it has not paid the tax and hence its barred from obtaining benefit under Section 80. The conclusion as aforesaid is supported by a decision of the Orissa High Court in the case of M/s.P.K.Ores Pvt Ltd @ M/s.PK Minings Pvt Ltd v Commissioner of Sales Tax & another [W.P.(c) No.10335 of 2022 dated 06.05.2022].

Impugned order is thus sustained and this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

21. GSTAT not functional: Rajasthan HC grants stay on GST demand subject to payment of 20% tax

Case Name : Dharendra Kumar Salgiya Vs Union Of India (Rajasthan High Court)
Appeal Number : D.B. Civil Writ Petition No. 4807/2023
Date of Judgement/Order : 18/04/2023
Courts : All High Courts (10525) Rajasthan High Court (306)

Dharendra Kumar Salgiya Vs Union Of India (Rajasthan High Court)

The petitioner has challenged the assessment order before the first appellate authority by filing an appeal but the same has been dismissed. The petitioner is unable to file further appeal as the second appellate authority that is, the tribunal is not functional anywhere in the country. In a similar matter on this ground alone, after hearing the parties, a writ petition being D.B. Civil Writ Petition No.14927/2022 was entertained by this Court at Jaipur Bench. The submission of learned counsel for the petitioner is that while filing the appeal, the petitioner had already deposited 10% of the disputed tax amount and that in view of Section 112 of the RGST Act, if he deposits further 10% of the disputed tax amount while filing the appeal before the appellate authority i.e. the tribunal, the depositing of remaining amount shall stand automatically stayed. In view of the aforesaid facts and circumstances, issue notice to the respondents by registered post. In the meantime, subject to the petitioner depositing further 10% of the disputed tax amount and furnishing security, other than cash and bank guarantee for the remaining 80% to the satisfaction of the Assessing Authority, no coercive steps shall be taken against the petitioner to recover any amount pursuant to the impugned assessment order dated 12.03.2021 and appellate order dated 14.02.2023. List along with D.B. Civil Writ Petition No.17466/2022.

22. Orissa HC stays demand as GST Appellate Tribunal not constituted

Case Name : Sundar Pravat Das Vs Joint Commissioner of State Tax (Orissa High Court)
Appeal Number : W.P (C) No. 12784 of 2023
Date of Judgement/Order : 26/04/2023
Courts : All High Courts (10525) Orissa High Court (197)

Sundar Pravat Das Vs Joint Commissioner of State Tax (Orissa High Court)
Since the petitioner wants to avail the remedy under the provisions of law by approaching 2nd appellate tribunal, which has not yet been constituted, as an interim measure subject to the Petitioner depositing entire tax demand within a period of fifteen days from today, the rest of the demand shall remain stayed during the pendency of the writ petition.

23. Proceeding by two GST authorities on same issue – HC allowed time barred Appeal

Case Name : SSB Petro Products Vs Assistant Commissioner (Calcutta High Court)
Appeal Number : MAT 90 of 2023
Date of Judgement/Order : 21/04/2023
Courts : All High Courts (10525) Calcutta High Court (581)

SSB Petro Products Vs Assistant Commissioner (Calcutta High Court)
This intra-Court appeal is directed against the order dated 16.01.2023 passed in WPA 29 of 2023. The appellants had challenged the order passed by the Senior Joint Commissioner, State Tax, Howrah Circle dated 21.11.2022 rejecting the appeal filed by the appellant as time barred. On a cursory glance of the order passed by the appellate authority one gets impression that the order is perfectly legal and valid as the appeal was hopelessly time barred and the authority had no power to condone the delay in filing the appeal. However, on a closer scrutiny of the facts and circumstances of the case, it would lead to a different conclusion. The appellants were served with an intimation of the tax ascertained as being payable under Sections 73(5) and 74(5) of the Goods & Services Tax Act dated 05.03.2021. In the said intimation which is in Form GST DRC-01A, the grounds and quantification were mentioned and the appellants were advised to pay the tax ascertained along with the amount of applicable interest and penalty under Section 74(5) of the Act by 12.03.2021 failing which show cause notice will be issued under Section 74(1) of the Act. The appellants filed their reply to the show cause notice on 08.03.2021. The matter was not adjudicated further and kept pending. The said intimation dated 05.03.2021 was issued by the first respondent. Thereafter, the second respondent issued Form GST DRC- 01 (under Rule 142(1)(a) of the GST Rules) dated 16.09.2021 which is the summary of the show cause. The summary states that the copy of the detail notice is enclosed as a separate attachment. The case of the appellant is that he was not aware of the said notice for being uploaded in the portal and they came to know of the same only after the sum of Rs. 1,84,930/- was paid from their electronic credit ledger and immediately

thereafter, the appellants applied for a copy of the order and thereafter preferred the appeal but by then the period of limitation for filing the appeal had expired.

2. The crucial issue would be as to whether the second respondent could have initiated fresh proceedings when the first respondent was seized of the matter and intimation in Form GSTDRC-01 dated 05.03.2021 was issued to which the appellants had submitted their reply dated 08.03.2021 and the said reply was neither considered nor rejected and the matter was kept pending. The option which was available to the first respondent was to consider the representation/reply and if not satisfied, could have proceeded to issue show cause notice under Section 74(1) of the Act which option the first respondent did not exercise and the matter was left to linger. Thus, the preliminary proceedings could not have been initiated by the second respondent when proceeding initiated by the first respondent for the very same amount on the very same allegation was not taken to the logical end. When the statutory appeal was pending before the appellate authority, the first respondent had dropped the proceedings. It is very crucial to note that from the final report of the first respondent it is seen that the proceedings was closed by the first respondent only on 24.01.2023. Thus, for all purposes, it is deemed that the first proceedings initiated by the first respondent pursuant to intimation dated 05.03.2021 had attained finality only on 23.01.2022 and on the said date, the appeal as against the second proceedings initiated by the second respondent was already pending before the appellate authority.

3. Therefore, considering the peculiar facts and circumstances of the case, we are of the view that the appeal should not be treated to be as time barred, more particularly, when the appellants had responded to the first intimation dated 05.03.2021 and submitted their reply on 08.03.2021, and it was not considered and disposed of. Therefore, the issue as to whether the appellants did not notice the uploading of the Form GST DRC-01 dated 16.09.2021 from the portal or not has become an academic issue and in the peculiar facts and circumstances of the case, we are of the considered view that the appeal should be decided on merits and in accordance with law.

4. In the result, the appeal and the writ petition stand allowed and the order passed by the appellate authority viz. Senior Joint Commissioner, State Tax, Howrah Circle dated 21.09.2022 stands set aside and the appeal is restored to the file and number of the appellate authority with a direction to hear and dispose of the appeal on merits and in accordance with law. We also make it clear that this order has been passed considering the facts and circumstances of the case.

5. Learned counsel for the appellant submitted that whatever the excess amount which has been swiped off from the electronic credit ledger of the appellants, should be re-credited and such prayer can be made before the appellate authority and it shall be considered by the appellate authority. Needles to state that the appellants and/or their authorized representative shall be afforded with an opportunity of personal hearing.

6. Consequently, the connected application also stands disposed of.

24. GST refund cannot be withheld for filing of appeal against refund order

Case Name : Brij Mohan Mangla Vs Union of India (Delhi High Court)
Appeal Number : W.P.(C) No. 14234/2022
Date of Judgement/Order : 23/02/2023
Courts : All High Courts (10525) Delhi High Court (2430)

Brij Mohan Mangla Vs Union of India (Delhi High Court) In this case In terms of Orders passed by Appellate Authority, the orders rejecting petitioner's application for GST refund have been set aside. The Appellate Authority has also directed restoration of the petitioner's GSTIN registration. The record also indicates that the petitioner thereafter once again applied for the disbursement of refunds but the said applications were also not processed on the same pattern: first deficiency memos are issued and thereafter, the applications were rejected. It is in the aforesaid context that the petitioner has filed the present petition. The respondent has filed a counter affidavit once again reiterating its stand that the petitioner's registration is liable to be cancelled as the petitioner was not found functioning at the given According to the respondent, if the petitioner's registration is cancelled, the petitioner would no longer be a registered person and therefore, cannot apply for refund under Section 54(3) of the GST Act. It is also stated that the concerned authority has reviewed the orders passed by the Appellate Authority and has directed that an appeals be filed challenging the orders passed by the Appellate Authority directing restoration of registration as well as grant of refunds. It is stated that this is the only reason that the respondents have not processed the petitioner's application for refund.

Admittedly, the appeals have not been filed by the respondents as yet. The time for preferring the appeal has also expired. However, the learned counsel for the respondent submits that the appeals would still be in time as in terms of the circular dated 03.12.2019, the time for the Department to prefer an appeal has been extended till three months after the date on which the Tribunal is constituted. It is not necessary for this Court to examine the question whether appeals if and when preferred would be within time. Suffice it to state that the respondent has not secured any order which would, in any manner, stay the operation of the appellate orders passed by the Appellate Authority. Clearly, it is not open for the respondents to ignore the orders passed by the Appellate Authority merely on the ground that it has decided to appeal those orders. It would be debilitating to the rule of law, if the respondents are permitted to withhold implementation of the orders passed by the authority in this manner. The respondents are directed to forthwith process the petit

25. Section 16B of HPGST invocable only after determination of liability

Case Name : State Of Himachal Pradesh Vs A.J. Infrastructures (Supreme Court of India)
Appeal Number : Civil Appeal No. 8980-8981/2012
Date of Judgement/Order : 28/04/2023
Courts : Supreme Court of India (2096)

State Of Himachal Pradesh Vs A.J. Infrastructures (Supreme Court of India)

Held that section 16-B of the Himachal Pradesh General Sales Tax Act, 1968 (HPGST) would be attracted only after determination of the liability.

Facts- The legal issues arising for decision on these appeals are whether, in view of dismissal of the special leave petition qua PNB, the judgment and order outlawing section 16-B of the HPGST Act can at all be examined; whether section 16-B of the HPGST Act should have been outlawed by the High Court on the ground that it is ultra vires the Constitution or the Banking Companies Act; whether the High Court was justified in returning the findings that the State's claim of first charge on the subject properties is not substantiated.

Conclusion- From the excerpt of the impugned judgment and order of the High Court dated 2nd January, 2008 underlined above, it is clear that proceedings were not initiated upon notice to the defaulters and the sum they owed to the department had not been finally determined in accordance with law. In view thereof, question of the State resorting to the provisions contained in Chapter VI of the HPLR Act for recovering the dues, if at all, as arrears of land revenue did not arise. Held that section 16-B would be attracted only after determination of the liability and upon any sum becoming due and payable; and that, it is only thereafter that the charge, if any, would operate.