DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT, PUNJAB, PATIALA

GST UPDATE

(AUGUST 2022)

ABSTRACT OF GST UPDATE

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PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-1 BRANCH)

NOTIFICATION

The 15th July, 2022

No. S.O. 62/P.A. 5/2017/S.3/2022.-In exercise of the powers conferred by section 3 read with section 5 of the Punjab Goods and Service Tax Act, 2017 (Punjab Act No.5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint Shri Kamal Kishor Yadav, I.A.S., as Taxation Commissioner for the purposes of the said Act, on and with effect from the 18th April, 2022 i.e. the date, he assumed the charge as such.

AJOY SHARMA, I.A.S.,
Financial Commissioner, Taxation,
Government of Punjab,
Department of Excise and Taxation.

2618/7-2022/Pb. Govt. Press, S.A.S. Nagar

CGST Notification

GST E-invoice limit reduced to Rs. 10 Crores wef 01/10/2022

With effect from 1st October, 2022, every registered taxable person whose aggregate annual turnover exceeds Rs. 10 Cr in any of the financial year since 2017-18 shall liable to issue E-Invoice. Earlier the limit was Rs. 20 Crore's. The registered person who is required to issue E-Invoice shall upload its' tax invoice in Jason file on Invoice Registration Portal (IRP) in accordance with e-invoice schema in INV-01 and shall get back digitally signed **json** from IRP with IRN and QR Code.

Ministry of Finance

(Department of Revenue)

(Central Board of Indirect Taxes and Customs)

New Delhi

Notification No. 17/2022-Central Tax | Dated: 1st August, 2022

G.S.R. 612(E).– In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21St March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of October, 2022, for the words "twenty crore rupees", the words "ten crore rupees" shall be substituted.

[F. No. CBIC-20021/2/2022-GST]

Rajeev Ranjan, Under Secy.

Note: The principal No. 13/2020 – Central Tax, dated the 21St March, 2020was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated the 21st March, 2020 and was last amended vide notification No. 01/2022-Central Tax, dated the 24th February, 2022, published vide number G.S.R. 159(E), dated the 24th February, 2022.

Advance Rulings

1. **No violation of Anti-Profiteering if relevant events took place in GST regime**

   Case Name: Director General of Anti-Profiteering Vs Elan Ltd. (NAA)
   Appeal Number: Case No. 55/2022
   Date of Judgement/Order: 05/08/2022
   Courts: National Anti-Profiteering Authority

   The Authority has carefully examined the Report of the DGAP and it has been observed that the relevant events for the project Epic took place in GST regime and the Respondent had not availed any CENVAT/ITC, related to 'EPIC' project, in pre-GST regime and that the Respondent neither raised any demand nor received any advance for this project in Pre-GST regime. Therefore, there was no pre-GST tax rate or ITC structure which could be compared with the post-GST tax rate and ITC structure and therefore, the provisions of Section 171(1) of the CGST Act, 2017 were not applicable against the Respondent's project "Epic". In view of the facts and records/documents cited and considered by the DGAP in its report dated 24.03.2021. the Authority concurs with the findings of the DGAP that the provisions of section 171(1) of the CGST Act, 2017 does not get attracted in the present case for the said project "Epic" and 1hr said period 01.07,2017 to 30.11.2020.

2. **Prestige Estates Projects guilty of not passing ITC benefit to homebuyers/customers**

   Case Name: Sh. Deepak Naik Vs Prestige Estates Projects Ltd. (NAA)
   Appeal Number: Case No. 54/2022
   Date of Judgement/Order: 04/08/2022
   Courts: National Anti-Profiteering Authority

   Authority funds that the Respondent has gained the benefit of ITC on the supply of Construction Services after the implementation of GST w.e.f 01.07.2017 and the Respondent was required to pass on such benefit of ITC to the homebuyers/customers by way of commensurate reduction in prices in tents of Section 171 of the CGST Act, 2017. However, it is observed that the benefit was not commensurately passed on by the Respondent to his recipients.

   The Authority finds that, taking into account the aforesaid Input Tax Credit availability post GST and the details of the amount collected from the home buyers during the period 01.07.2017 to 30.09.2019, the amount of benefit of ITC not passed on to the recipients

or in other words, the profiteered amount comes to Rs. 7,90,95,475/- (i.e., 7,06,20,959/- Rs. 84,74,515/- i.e., OST thereon) in respect of 452 homebuyers. The Respondent has claimed that be had already passed on a substantial amount of GST ITC per the requirements of Section 171 of the CGST Act, 2017 to the homebuyers.

The Respondent had submitted that he had passed on the benefit of Rs. 8,28,91,520/- to all the homebuyers/customers. The Respondent has also claimed that he has passed on excess ITC benefit to his buyers/customers. The DGAP has responded to such claims as tabulated at Table A above and fund that Respondent has not passed commensurate benefit to all homebuyers/customers. The Authority agrees with such verification report of the DGAP as such verification has been conducted in accordance with the directions of this Authority.

The Authority finds that, provisions of law i.e., Section 171 of the CGST Act, 2017 mentioned herein above provide that benefit of the ITC needs to be provided to each and every supply in the commensurate manner. As such, the excess of the ITC benefit provided to some of the homebuyers/customers cannot be offset against others to whom less ITC benefit has been provided or no benefit have been provided at all. The Authority finds that the verification as done by the DGAP in terms of this Authority's Order No. 01/2021 dated 16.03.2021 does not substantiate the submissions and contentions of the Respondent that they have passed on the profiteered amount along with interest to each recipient of supply. The Authority finds that, the DGAP has made all efforts towards verification in terms of the said Order No. 01/2021 dated 16.032021 of the Authority, but the Respondent was unable to provide the requisite evidence which was directed in the said Order. Hence, the Authority determines that the Respondent has profiteered an amount of Rs. 7,90,95,475/- (i.e., Rs. 7,06,20,959/- Rs. 84,74,515/- i.e., GST thereon). The details of all eligible homebuyers/customers and the amount of the benefit to be passed on to each of them is enclosed as the Annexure-A to this Order. Therefore, given the above facts, the Authority under Rule 133(3)(a) of the CGST Rules orders that the Respondent shall reduce the prices to be realized from the buyers of the Flats/customers commensurate with the benefit of ITC received by him. The details of the recipients and benefit which is required to be passed on to each recipient/homebuyer along with the details of the unit arc contained in the Annexure 'A' to this order.

The Authority directs that the profiteered amount as determined shall be passed on/returned by the Respondent to the recipients of supply along with interest (4)18%, as prescribed under Rule 133(3)(b) of the CGST Rules, 2017, from the date such amount was profiteered by the Respondent up till the date such amount is passed on/returned

to the respective recipient of supply (if not already passed on) within a period of three months form the date of this order.

3. **IBC 2016 prevails over Anti-Profiteering of Section 171**

Case Name: Director General of Anti-Profiteering Vs Puma Realtors Pvt. Ltd (NAA)
Appeal Number: I.O No. 10/2022
Date of Judgement/Order: 04.08.2022
Courts: National Anti-Profiteering Authority

NAA held that although Anti-Profiteering Provisions of Section 171 of CGST Act, 2017 were violated by Respondent, yet provisions of IBC, 2016 will nonetheless prevail.

DGAP had observed that a Corporate Insolvency Resolution Process (CIRP) was initiated against the Respondent under Insolvency and Bankruptcy Code 2016 (IBC) vide Order dated 17.10.2018 by the National Company Law Tribunal (NCLT), New Delhi. The Said CIRP had been concluded by NCLT vide its Order dated 01.06.2021 whereby the Resolution Plan filed by the M/s One City Infrastructure Pvt. Ltd was duly approved and subsequently implemented.

DGAP has further observed that as per provisions of Section 238 of the IBC, 2016 "the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law:" Although, it is argued that the provisions of Section 171 of the CGST Act, 2017 have been violated by the Respondent, yet the provisions of IBC, 2016 will nonetheless prevail.

4. **KTBS not State Government or educational institution for GST**

Case Name: In re Bhagyam Binding Works (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 25/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

Q1. Whether KTBS can be classified as 'educational institution' for the purposes of applicability of GST on printing services provided to it by the Applicant?
A1. KTBS cannot be classified as "educational institution" for the purposes of applicability of GST on printing services provided to it by the Applicant.
Q2. Alternatively, whether KTBS can be classified as "State Government" for the purposes of applicability of GST on printing services provided to it by the Applicant?
A2. KTBS cannot be classified as "State Government" for the purposes of applicability of GST on printing services provided to it by the Applicant.

Q3. Whether the rate of tax being charged at present by printers on the printing of textbooks supplied to KTBS, i.e., @12%, is correct, or whether any exemptions or lower rate of tax would be applicable on the said contracts for printing and supply of school textbooks.

A3. Rate of tax being charged at present by the printers on the printing of textbooks supplied to KTBS i.e., @ 12%, is incorrect and the same is taxable @ 18% as per entry No. 27 of Notification No.11/ 2017-Central Tax (Rate) dated: 28.06.2017 further amended vide Notification No.6/ 2021-Central Tax (Rate) dated: 30.09.2021

5. **GST on services to Karnataka Secondary Education Examinations Board**

Case Name: In re P.K.S Centre for Learning (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 24/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

Q1. Whether the activity proposed to be undertaken by the Applicant, of printing stationery items such as question papers, admit cards, answer booklets, SSLC Pass Certificate, the overprinting of variable data and lamination, fail marks cards, Circulars, ID cards and other formats used for and during examinations, envelopes for packing answer booklets on contract basis for the Karnataka Secondary Education Examinations Board, and utilized for the conduct of examinations, would constitute a supply of service to an "educational institution" as defined in Notification 12/2017 CT (R)?

A1. The activity proposed to be undertaken by the Applicant, of printing stationery items such as question papers, admit cards, SSLC Pass Certificate, the overprinting of variable data and lamination, fail marks cards, Circulars, ID Cards on contract basis for the Karnataka Secondary Education Examinations Board and utilized for the conduct of examinations, would constitute a supply of service to an "educational institution".

Q2. If the answer to the above Question 1 is yes, then whether the service provided to educational institutions, specifically the Karnataka Secondary Education Examinations Board by way of printing of stationery pertaining to the conduct of examination would be covered by Sr. No. 66 (Heading 9992) of Notification No. 12/2017-Central Tax (Rate), as amended and subject to Nil rate of tax?

A2. The activity proposed to be undertaken by the Applicant, of printing stationery items such as answer booklets, other formats used for and during examination and envelopes for packing answer booklets on contract basis for the Karnataka Secondary Education Examinations Board and utilized for the conduct of examinations, would constitute a supply of Goods to an "educational institution".

The services provided by the applicant to educational institutions (KSEEB) by way of printing of stationery pertaining to the conduct of examination covered under para i(a) supra is exempted as per entry No.66 (Heading 9992) of Notification No.12/ 2017-Central

Tax (Rate), dated 28th June, 2017 as amended vide Notification No.02/ 2018-Central Tax (Rate) dated 25th January, 2018.

6. **GST on Services to Bangalore Water Supply & Sewerage Board**

Case Name: In re Indian Hume Pipe Company Limited (AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 23/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

Q1. Whether the supply of services by the Applicant to M/s. BANGALORE WATER SUPPLY & SEWERAGE BOARD is covered by Notification No. 15/2021- Central Tax (Rate), dated 18th November, 2021 r/w. Notification No. 22/2021 – Central Tax (Rate), dated 31st December, 2021?

A1. The supply of Services by the Applicant to M/s. Bangalore Water Supply and Sewerage Board is covered by Notification No.15/ 2021-Central Tax (Rate), dated 18th November, 2021 r/w Notification No.22/ 2021-Central Tax (Rate), dated 31st December 2021.

Q2. If the supplies as per Question 1 are covered by Notification No. 15/2021 – Central Tax (Rate), dated 18th November, 2021, r/w. Notification No. 22/2021-Central Tax (Rate), dated 31st December, 2021, then what is the applicable rate of Tax under the Goods and Services Tax Act, 2017 on such Supplies made w.e.f 01-01-2022; and

A2. The applicable rate of tax under the Goods and Services Tax Act, 2017 on the supplies made by the Applicant to the BWSSB as per the instant application is 18% w.e.f 01.01.2022 as per entry 3 (xii) of No.11/ 2017-Central Tax (Rate) dated 28.06.2017.

Q3. In case if the supplies as per Question 1 are not covered by the Notification supra then what is the applicable rate of tax on such supplies under the Goods and Services Tax Act, made w.e.f. 01-01-2022;

A3. In view of the ruling given at question (1), this question becomes redundant.

7. **No GST on cleaning & sweeping of lawns services to Horticulture Dept**

Case Name: In re Indian Security and Personnel Arrangements (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 22/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

Q1. Whether the services proposed to be provided by it to the Department of Horticulture for cleaning and sweeping of lawns and garden path areas and segregation and transport of the garbage are liable for GST, and if yes, then at what rate?

A1. The services proposed to be provided by the Applicant to the Department of Horticulture for cleaning and sweeping of lawns and garden path areas and segregation and transport of the garbage are liable for GST at NIL rate as per Entry No. 3 of Notification No.12 of 2017 (Central Tax Rate), dated: 28.06.2017.

Q2. Whether the services proposed to be provided by it to the Department of Horticulture for supply of manpower for garden maintenance on outsource basis to the Department of Horticulture are liable for GST, and if yes, then at what rate?

A2. The services proposed to be provided by the Applicant to the Department of Horticulture for supply of manpower for garden maintenance on outsource basis to the Department of Horticulture are liable for GST at NIL rate as per Entry No. 3 of Notification No.12 of 2017 (Central Tax Rate), dated: 28. 06. 2017.

8. **Advance ruling application not maintainable on issue pending before Authorities**

Case Name: In re Unnathi HR Solutions (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 21/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

The issue before us is the admissibility/maintainability of the instant application and the said admissibility is governed by the first proviso to Section 98(2) of the CGST Act, 2017, which reads as under:

> *"The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of applicant under any provisions of this Act".*

Thus, the conditions to be considered before admission of application, on the basis of above proviso are as under:

i. Whether the question raised is pending or decided in any proceedings.
ii. Whether the question raised is pending or decided in the case of the applicant.
iii. Whether the question raised is pending or decided under any provisions of this Act.

We examined the records and observed that the instant application has been filed online on 23.05.2022 and the question raised therein is about the applicability of GST on supply of manpower service to M/s. Karnataka Institute of Leather Technology. The notice U/s 73 of KGST and CGST Act, 2017 issued by concerned authorities as mentioned supra, also pertains to the applicability of GST supply of manpower service to M/s. Karnataka Institute of Leather Technology.

The issues raised in the instant application and the issues mentioned in the notice mentioned supra are one and the same i.e., applicability of GST on supply of manpower service to M/s. Karnataka Institute of Leather Technology. Thus, first proviso to Section

98(2) of the CGST Act 2017 is squarely applicable to the instant case, as all the conditions therein are fulfilled.

9. <u>Go-karts classifiable under Chapter Tariff Heading 9508</u>

Case Name: In re KNK Karts (P) Limited (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 20/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

Q1. Whether the 'amusement park ride karts' commonly known as 'Go-karts' manufactured and supplied by the Applicant meant solely for the purpose of joy riding or amusement or recreational purpose and are designed and shaped to suit to run or drive only on extremely smooth specially designed surfaced tracks or closed circuits, are classifiable under Chapter Tariff heading 9508 of the First Schedule to the customs Tariff Act, 1975?

A1. The 'amusement park ride karts' commonly known as 'Go-karts' manufactured and supplied by the applicant meant solely for the purpose of joy riding or amusement or recreational purpose and are designed and shaped to suit to run or drive only on extremely smooth specially designed surfaced tracks or closed circuits, are classifiable under Chapter Tariff Heading 9508 of the First Schedule to the Customs Tariff Act, 1975.

Q2. Whether the 'amusement park ride karts' commonly known as 'Go-karts' manufactured and supplied by the Applicant which are not roadworthy and cannot be registered as Motor Vehicles with the Regional Transport Authority ('RTO' for short) are classifiable as 'Motor vehicles meant for carrying of passengers / persons' under Chapter Tariff heading 8703 of the First Schedule to the Customs Tariff Act, 1975?

A2. The 'amusement park ride karts' commonly known as 'Go-karts' manufactured and supplied by the Applicant which are not roadworthy and cannot be registered as Motor Vehicles with the Regional Transport Authority (RT0' for short) are not classifiable as 'Motor Vehicles meant for carrying of passengers / persons' under Chapter Tariff Heading 8703 of the First Schedule to the Customs Tariff Act, 1975.

Q3. Whether the 'amusement park ride karts' commonly known as 'Go-karts' manufactured and supplied by the Applicant attracts GST at the rate of 18% under Sl No.441A of Schedule III to Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No.18/2021-Central Tax (Rate) dated 28.12.2021 or at the rate of 18% under Sl No. 453 of Schedule III to Notification No. 1/2017-Central Tax (Rate), dated 28.06.2017?

A3. The 'amusement park ride karts' commonly known as 'Go-karts' manufactured and supplied by the Applicant attracts GST at the rate of 18% as per Sl.No.441A of Schedule III

to Notification No.1/ 2017-Central Tax (Rate) dated 28-06-2017 as amended by Notification No.18/ 2021-Central Tax (Rate) dated 28-12-2021.

10. **Advance ruling cannot be given on applicability of GST on Donation**

Case Name: In re Mercara Downs Golf Club (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 29/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka (389) Advance Rulings (2823)

Whether the donation amount is taxable under GST or not? If taxable whether the rate of GST applicable on the said donation is 18% or not?

Advance ruling can be sought under Section 97 only for supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Supply, as per Section 7(1), includes all forms of supply of goods or services or both, made or agreed to be made for a consideration by the applicant in the course or furtherance of business.
In the instant case the applicant admittedly is not involved in supply nor intends to supply any goods or services or both to the donor and thus the first limb of the Section 7(1) supra is not fulfilled. Also, admittedly there is no quid pro quo involved to treat the amount as consideration and there is no business relationship between the donor and the applicant and hence the receipt of donation is not towards any supply. Thus from the facts brought forth in the application for advance ruling, the applicant admittedly is neither undertaking nor proposed to undertake any supply of goods or services or both to the donor in respect of the donation received and thus there is no supply in terms of Section 7(1) of the CGST Act 2017 and hence the instant application does not qualify as an application for advance ruling in terms of Section 97 read with Section 95(a) and Section 7(1) of the Act, ibid, and is liable for rejection in terms of Section 98(2) of the CGST Act 2017.

11. No GST on Service of educating & training farmers related to agro forestry

Case Name: In re Avaniinfosoft Private Limited (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 28/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

From the scope of work, it is seen that the applicant through their **maramitras** not only educate and train farmers with regard to agro forestry through scientific research and knowledge, but are also involved in hand holding the farmers from recording demand for saplings, picking up the samplings from nurseries to their plantation and also monitoring post plantation survival.

Now we proceed to examine whether the activities of the applicant are covered under Agriculture Extension services. We invite reference to Explanation 2(C) appended to the **Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017**, wherein the term "agricultural extension" is defined to mean application of scientific research and knowledge to agricultural practices through farmer education or training. In the instant case, the applicant, through maramitras, provides education and training to the farmers for cultivation of plants / trees, by applying scientific research and knowledge. All the other activities of the applicant carried out through maramitras from selection of saplings to assisting in transportation & planting, to monitoring the survival of plants are related to agricultural extension activity. Thus, the services of the applicant are covered under agricultural extension services.

Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017 exempts inter-state supply of certain services, whose description is specified under column 3 of the table. Entry No.57 of the said table exempts the services covered under SAC 9986 whose description at column 3 is as under:

Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of-

(a) ..

(b) ..

(f) agricultural extension services

In the instant case the farmers are into cultivation of various plants for agricultural produce and the services of the applicant are agricultural extension services as discussed at para 15 supra and hence are exempted under entry number 57 of the notification supra.

12. GST on parts & accessories suitable for use solely with hearing aids

Case Name: In re Sivantos India Private Limited (GST AAR Karnataka)

Appeal Number: Advance Ruling No. KAR ADRG 27/2022

Date of Judgement/Order: 12/08/2022

Courts: AAR Karnataka Advance Rulings

Q1. Classification of parts and accessories suitable for use solely with the hearing aids?

A1. The parts & accessories of hearing aids are covered specifically under heading 9021 9010 and thus merit classification under the said heading.

Q2. The rate of tax (GST) applicable on supply of such parts & accessories of hearing aids is 18% in terms of entry no.453 of Schedule III to the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.

A2. Rate of tax on supply of such parts and accessories which are suitable for use solely with the hearing aids

Q3. The entry No. 142 of Notification 2/2017-Central Tax (Rate) dated 28.06.2017 is not applicable to the supply of parts & accessories of hearing aids and thus the said goods are not entitled for exemption.

A3. Whether such parts and accessories, suitable for use solely with the hearing aids are exempt by virtue of Sl. No. 142 of 2/2017-CT(R) as amended from time to time.

13. **<u>GST rate depends on nature of activity performed & not on form of agreement</u>**

Case Name: In re Hyundai Rotem Company (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 26/2022
Date of Judgement/Order: 12/08/2022
Courts: AAR Karnataka Advance Rulings

Q1. Whether the supplies made under Cost Centre's D, G and H (to the extent of training services) of contract 'Rs-10' to DMRC are to be considered as independent supplies of goods and services and GST rate applicable depending upon the nature of activity performed under such cost center's.

A1. The supplies made under Cost Centres D, G and H (to the extent of training services) of Contract 'RS-10' to DMRC are to be considered as independent supplies of goods and services and GST rate applicable depending upon the nature of activity performed under such cost centres. This ruling is subject to the outcome of the judgment of the High Court of Karnataka in the appeal filed by M/s BMRCL. AAR has considered following observations of AAAR –

For a supply to be considered as a composite supply, its constituent supplies should be so integrated with each other that one cannot be supplied in the ordinary course of business without or independent of the other.

- In this case, although there is only one contract, the scope of work under each cost center is clearly specified and identifiable and is not associated with any other cost center.
- The concept of "Naturally Bundled", as used in Section 2(30) of the CGST Act'2017, lays emphasis on the fact that the different elements in a composite supply are integral to the overall supply and if one of the elements is removed the nature of supply will be affected. In the instant case, supplies in the corresponding cost centers are not naturally bundled.
- The form of the agreement is not important, but its nature/ substance has to be seen to arrive at the correct conclusions. The clear-cut demarcation of activities to each cost center demonstrates the intention of the contracting parties that each cost center is independent supply center undertaking either the supply of goods or supply of services.

Q2. Whether the supplies made by all the Cost Centres of RS-10 Contract of DMRC are to be considered as 'composite supply' as defined under Section 2(30) of the Central Goods and Service Tax Act 2017 ('CGST Act') read with Section 8(1) of the CGST Act, thereby considering the supply of rolling stock undertaken under Cost Centre B and C as the principal supply and levying GST at 5% (up to 30 Sept 2019), 12% (from 1 Oct 2019 till 30 Sept 2021) and 18% (with effect from 1 oct 2021) on the entire contract value.

A2. The supplies made by all the Cost Centres of RS-10 contract of DMRC are not to be considered as 'composite supply', in view of the ruling at para 1 and hence the instant question is redundant.

14. **Mere E way bill Expiry not amount as intention to evade taxes**

Case Name: Hero Steel Limited Vs Assistant Commissioner State Taxes & Excise-cum-Proper Officer (GST Appellate Authority)
Appeal Number: Appeal No: 061/2019-20
Date of Judgement/Order: 20/08/2022
Courts: Appellate Authority GST Appellate Authority

It was held that:
1. Once the tax invoice is issued and the e way bill generated through online GST portal containing all details of the transactions and such details are available with the GST authorities, therefore the possibility of tax evasion is very remote.
2. It was held that the tax/ penalty under section 129 of CGST Act 2017 cannot be imposed merely on the basis of expiry of E way bill and without proving the intention to evade the tax.
3. The penalty order is illegal and against the fundamental principles of law.

15. **Pareena Infrastructure Pvt. Ltd. guilty of Profiteering: NAA**

Applicant alleged that the Respondent had not passed on the benefit or Input Tax Credit (ITC) to him by way of commensurate reduction in the price of flat in respect of purchase of flat in project "Laxmi Apartment" Sector-99A, Dwarka Expressway, Gurugram, Haryana. It is clear from plain reading of Section 171 (1) that it deals with two situations. One relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate. it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period: hence the only issue to he examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue it has been revealed from the DGAP's Report that the ITC as a percentage of the turnover that was available

to the respondent during the per-GST period (April-2016 to June 2017) was 1.61% and during the post-GST period (July-2017 to October-2020), it was 9.88% for the project "Laxmi Apartments", This confirms that post-GST. the Respondent bus been benefited from additional ITC to the tune of 8.27% [9.88% (-) 1.61%] of his turnover for the said project and the same %vas required to be passed on to the customers/flat buyers/recipients. The DGAP has calculated the amount of ITC benefit to be passed on to the customers/flat buyers/recipients as Rs. 633,70,091/- (which includes an amount of Rs. 57.557/- in relation to Applicant no. 1) for the project "Laxmi Apartments". the details of which are mentioned in Table- B above.

Hence, the Authority finds no reason to differ from the above detailed computation of profiteered amount by the DGAP or the methodology adopted by it. The Authority finds that Respondent has profiteered an amount of Rs. 6,33,70,091/- (Rupees Six Crore Thirty-Three Lakhs Seventy Thousand Ninety-one only) during the period under present investigation. This includes an amount of Rs. 57,577/- in relation to Applicant no. 1, Therefore given the above facts. the Authority under Rule I 33(3)(a) of the COST Rules orders that the Respondent shall reduce the price to be realized from the customers/flat buyers/recipients commensurate with the benefit of additional ITC received by him.

The Respondent is also liable to pay interest as applicable on the entire amount profiteered. i.e. Rs. 6,33,70,091/- for the project "laxmi Apartments". Hence the Respondent is directed to also pass on interest @18% to the customers/flat buyers/recipients on the entire amount profiteered, starting from the date which the above profited, starting from the date Nola which the above amount was profiteered till the date of passing on/ payment. as par the provisions of Rule 133 (3) (h) of the CGST Rules, 2017.

This Authority also orders that the profiteering amount of Rs. 6,33,70,091/- for the project "Laxmi Apartments" along with the interest @18% from the date of receiving of the profiteered amount from the customers/flat buyers/recipients till the date of passing the benefit ITC shall be. paid/passed on by the Respondent within a Period of 3 months from the date of this Order failing which ,:.hall be recovered as per the provisions of the CGST Act. 2017.

16. **<u>No Profiteering by 'Sri Dutt Constructions' in Project Garden Avenue K-4</u>**

Case Name : Milan Pankaj Kothari Vs Sri Dutt Constructions (NAA)
Appeal Number : Case No. 66/2022
Date of Judgement/Order : 31/08/2022
Courts : National Anti-Profiteering Authority

The brief facts of the present case are that an application was filed before the Maharashtra State Screening Committee on Anti-profiteering under Rule 128 of the CGST

Rules, 2017 by the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of a Flat No. 303, Wing-D, in the Project Garden Avenue K-4, Virar West, Palghar, Maharashtra. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price.

The only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue, the DGAP in his Report, has stated that ITC as a percentage of the turnover which was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 1.03% and during the post-GST period (July-2017 to March-2019), it was 0.63%. On this basis, the DGAP has concluded his Report with the findings that the Respondent had neither been benefited from additional ITC nor there had been a reduction in the tax rate in the post-GST period for the Project "Garden Avenue K-4".

The Authority also finds the Applicant No. 1 vide his above submissions has also stated that he has satisfied with the findings in the DGAP's Investigation Report dated 29.01.2021.

In view of our above facts the Authority has no reason to differ from the Report of DGAP and we therefore agree with his findings since there was no reduction in the rate of tax nor there was increased additional benefit on account of ITC. Hence, the provisions of Section 171 of CGST Act, 2017 are not liable to be Invoked in this case. The Authority concludes that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017 as the Respondent has neither been benefited from additional ITC nor has there been a reduction in the tax rate in the post-GST period.

17. <u>No violation of Anti-Profiteering if project commences on or after 01.07.2017</u>

Case Name: Smt. K. B. Sreedevi Vs Siva Rama Constructions (NAA)
Appeal Number: Case No. 65/2022
Date of Judgement/Order: 31/08/2022
Courts: National Anti-Profiteering Authority

The present Report dated 27.01.2021 had been received from the Applicant No. 2 i.e. the Directorate General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129(6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the report were that the Applicant No. 1 had filed an application before the Andhra Pradesh State Screening Committee on Anti-Profiteering under Rule 128 of the CGST Rules,2017 and alleged that Respondent had not passed on the benefit of the input tax credit by way of commensurate reduction in price to the Applicant in respect of the purchase of Flat No. 201 in the Respondent's project " Sai ParthaSreekar Residency", MarripalemVuda layout, Visakhapatnam – 530009 in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

Applicant No. 1 has filed a complaint alleging that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of the Flat No. 201 purchased from the Respondent in his project "Sai ParthaSreckar Residency" in terms of Section 171 of the CGST Rules, 2017.

It is also noted that the DGAP, after a detailed investigation, has found that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 as the date of commencement of the instant project was after the inception of GST w.e.f. 01.07.2017. Further, the first booking in the instant project was made by the Respondent on 06.09.2018 and the Applicant had booked the Flat no. 201 on 15.10.2018 i.e. in post-GST period. Further, as per the registration details, the Respondent having Registration No. 336/2004 obtained Building Permission from 02.02.2018 which was also the Project starting date. There was no pre-GST tax rate/ details or ITC credit structure/details which could be compared with the post-GST tax rate and ITC. There was no benefit of CENVAT to compare ITC which was available to the Respondent post implementation of GST while fixing the base price in this case. The Applicant No. 1 has not responded on the merit in respect of the DGAP report dated 27.01.2021. The contention of the Applicant No. 1 regarding denial of principles of natural justice is found to be unsustainable as enough opportunities were provided to him to put up in case before the Authority.

In view of the above discussions, the Authority finds that there is no contravention of Section 1'71(1) of the CGST Act, 2017. Thus the Authority concur with the DGAP report dated 27.01.2021.

18. <u>Nandi Infratech guilty of Profiteering in its Project 'Amaatra Homes'</u>

Case Name: Vijay Pal Sing Vs Nandi Infratech Pvt. Ltd. (NAA)
Appeal Number: Case No. 64/2022
Date of Judgement/Order: 31/08/2022
Courts: National Anti-Profiteering Authority

The Authority determines an amount or Rs. 7,28,05,691/- (including 12% GST) under section 133(1) as the profiteered amount by the Respondent from his 768 home buyers/shop buyers/customers which shall be refunded by him along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment. per the provisions of Rule 133 (3) (b) of the CGST Rules 2017. This amount profiteered is Rs. 84,757/- (including GST) in respect of Applicant No. 1.

This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders than the Respondent shall reduce the prices to be realized from the buyers of the flats shop buyers/customers commensurate with the benefit of ITC received by him as has been detailed above.

The Respondent is also liable to pay interest as applicable on the entire amount profiteered. i.e. Rs. 7,28,05,691/- for the project 'AMAATRA HOMES'. Hence the Respondent is directed to also pass on interest @18% to the customers/flat buyers/recipients on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) or the CGST Rules, 2017.

The complete- list of homebuyers/shop buyers /customers has been attached with this Order with the details of the amount of benefit of ITC to be passed on along with interest @18% in respect of the project AMAATRA HOMES' of the Respondent as in the Annexure-'A'.

This Authority also orders that the profiteered amount of Rs. 7,28,05,691/- for the project 'AMAATRA HOMES' along with the interest @18% from the date of receiving of advance from the homebuyer till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

It has also been found that the Respondent has denied the benefit of additional ITC to his customers/recipients in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and mined to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. Therefore. the Respondent is liable for the imposition of penalty for the period 01.01.2020 us 28.02.2021 under the provisions of the above Section. Accordingly, a Notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

19. <u>Tata play guilty of profiteering of Rs. 225 crores in DTH services: NAA</u>

Case Name: Sweety Agarwal Vs Tata play Limited (NAA)
Appeal Number: Case No. 63/2022
Date of Judgement/Order: 29/08/2022
Courts: National Anti-Profiteering Authority

The present report dated 06.08.2021 has been furnished by the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules,

2017, on the basis of application filed by the Applicant No. 1 alleging profiteering in respect of DTH (Direct to flume) Service supplied by the Respondent vide subscription ID No. 1088222136 in respect of payment of half yearly/annual subscription charges. The Applicant No. 1 alleged that the Respondent had not passed on the commensurate benefit of Input Tax Credit (ITC) to her which was available to the Respondent on implementation of GST w.e.f 01.07.2017. in terms of Section 171 of the CGST Act. 2017.

The Authority has carefully considered the Reports tiled by the DGAP, all the submissions and the documents placed on record. and the arguments advanced by the Respondent during the hearing. It is clear from the plain reading of Section 171(1) that it duds with two situations:- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of lax in the post PST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. It is observed from the report that on the basis of the bifurcated information of turn over submitted by the Respondent vide email dated 20.04.2021 for the period April, 200 to January, 2019 and details of ITC submitted by the Respondent vide email dated 26.04.2021 roe the period April, 2016 to January, 2019 specific to the supply of DTH (Broadcasting) services and the details of the credit of VAT/SAD) foregone, ITC availed by him pre GST, the percentage of benefit and thereby the amount of benefit consequent to the introduction of GST, during the post-GST (June, 2017 to January, 2019) period was calculated and has been furnished in Table-'A' of the Report and amounted to Rs. 4,50,18,07,258/- and the state-wise bifurcation of the profiteered amount has been furnished in the DGAP's Report in Table – 'B'.

Further reasons mentioned herein above. the Authority finds no reason to differ from the above-detailed computation of profiteered amount in the DGAP's Report or the methodology adopted. The Authority finds that the Respondent has profiteered by an amount of Rs. 4,50,18,07,258/- during the period of investigation i.e. 01.07.2017 to 31.01.2019 from his subscribers/customers including the subscription accorded to Shri Sumit Garg and/or Applicant No. 1.

The Authority is in agreement with the assertion of the DGAP that, in the instant case on the basis of the submissions made by the Applicant No.1, as per the provisions of law relating to anti profiteering under the CGST Act, 2017 and Rules made thereunder and the responsibilities cast on this Authority by the said statutory provisions, that the Applicant No. 1 is an interested party in this case for the purposes of alleging profiteering by the Respondent as a supplier, however, as in this case the Applicant no.1 is not it direct

subscriber of the Respondent and is representative of interests of one Shri Sumit Garg, therefore the Authority– finds it in consonance with the law to– order the deposit of the profiteered amount in respect of the said Applicant also along with till other subscribers in the Consumer Welfare funds as envisaged in Rule of 133(3)(e) of CGST Rules, 2017 for the benefit of all consumers.

20. **<u>Panchshil Infrastructure guilty of profiteering in Panchshil Tower project</u>**

Case Name : Sh. Madhumal Panjumal Keswani Vs Panchshil Infrastructure Holding Pvt. Ltd. (NAA)

Appeal Number: Case No. 62/2022

Date of Judgement/Order: 29/08/2022

Courts: National Anti-Profiteering Authority

The present Report dated 25.10.2021 has been received from Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed Investigation under Rule 120(6) of the Central Goods & Service Tax (CGST) Rules, 2017 The brief facts of the present case are that the Standing Committee on Anti-profiteering, received an Application under Rule 128 of the CGST Rules. 2017 filed by Applicant No. 1 alleging profiteering in respect of construction service supplied by the Respondent. Applicant No. 1 alleged that the Respondent has not passed on the benefit of ITC to him by way of commensurate reduction in the price on purchase of Apartment No. 503, Tower-E, from the Respondent in the Project Panchshil Towers situated at Kharadi, Pune on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

Given the above discussions. the Authority finds that the Respondent has profiteered by Rs 1,98,69,483/- for the Protect “Panchshil Towers” during the period of investigation i.e. 01.07.2017 to 30.11.2020. The above amount that has been profiteered by the Respondent from his home buyers/customers/recipients in the above said Project shall be refunded by him, along with interest @18% thereon, from the date when the above amount was profiteered by till the date of passing on/payment, as per the provisions of Rule 133(3) (b) of the CGST Rules. 2017

The Respondent is also liable to pay Interest as applicable on the entire amount profiteered. i.e. Rs 1,96,69,483/- for the Project ‘Panchshil Towers’ Hence the Respondent is directed to also pass on interest @18% to the customers/flat buyers/recipients on the entire amount profiteered, starting from the date from which the above amount was profiteered till the dale of passing on, payment, as per the provisions of Rule 133 (3) (b) of the CGST Rules 2017

The complete list of home buyers/customers/recipients has been attached as Annexure – ‘A’ with this Order, containing the details of the amount of benefit of ITC to be passed on in respect of the Project ‘Panchshil Towers’ of the Respondent.

This Authority also orders that the profiteered amount of Rs 1,96,69,483/- for the Project 'Panchshil Towers' along with the interest 18% from the date of receiving of the profiteered amount from the home buyers/customers/recipients till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of this Order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

It is also evident from the above narration of facts that the Respondent has denied the benefit of ITC to the customers/flat buyers/recipients in his Project 'Panchshil Towers' in contravention of the provisions of Section 171 (1) of the CGST Act. 2017 and has committed an offence under Section 171 (3A) of the above Act. That Section 171 (3A) of the CGST Act, 2017 has been inserted in the CGST Act, 2017 vide Section 112 of the Finance Act. 2019. and the same became operational w.e.f. 01 01.2020 As the period of investigation was 01.07.2017 to 30.11.2020, therefore, he is liable for imposition of penalty under the provisions of the above Section for the amount profiteered from 01.01.2020 onwards Accordingly, notice be issued to him to explain why penalty should not be imposed on him

The concerned jurisdictional COST/SGST Commissioner is directed to ensure compliance of this Order It may be ensured that the benefit of ITC is passed on to each home buyers/customers/recipients as per Annexure- A attached with this Order along with interest @18% as prescribed if not paid already. In this regard an advertisement of appropriate size to be visible to the public may also he published In a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of the builder (Respondent) — M/s Panchshil Infrastructure Holding Pvt. Ltd. Project- "Panchshll Towers". Location- Khaiadi, Pune, Maharashtra and amount of profiteering i.e. Rs. 1,96,69,483/- so that the concerned home buyers/customers/recipients can claim the benefit of ITC if not passed on Homebuyers/customers/recipients may also be informed that the detailed NAA Order is available on Authority's website www,naa.gov in Contact details of the concerned Jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement.

The concerned jurisdictional CGST/SGST Commissioner shalt also submit a Report regarding the compliance of this Order to this Authority and the DGAP within a period of 4 months from the date of this Order

It is clear to us that the Respondent has profiteered in the project 'Panchshil Towers' Therefore. as per the provisions of Section 171(2) of the CGST Act, 2017 this Authority has reasons to believe that there is a need to verify all the Input Tax Credits of the Respondent so as to arrive at the aggregate profiteering of the Respondent since profiteering on the part of the Respondent has already been established in the case of "Panchshil Towers' project of the Respondent as also the tact that supplies from various protects of the Respondent are being made through a single GST registration and the same ITC

Pool/Electronic Credit Ledger is being used for all the supplies being made from that registration Therefore. the Authority, in line with the provisions of Section 171(2) of the CGST Act, 2017 and as per the amended Rule 133 (5) (a) of the CGST Rules, 2017 directs the DGAP to further examine all the other projects of the said Respondent for possible violations of the provisions of Section 171 of the CGST Act, 2017 and to submit his Report as per the provisions of Rule 133 (5) (b) of the CGST Rules, 2017, since there are adequate reasons to believe that the Respondent may not have passed on the her benefit of ITC to his recipients in terms of Section 171(1) of the Act ibid, in the same manner as in the project in hand, i.e. 'Panchshil Towers'.

21. <u>Vishwanath Builders guilty of profiteering in its project 'Sarathya'</u>

Case Name: Mahendra Kishanlal Prajapati Vs Vishwanath Builders (NAA)
Appeal Number: Order No. 61/2022
Date of Judgement/Order: 26/08/2022
Courts: National Anti-Profiteering Authority

The Authority finds that the benefit of additional Input Tax Credit of 3.75% of the turnover has accrued to the Respondent for the project 'Sarathya'. This benefit was required to be passed on to the recipients. Thus, Section 171 of the CGST, 2017 has been contravened by the Respondent. inasmuch as the additional benefit of ITC @3.75% of the base price received by the Respondent during the period 01.07.2017 to 30.06.2020, was required to he passed on by the Respondent to 215 recipients including the Applicants. These recipients are identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit no. allotted to such recipients. From the above discussions, the Authority determines that the Respondent has profiteered an amount of Rs.2,95,93,850/-.

10. Therefore, given the above facts. the Authority under Rule 133(3)(a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the homebuyers/customers/ recipients commensurate with the benefit of Fit received by hint The details of the home buyer/customers/recipients and benefit which is required to be passed on to each homebuyers/customers/recipients (including all the 12 Applicants) along with the details of the unit are contained in the Annexure 'A' to this Order. The Authority directs that the profiteered amount as determined shall be passed on/returned by the Respondent to the recipients of supply along with interest @18%, as prescribed under Rule 133(3)(b) of the CGST Rules, 2017, from the date such amount was profiteered by the Respondent up till the date such amount is passed on/returned to the respective recipient of supply (if not already passed on) within a period of three months from the

date of this Order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

For the reasons mentioned hereinabove and in the given facts and circumstances and also stated position of law we find that the Respondent has denied the benefit of lit to the homebuyers/customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. The Authority holds that the Respondent has Committed an offence by violating the provisions of Section 171 (1) during the period from 01.07.2017 to 30.06.2020. and therefore, he is liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, perusal of the provisions of the said Section 171 (3A) shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was in operation during the period from 01.07.2017 to 30.06.2020 when the Respondent had committed the above violation. These provisions came into effect from 01.01.2020 i. e. penalty equivalent to ten per cent of the profiteered amount will be imposed upon him for the amount profiteered after 01.01.2020. However, no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority. In this regard, Notice be issued to the Respondent.

The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC as determined by the Authority as per the Annexure 'A' of this Order be passed on along with interest @18% to each homebuyer/customer/recipient, if not already passed on. In this regard an advertisement may also be published in a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of the builder (Respondent) – M/s Vishwanath Builders, Project – "Sarathya", Location- Ahmedabad, Gujarat and amount of profiteering Rs.2.95.93.850/- so that the Applicants along with Non-Applicant homchuyer/customers/recipients can claim the benefit of ITC which has not been passed on to them. homebuyas/customers/recipients may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional Commissioner CGST/SGST for compliance of this Authority's order may also be advertised through the said advertisement.

The Authority finds that the Respondent may also be executing other projects under the same GST Registration No. 24ABEPV6263DIZN and the issue of profiteering may arise in the other projects as well. In view or the observation made in the earlier paragraph, the Authority finds that there exists reason to investigate other projects for the purpose of determination of profiteering. Accordingly, this Authority as per the provisions of Section 171 (2) of the above Act take suo-mom cognizance of the same and in terms of Rule 133(5)

of the said Rules, directs the DGAP to conduct investigation in respect of the other projects executed under the said registration and submit Report to this Authority for determination whether the Respondent is liable to pass on the benefit of ITC in respect of the other project/towers to the buyers or not as per the provisions of Section 171 (I) of the above Act.

22. <u>Paramount Propbuild guilty of Profiteering in project 'Paramount Golfforeste'</u>

Case Name : Sunil Saraf Vs Paramount Prop build Pvt Ltd. (NAA)
Appeal Number : Case No. 60/2022
Date of Judgement/Order: 23/08/2022
Courts: National Anti-Profiteering Authority

The brief facts of the present case were that a reference was received from the Standing Committee on Anti-Profiteering to the DGAP for conducting a detailed investigation in respect of an application filed by the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of a Unit/Flat No. 0-621 in Tower Oak in the Respondent's project 'Paramount Golfforeste' situated at Plot No. BGH-A, Site-C (Housing Extn.), Opp. Sector Zeta, Surajpur, Greater Noida. The Applicant No. 1 has alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in price after the Implementation of GST w.e.f. 01.07.2017.

Authority finds that the Respondent has profiteered by an amount of Rs. 93,63,948/- during the period of investigation e. July-2017 to October-2020. Such amount profiteered by the Respondent from his customer's/home buyers/recipients in the above project shall be refunded/returned/passed on by him, along with interest 018% thereon, from the date when the above amount was profiteered by him till the date of such refund/return/payment, In accordance with the provisions of Rule 133 (3) (b) of the GCST Rules 2017.

With respect to the benefit of ITC amounting to Rs. 9,26,233/- already passed on to the 87 home buyers by the Respondent, the report of the DGAP is not clear that whether the Respondent has refunded the above profiteered amount to the home buyers along with interest @18% or not. Hence, the aspect whether the Respondent has paid the interest on the above profiteered amount of Rs. 9,26,233/- is required to be verified.

The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 93,63,948/-. Hence the Respondent is directed to also pass on interest @18% to the customers/flat buyers/recipients on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules 2017.

This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the customer's/home

buyers/recipients commensurate with the benefit of ITC received by him as has been detailed above.

We also order that the profiteering amount of Rs. 93,63,948/- along with the interest @ 18%, from the date of receiving of profiteered amount from the customer's/home buyers/recipients till the date of passing the benefit of ITC/profiteered amount, shall be paid/passed on by the Respondent within a period of 3 months from the date receipt of this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

23. <u>New World Realty LLP guilty of profiteering in Tinsel Town Project, Pune</u>

Case Name: Shubham Saxena Vs New World Realty LLP (NAA)
Appeal Number: Case No. 59/2022
Date of Judgement/Order: 22/08/2022
Courts: National Anti-Profiteering Authority

The Present Report dated 30.12.2020 had been received from the Applicant No. 4 i.e. the Director-General of Anti-Profiteering (1) GAP) alter a detailed investigation under Rule 129(6) of the Central Goods & Service Tax (CGST) Rules, 2017. alleging profiteering by Respondent in respect of purchase of flats in the Respondent's project "Tinsel Town". The Applicant No. 1. 2 and 3 vide their complaint had alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in prices after implementation of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act. 2017.

The Respondent is in the business of the supply of Construction services and he has executed project by the name of Tinsel Town in Pune. Additional Input Tax Credit was available to the Respondent for the project due implementation of the GST w.e.f. 01.07.2017 which was required to passed on in terms of Section 171 of the CGST Act, 2017.

On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period. I fence. the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST.

We find that, the ITC, as a percentage of the turnover, that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 1.15%, whereas, during the post-GST period (July-2017 to Mar, 2019), it was 7.67%. This confirms that in the post-GST period, the Respondent has been benefited from additional ITC to the tune

of 632% (7.67%-1.15%) of his turnover and the same is required to be passed on by him to the recipients of supply, including the Applicant No. 1.2 & 3. The Authority finds that the computation of the amount of ITC benefit to be passed on by the Respondent to the eligible recipients works out to Rs. 2.03.03.720/- The DGAP has calculated the amount of ITC benefit to he passed on to all the eligible recipients as Rs.2,03,03,720/- on the basis of the information supplied by the Respondent.

This Authority under Rule 133 (3) (a) of the Cost Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/Customers commensurate with the benefit of ITC received by him. The Authority directs the Respondent to return/pass on/refund the profiteered amount along with interest as prescribed to each homebuyer/recipient of supply along with interest @ 18% p.a. as prescribed from the date the profiteered amount was collected until the date of such return/passing on/refund. The names of such homebuyers along with unit number, profiteered amount and the benefit already passed on is enclosed with this order as Annexure-A.

It is also evident from the above narration of the facts that the Respondent has denied benefit of ITC to the buyers of his flats in contravention of the provisions of Section 171 (I) of the CGST Act. 2017 and he had thus resorted to profiteering. Hence, he has committed an offence for violation of the provisions of Section 171 (1) during the period from 01.07.2017 to 31.03.2019 and therefore, appears to be liable for imposition of penalty tinder the provisions of Section 171 (3A) of the above Act. However, the provisions of Section 171 (3A) have been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act. 2019 and it was not in operation during the period from 01.17.2017 to 31.03.2019 when the Respondent had committed the above violation and hence, the penalty under Section 171 (3A) cannot be imposed on the Respondent for such period. Accordingly, notice for imposition of penalty is not required to be issued to the Respondent.

The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order within three months of receipt of this order by the Respondent. It may be ensured that the benefit of ITC has been passed on to each homebuyer as per this Order along with interest C)18% if not already passed on. In this regard an advertisement may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. New World Reality 1.12. Project: Tinsel Town. located at Pune and the Profiteering Amount 2,03,03.720/- so that the Applicants along with Non-Applicant homebuyers can claim the benefit of ITC which is not passed on to them. homebuyers may also be informed that the detailed NAA Order is

available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional CGST/SGST who arc nodal officer for compliance of the NAA's order may also be advertised through the said advertisement.

24. **K D Lite Developers guilty of Profiteering in 'Ruparel Orion' project**

Case Name: Sh. Hasmukh Daftary Vs K D Lite Developers Pvt. Ltd. (NAA)
Appeal Number: Case No. 57/2022
Date of Judgement/Order: 05/08/2022
Courts: National Anti-Profiteering Authority

The brief facts of the present case are that Applicant No. 1 had filed an Application before the Standing Committee stating that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of Flat No. C-1004 purchased from the Respondent in the Respondent's project 'Ruparel Orion', situated at Chembur, Mumbai on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

The Respondent has contended that as per DGAP's report, ITC of GST availed from July 2017 to December 2019 was Rs. 5,82,71,633/-, however, the Respondent submitted his reworked figure of Rs. 5,82,74,633/-. The Authority finds that figure mentioned in the DGAP's report has been taken from the GST returns filed by the Respondent and have been ascertained as correct. Therefore, the above contention of the Respondent cannot be accepted.

As discussed above, this Authority concurs with the DGAP's report dated 28.10.2020. The Authority determines that the Respondent has profiteered by Rs. 1,45,87,404/- in respect of the project "Ruparel Orion" during the period from 01.07.2017 to 31.12.2019 which includes Rs. 86215/- of the Applicant No. 1 and orders refund/return/passing on of the profiteered amount, if not already done, along with the interest @18% thereon, from the date, when the above determined profiteered amount was profiteered by him till the date of such payment, in line with the provisions of Rule 133 (3) (b) of the CGST Rules 2017. The names of such homebuyers/customers/recipients, along with the unit number, are enclosed with this order as Annexure-A.

This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from homebuyers/customers/recipients commensurate with the benefit of ITC received by him as has been detailed above.

25. Ramprastha Promoter & Developer Guilty of Profiteering in its project 'Rise'

Case Name: Ram Prakash Sharma Vs Ramprastha Promoter & Developer Pvt. Ltd (NAA)
Appeal Number: Case No. 56/2022
Date of Judgement/Order: 05/08/2022
Courts: National Anti-Profiteering Authority

The Present Report dated 28.08.2020 received on 31.08.2020 by this Authority, has been furnished by the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017 The brief facts of the present case are that an application dated 30.07.2018 filed by the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of Flat No E-1302 in the Respondent's project 'Rise', Ramprastha City, Sector-37D, Gurugram. The above Applicant No. 1 had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price after implementation of GST w.e.f. 01.07.2017. in terms of Section 171 of the Central Goods and Services Tax Act, 2017. This complaint was examined by the Standing Committee on Anti-profiteering in its meeting held on 13.09.2019 and upon being prime facie satisfied that the Respondent had contravened the provisions of Section 171 of the CGST Act, 2017, forwarded the said application with its recommendation to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017 The above reference of the Standing Committee on Anti-profiteering had been received by the DGAP on 09.10.2019. The Respondent has further contended that there was no uniformity in the ratio of billed amount and the expenditure incurred While in pre-GST regime, the billing was far higher, the construction was not carried out commensurate to the same. The speed of the work increased tremendously in post GST regime, and the construction cost incurred after the CST regime was far higher in proportion to the billings in that period. as compared to the pre-GST period taken by the DGAP as the basis When the construction cost incurred by the Respondent has substantially increased it was quite natural that that ITC relatable to the said cost has seen sharp surge.

With respect to the above contention of the Respondent, we perused Para 12 of the DGAP's Report doled 28 08 2020 which stated that in the construction service, the payment plans were linked with the different stages of the construction Therefore, if 40% construction has been completed then the payments would have also been received 40% (approx.) of the total payment It implies that if ITC was accumulating to the Respondent then it could definitely be utilized whenever payments would be received The Respondent as positing an imaginary situation in which most of the payments from the home buyers are received in the pre-GST regime and very less amount was pending for

collection in GST regime whereas on the other hand most of the construction of the project was taking place in GST regime only on which huge ITC was accumulating but same could not be utilized as the Respondent had very meagre GST liability due to less receipts in GST regime. This at best, is imaginary and based on assumptions of the Respondent which are impractical

It has also been contended by the Respondent that the DGAP has not given any opportunity to him to either controvert or respond to the methodology adopted by the DGAP for determining profiteering We observe that the mandate of DGAP is to conduct investigation as per the directions and recommendation of the Standing Committee on Anti-profiteering. The DGAP submits report of its findings based on the information/data and documents provided, to this Authority under Rule 129 of the CGST Rules, 2017. There is no provision/stipulation in the law to grant any opportunity of hearing by the DGAP during or after the investigation. Since the DGAP s merely an investigating agency, the adjudication to establish profiteering or the absence of rt is done by this Authority During the proceedings of adjudication this Authority afforded ample opportunity of hearing following the principles of natural justice Hence, the above contention of the Respondent is not correct.

The Respondent has further claimed that he has already passed on the ITC benefit amounting to Rs 17,37,958/- till date In this context, we find that the Respondent has only submitted the list showing the details i.e. Name of the Owner, Flat No and Amount of ITC benefit passed on However no supporting documents i.e. Credit Notes/Cheque/Cash Voucher issued to the customers, bank statement showing debit of the amount passed on acknowledgement receipts from the customers claiming that they had received the benefit of ITC from the Respondent etc. have been submitted by the Respondent to support his claim that he has passed on the benefit of ITC amounting to Rs. 14,37,958/- to his customers/flat buyers Therefore, in the absence of any supporting documents. the above claim of the Respondent cannot be accepted

It has also been contended by the Respondent that benefit of ITC could only be computed at the end of the project because of the nature of the contracts i.e. long term, and also the requirement of law to reverse the unutilized ITC in respect of unsold units once the completion certificate was issued. Therefore, until the protect was complete and competition certificate was issued, the Respondent was not in a position to calculate accurate quantum of ITC benefit. In this regard it is mentioned that the Respondent is required to pass on the benefit of ITC as soon as he was availing the above benefit to discharge his GST output liability. The Respondent cannot employ different yardsticks while utilizing the above benefit every month himself and by asking his buyers to wait for the benefit tilt the project was completed after a lapse of a long period. In case the Respondent proposes to pass on the benefit to his recipients after completion of the

project he should also avail the benefit himself after completion of the project. The Respondent cannot misappropriate the amount of ITC and enrich himself at the expense of the common buyers by denying them the benefit which he is not to pay from his own pocket. Therefore, the above contention of the Respondent is frivolous and hence, the same cannot be accepted.

It is clear from the plain reading of Section 171(1) mentioned above that, it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue it has been revealed from the DGAP's Report that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 5.23% and during the post-GST period (July-2017 to September-2019), it was 13.15%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 7 92% (13.15%-5.23%) of his turnover and the same was required to be passed on to the Applicant No 1 and the other customers/ flat buyers/recipients. The DGAP has calculated the amount of ITC benefit to be passed on to all the customers/flat buyers/recipients as Rs 33,41,006/- on the basis of the information supplied by the Respondent The above amount is inclusive of Rs 19,805/- which is the profiteered amount in respect of the Applicant No 1.

We find that the additional benefit of ITC availed by the Respondent during the period July 2017 to September 2019 which is required to he passed on to his home buyers/customers/recipients. has been correctly calculated by the DGAP which is based on the factual records/information furnished by the Respondent and according to the Methodology which has been approved by this Authority in all the cases where benefit of ITC is required to be passed on under the provisions of Section 171 of the CGST Act, 2017.

In view of the above discussions, the Authority finds that the Respondent has profiteered by an amount of Rs. 33,41,006/ during the period of investigation i.e. July, 2017 to Sept-2019. The above amount that has been profiteered by the Respondent from his customers/flat buyers/recipients shall be refunded/returned/passed on by him. along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in line with the provisions of Rule 133 (3) (b) of the CGST Rules, 2017

This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the customers/flat buyers/ recipients commensurate with the benefit of ITC received by him as has been detailed above

The Respondent is also liable to pay interest as applicable on me entire amount profiteered. i.e. Rs. 33,41,006/- Hence the Respondent is directed to also pass on interest @18% to the customers/flat buyers/recipients on the entire amount profiteered. starting from the date from which the above amount was profiteered till the date of passing on! payment, as per provisions of Rule 133 (3) lb) of the CGST Rules, 2017 We also order that the profiteering amount of Rs 33,41,006/ along with the interest @18% from the date of receiving of advance horn the customers/flat buyers/recipients till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date receipt of this order failing which it shall be recovered as per the provisions of the CGST Act, 2017

26. <u>NAA directs DGAP to recalculate amount profiteered by SVP Builders</u>

Case Name: Dr. Rahul Bamal Vs SVP Builders India Pvt. Ltd. (NAA)
Appeal Number: Case No. 16/2022
Date of Judgement/Order: 31/08/2022
Courts: National Anti-Profiteering Authority

The brief facts of the case were that an application was filed before the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules. 2017, by the Applicant no. 1, wherein it had been alleged that the Respondent had not passed on the benefit of ITC to the Applicant No. 1 by way of commensurate reduction in the price of the Unit No. 13-3-304 purchased from the Respondent in the Respondent's project 'Glomar Garden Phase-II', situated at Raj Nagar Extension. Ghaziabad, on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

The Respondent vide his various submissions before the Authority has also contended that the DGAP has not incorporated the ITC of VAT in the pre-GST period for the computation of profiteering which ought to have been done. He has further submitted before this Authority that the said ITC of VAT for the period from April 2016 to June 2017 has been allowed to him by the concerned statutory Authority, in support of which he has submitted VAT Assessment Orders for the period from April. 2016 to June, 2017 Consequently, this Authority without going into merit of other issues finds that the Assessment Orders for the period from April 2016 to June 2017 issued by the VAT Authorities in respect of the Respondent have never been placed before the DGAP during the course of the investigation and hence the same have not been incorporated in the computation of profiteered amount.

In view of the above, the Authority in terms of Rule 133 of the CGST Rules, 2017 directs the DGAP to ascertain the authenticity of the VAT Assessment Orders submitted by the Respondent for the period from April 2016 to June 2017 and if verified from the State GST Commissioner/ Uttar Pradesh VAT Department. the DGAP shall incorporate the amounts, as allowed by the concerned statutory Authority on assessment, in the computation of profiteered amount by including the same as ITC in the pre GST period and recalculate the profiteered amount and submit his Report to this Authority.

27. <u>NAA directs DGAP to reinvestigate Profiteering by Friends Land Developers</u>

Case Name: Director-General of Anti-Profiteering Vs Friends Land Developers (NAA)
Appeal Number: Case No. 15/2022
Date of Judgement/Order: 31/08/2022
Courts: National Anti-Profiteering Authority

The present Report dated 01.07.2020 has been received from the Director-General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax Rules, 2017. The brief facts of the case are that this Authority, vide Order No. 62/2019 dated 27.11.2019, directed the DGAP under Rule 133(5) (a) of the Central Goods and Services Tax Rules, 2017 to further investigate the project "Anandam Square", which the Respondent had been constructing during the period, for violation of provisions of Section 171 of the Central Goods and Service Tax Act, 2017. The said direction was based on the records submitted by the Respondent before this Authority, in the course of proceedings pertaining to their project "Palm Wood Royale Gulmohar Green" wherein it had been established that the Respondent had availed the benefit of Input Tax Credit and was required to pass on the benefit thereof in terms of section 171 of the CGST Act, 2017. Thus, there were sufficient grounds to believe that the Respondent was liable to pass on benefits to buyers of this project too, as envisaged under the provisions of Section 171 of the CGST Act, 2017. The matter was investigated by the DGAP in accordance with the aforementioned order of this Authority.

This Authority has carefully considered all the submissions filed by the DGAP, the Respondent, and the other material placed on record and the arguments advanced by the Respondent. On examining the various submissions, the findings of this Authority are as follows: -

i. With respect to the contention of the Respondent that "the DGAP investigation report dated 01.07.2020 was incomplete on account of non-consideration of all submissions of the Respondent submitted in reply to the Notice for investigation", the Authority finds that the Respondent had not reduced the base price commensurate with the benefit of ITC, post

introduction of GST. The Respondent continued to maintain the identical price for these shops. Hence, the above contention of the Respondent cannot be accepted.

ii. With respect to the contention of the Respondent that "DGAP's investigation Report was based on unrealistic assumptions" the Authority finds that as per the shop buyers list submitted by the Respondent, Sh. Sunil Kumar Dhupar booked shop no. G-20 on 27.10.2014 for Rs. 31,25,000/- and Smt. Janaki Tanja booked shop G-17 on 22.07.2019 at the same price as of G-20. Thus, it is found that the Respondent had not reduced the agreement price and therefore, the Respondent's claim that ITC benefit has been incorporated at agreement level is not corroborated with the data submitted by the Respondent. Hence, this contention of the Respondent is not acceptable.

iii. The Respondent vide his submission has argued that methodology used by the DGAP to calculate alleged profiteering is faulty, arbitrary and in variance with their own methodology previously used to investigate the Respondent's other residential project "Palm Wood Royale Gulmohar Green". In this regard, this Authority finds that in both cases the calculation of profiteering was done by way of comparing ratio of ITC to turnover available in pre-GST period and post-GST period. The area and turnover considered for calculating of ITC to turnover ratio pertaining to pre-GST period and post GST period was for the service recipient/flat/unit buyers to whom demands were raised during the particular period. Hence, there is no variation in the methodology adopted by DGAP for calculation of profiteering. Hence, the above contention of the Respondent is unacceptable.

iv. The Respondent vide his submissions has contended that the DGAP has not incorporated the ITC of VAT in the pre-GST period for the computation of profiteering which ought to have been done. He has further submitted before this Authority that the said ITC on VAT credit was Rs. 7,89,028/- for the period from April 2016 to June 2017 which has been allowed to him by the concerned statutory Authority, in support of which he has submitted VAT Assessment Orders for the period from April, 2016 to June, 2017. The Authority finds that the Assessment Orders for the period from April 2016 to June 2017 issued by the VAT Authorities in respect of the Respondent have never been placed before the DGAP during the course of the investigation for verification of authenticity and hence the same have not been incorporated in the computation of profiteered amount. The

Authority further finds that the No. 1512022 Page 19 of 22 DGAP Vs. Friends Land Developers Pvt. Ltd. ITC of VAT, as much as is allowed vide the said VAT Assessment Orders for the period from April 2016 to June 2017 shall be incorporated into the computation of profiteered amount by the DGAP subject to verification of the authenticity of the same. The Authority therefore directs the DGAP to ascertain the authenticity of the VAT Assessment Orders submitted by the Respondent for the period from April 2016 to June 2017 and if verified from the State GST Commissioner/Uttar Pradesh VA–I Department, the DGAP shall incorporate the amounts, as allowed by the concerned statutory Authority on assessment, in the computation of profiteered amount by including the same as ITC in the pre GST period and recalculate the profiteered amount and submit his Report to this Authority.

v. The Respondent vide his submissions dated 10.09.2020 and 18.05.2022 has argued that the DGAP has taken an arbitrary figure of ITC of GST Rs. 3,44,11,808/- instead of Rs. 59,31,808/- in the post GST period. In this regard the DGAP vide his Report dated 28.09.2020 has admitted that the figures had been re-examined and it was found that while initially calculating the profiteered amount, the figure of ITC was inadvertently taken erroneously by the DGAP as Rs. 3,44,11,808/- in place of 59,31,808/- . The Authority therefore, directs the DGAP to rectify the said error and incorporate the correct figure of Post-GST ITC to recalculate the profiteered amount based on the above rectification to the above extent.

Therefore, in the terms of the above findings, this Authority directs DGAP to carry out further verification/rectification strictly in line with the findings made in Para's 9(iv) and 9(v) of this Order. The DGAP is also directed to recalculate the profiteered amount in line with the para 9(iv) and 9(v) of this order and submit his report in term of Rule 133(2) (a) of CGST Rules, 2017.

28. <u>Alleged Profiteering by Dange Enterprises: NAA directs DGAP to reinvestigate</u>

Case Name: Director-General of Anti-Profiteering Vs Dange Enterprises (NAA)
Appeal Number: Case No. 11/2022
Date of Judgement/Order: 05/08/2022
Courts: National Anti-Profiteering Authority

Authority also find that after the closure of the hearing, Respondent vide his email dated 13.06.2022 has stated that he has agreed to submit the requisite data in the prescribed format as required by the DGAP for the entire period of investigation. In the given

situation, as narrated above, it would be prudent that last opportunity may be provided to the Respondent to provide complete information for the investigation period within one month of issue of this order, failing which, DGAP would calculate the amount of profiteering based on the information provided by the Respondent vide email dated 05.04.2022 and extrapolating the profiteered percentage of the limited period of information provided to the overall investigation period.

15. In view of the above said observation, the matter is remanded back to the DGAP to carry out further investigation in terms of Rule 133(4) with a direction that the investigation should be completed and a report should be sent to the Authority within three months. It is reiterated that if the Respondent does not provide relevant and complete information for the investigation period all means available under the provisions of the CGST Act, 2017 and rules made thereunder shall be utilized.

29. <u>GST on Agricultural manually hand operated Seed dressing, Coating & Treating drum</u>

Case Name: In re Adarsh Plant Protect Ltd (GST AAAR Gujarat)
Appeal Number: Advance Ruling No. GURGAAAR/APPEAL/2022/19
Date of Judgement/Order: 26/08/2022
Courts: AAAR AAR Gujarat Advance Rulings

What is the HSN and applicable tax on 'Agricultural manually hand operated Seed dressing, Coating and Treating drum'?

The main issue to be decided here is the classification of the product viz. "Agricultural manually hand operated Seed dressing, Coating and Treating drum" and to decide applicable rate of GST on the same.

From the explanatory notes to HSN 8436, which explains the scope of the entry, it is found that, other agricultural machinery includes Seed dusting machines consisting of a revolving drum in which the seeds are coated with insecticidal or fungicidal powders. The appellant has mentioned in their appeal, inter-alia, that their machinery is used to cover and coating of chemicals over seeds or grains before sowing to increase their germination and immunity against disease. Further the product in question is an agricultural machinery, and the same is a farm-type machinery. Thus there is thus no doubt that the product in question is covered under heading 8436. Moreover, heading 8437 specifically excludes 'farm-type machinery', further strengthening the classification of subject goods under heading 8436.

The appellant's product viz. manually hand operated seed dressing, coating and treating drum is covered within the description provided under the HSN Code 8436. The appellant's product in its use as well as its function is as described under the said HSN

code. Therefore, we find that the GAAR has correctly classified the product in question under Chapter Heading 8436 and tariff item 8436 80 90.

30. <u>'Power Sip' Flavored milk classifiable under CTH 22029930</u>

Case Name: In re Vadilal Industries Ltd (GST AAAR Gujarat)
Appeal Number: Advance Ruling No. GUJ/GAAAR/APPEAL/2022/18
Date of Judgement/Order: 26/08/2022
Courts: AAAR AAR Gujarat Advance Rulings

What would be the classification of 'Flavored Milk' sold under trade name of Power Sip?
The main issue here is to decide the classification of the product viz. flavored milk' sold under trade name of Power Sip, produced from standardization of fresh milk according to the fat contents and then heating at certain temperature followed by filtration, pasteurization and homogenization and then mixing of sugar and various flavors and finally bottling.
In the present case, as per the product labels submitted by appellant, the Milk constituent is 'Double Toned Milk' which are not 'Full Cream Milk' or 'Skimmed Milk' and therefore are undoubtedly excluded from the purview of Tariff Heading 0402. Therefore, irrespective of the contentions that the product remains 'Milk' even with added flavors, it is clearly established that the 'Milk' referred to in this Tariff heading and the products of the appellant are not the same and on this ground alone the products in hand are not covered under Tariff Heading 0402. (Referred definition of cream milk, skimmed milk, standardized milk and toned milk as per Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and explanatory note of Customs Tariff Heading 0402)
Furthermore, the relevant explanatory notes of CTH 0402 of the HSN clearly state that beverages consisting of milk flavored with cocoa or other substances is specifically excluded from this chapter heading.
A perusal of the tariff entries, and explanatory notes of the HSN indicates that beverages with a basis of milk and cocoa which are ready for consumption is covered under tariff item 2209 99 30 as beverage containing milk. Furthermore, on conjoint reading of Chapter heading 0402 and 2202 and relevant explanatory notes, it is clear that milk flavored with cocoa or other substances are specifically excluded from Chapter heading 0402 and included under Chapter heading 2202.

GAAR find that the National Dairy Development Board as seen on their web page https://www.nddb.coop/services/ppd/dairyproducts/beverages holds 'Flavored Milk' as a Dairy based Beverage.

NDDB is a nodal agency in the Dairy products and the 'Flavored Milk' is categorized as Beverage as can be seen above. Further, Beverage as per the Oxford dictionary definition is 'any type of drink except water'. Thus, it becomes evident that the product in hand is a Beverage containing milk, classifiable under tariff item 2202 99 30.

We find that in similar facts of case the Appellate Authority for Advance Ruling, Tamil Nadu, vide its Order in Appeal No. AAAR/16/2021 (AR) dated 30.06.2021 in the case of M/s. Britannia Industries Ltd., held that flavored milk is not classifiable under Tariff Heading 0402/0404 but classifiable under CTH 2202 99 30.

In view of the foregoing, we reject the appeal filed by appellant M/s Vadilal Industries Ltd and uphold the Advance Ruling No. GUR/GAAR/R/05/2021 dated 20.01.2021 of the Gujarat Authority for Advance Ruling.

31. **Flavoured Milk' classifiable under Tariff Item 22029930: AAAR Gujarat**

Case Name : In re Gujarat Co-operative Milk Marketing Federation Ltd (GST AAAR Gujarat)

Appeal Number: Advance Ruling No. GUJ/AAAR/APPEAL/2022/17

Date of Judgement/Order: 22/08/2022

Courts: AAAR AAR Gujarat Advance Rulings

What would be the classification of 'Flavored Milk'?

GAAAR find that in similar facts of case the Appellate Authority for Advance Ruling, Tamil Nadu, vide its Order in Appeal No. AAAR/16/2021 (AR) dated 30.06.2021 in the case of M/s. Britannia Industries Ltd., held that flavored milk is not classifiable under Tariff Heading 0402/0404 but classifiable under CTH 2202 99 30.

In view of the foregoing, GAAAR reject the appeal filed by appellant M/s. Gujarat Co-operative Milk Marketing Federation Ltd and uphold the Advance Ruling No. GUJ/GAAR/R/04/2021 dated 20.01.2021 of the Gujarat Authority for Advance Ruling.

32. Violation of principles of natural justice: AAAR remands matter back to AAR

Case Name: In re D M Net Technologies (GST AAAR Gujarat)

Appeal Number: Advance Ruling No. GUJ/GAAAR/APPEAL/2022/16

Date of Judgement/Order: 22/08/2022

Courts: AAAR AAR Gujarat Advance Rulings

Whether the services provided by the applicant in affiliation to/partnered with Gujarat

University and providing education for degree courses to students under specific curriculum as approved by the Gujarat University, for which degrees are awarded by the Gujarat University are exempt from GST vide Entry No.66 of the Notification No.12/2017-Central Tax (Rate) dated 28th June 2017?

AAAR finds that the appellant for the first time has raised additional plea before this appellate authority that their services are exempted as they are also covered by Entry No.3 of Notification No.12/2017-Central Tax dated 28.06.2017. This plea has been raised for the first time before this authority and the same was never raised before the GAAR.

From the above we find that the issues mentioned above need to be re-examined at the level of GAAR, in view of the fact that it appears that the principles of natural justice have not been followed.

In this regard we would also like to rely upon the order of the Principal Bench of CESTAT, New Delhi in the case of Commissioner of Central Excise, Meerut-II Vs. Honda Seil Power Products Ltd. [2013(287) ELT 353 (Tri. -Del.)].

The tribunal in the above referred case had held that "There may be circumstances where only just and proper order- could be remand of the matter for fresh adjudication. For example, if the order-in-original is passed without giving opportunity of being heard to the assesse or without permitting him to adduce evidence in support of his case then only order-in-appeal by the Commissioner (Appeals) could be to set aside the impugned order on the ground of failure of justice. This would create an anomaly and cause prejudice to the Revenue as it would bring an end to the litigation without adjudicating on the demand raised by the show cause notice. Therefore, only just and proper order in such a case would be the order of remand to adjudicate the matter de novo after giving due hearing to the assesse. Thus, we are of the view that power to remand the matter back in appropriate cases is inbuilt in Section 35A (3) of the Central Excise Act, 1944."

In view of the above discussion we find it fit to remand the matter to the Authority for Advance Ruling i.e. the GAAR in the present case for fresh decision. The GAAR will take into consideration all aspects of the matter and decide the case afresh after affording adequate opportunity of hearing to the appellant.

33. <u>GST on fabrication & mounting of Tanker & Tripper on chasis</u>

Case Name: In re Hasmukhlal Jivanlal Patel (GST AAR Gujarat)
Appeal Number: Advance Ruling No. GUJ/GAAR/R/2022/40
Date of Judgement/Order: 10/08/2022
Courts: AAR Gujarat Advance Rulings

Q1. Whether the activity of fabricating and mounting Tankers, Tippers, etc. on the

chassis provided by the owner of such chassis i.e. bus body building would be covered under the category of Supply of Services?

A1. In cases where the chassis is provided/supplied by an unregistered principal to the applicant for carrying out the fabrication and mounting work on the chasis owned by them, such activity is covered under the description "Manufacturing services on physical inputs (goods) owned by others" as appearing at Sr. No. 26(iv) of Notification No. 11/2017 Central Tax (Rate) as amended vide Notification No. 20/2019- Central Tax (Rate) and the applicable rate would be 18%.

We find that the above position has also been clarified under Circular No. 126/45/2019-GST dated 22.11.2019 and the relevant text of the clarification is as follows:

> In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. Entry at item (id) covers only job work services as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.

The above clarification clearly shows that the activity of manufacturing services on physical inputs owned by others would be classifiable under 'Job-work' services in case the goods are received from Registered person and 'Other Manufacturing Services' in case the goods are received from Unregistered person.

In view of above Activity of fabrication and mounting of Tanker and Tripper on the chasis supplied and owned by the principal is supply of Service

18% GST payable on fabrication & mounting of Tanker and Tripper on chasis supplied and owned by principal

Q2. If yes, the applicable accounting code of such services as per the Scheme of Classification of Services and the applicable rate of GST thereon?

A2. Supply of Service merits classification 998882 'Other transport equipment manufacturing services' and Tax Rate is 18% in both the cases (i) Chasis supplied by GST Registered person (ii) Chasis supplied by un-registered person i.e. not having GSTIN.

34. <u>ITC eligible on receipt of direct services from same line of business</u>

Case Name: Varunbhai Satyendrakumar Panchal (Legal name), Varun Travels (Trade Name) (GST AAR Gujarat)

Appeal Number: Advance Ruling No. GUJ/GAAR/R/2022/39

Date of Judgement/Order: 10/08/2022
Courts: AAR Gujarat Advance Rulings

Q1. Whether the A.C. car hiring services for Covid-19 third wave, for Emergency and for other important matter received by the Local Authority, Ahmedabad Municipal corporation as stated in the work order No. 445/1 dated 01-11-21 falls under Sr. No. 6 (Public Health) of Twelfth schedule of article 243W of the constitution?

A1. Service of Renting of Motor Vehicle to the Ahmedabad Municipal Corporation (AMC) does not fall under Sr. no. 6 (Public Health) of Twelfth schedule of article 243W of the constitution

Q2. Whether Services provided to Ahmedabad Municipal Corporation vide their work order No.445/1 dated 01-11-21 falls under exempted category of services as stated in Sr. No. 3 of Notification No.12/2017 (Central Tax Rate) dated 28th June 2017, chapter 99 "Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to Government, a local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or to any function entrusted to a Municipality under Article 243W of the Constitution is exempted services?"

A2. The service of Renting of Motor Vehicle to the AMC does not cover under entry No. 3 of Not. No. 12/2017-CT (R)

AAR cannot give ruling on documents to be maintained for claiming GST exemption or ITC

Q3. What kind of documentary evidences or declarations should be collected other than the work order and tender documents from the service recipient, Ahmedabad Municipal Corporation to ensure that the cars are exclusively used for the public health purpose as stated in Sr. No.6 of Twelfth Schedule of Article 243W of the constitution?

A3. Question No. 3 does not cover under the questions (a) to (g) of Section 97 (2) of CGST Act on which this Authority can pronounce the Ruling. Thus, to give Ruling on question No. 3 is out of the jurisdiction of this Authority and is not maintainable. Input Tax Credit on receipt of the direct services from the same line of business

Q4. Whether service provider Varun Travels is entitled to claim Input Tax Credit on receipt of the direct services from the same line of business for rendering the Car Hire services to Ahmedabad Municipal Corporation as per work order No.445/1 dated 01-11-21?

A4. ITC shall be available on the input services used for making an outward taxable supply of the same line of business. Thus the applicant is eligible to avail the Input Tax Credit on receipt of the service from the same line of business entity subject to the condition prescribed under Notification No. 11/2017-CT (Rate).

Q5. Whether Direct input services of the same line of business received by the service provider to render the above services as stated in work order No.445/1 dated 01-11-21 issued by Ahmedabad Municipal Corporation is also exempt?

A5. The applicant in the application has not elaborated the details of the transaction and type of supply with regard to the question No. 5 of the Ruling. The applicant in the question have asked whether Direct input services of the same line of business received by the 'service provider' to render the above services as stated in work order No.445/1 dated 01-11-21 issued by Ahmedabad Municipal Corporation is also exempt. From this question it is forthcoming that the applicant wants ruling on the supply of AC Motor Vehicle by same line of taxable person to the applicant to fulfill the requirement of Contract received by the applicant. It means, the question of levy of GST is in relation to supply of Motor Vehicle by the third party to the applicant and supplier of service is third party not the applicant himself. In the instant transaction the applicant is recipient of the service and as per Section 95 of CGST Act this Authority can pronounce ruling in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. The ruling pronounce by this Authority will be binding on the applicant as per Section 103 of CGST Act who sought the ruling. Thus, this question is not maintainable in view of the above discussion.

35. GST on Canteen Service charges of employees or contractual workers

Case Name: In re Troikaa Pharmaceuticals Limited (GST AAR Gujarat)
Appeal Number: Advance Ruling No. GUJ/GAAR/R/2022/38
Date of Judgement/Order: 10/08/2022
Courts: AAR Gujarat Advance Rulings

Q1. Whether GST shall be applicable on the amount recovered by the company, Troikaa Pharmaceuticals Limited, from employees or contractual workers, when provision of third-party canteen service is obligatory under section 46 of the Factories Act, 1948?

Q2. Whether input tax credit of GST paid on food bill of the Canteen Service Provider shall be available, since providing this canteen facility is mandatory as per the Section 46 of the Factories Act, 1948?

Held by AAR

1. GST, at the hands of M/s Troikaa, is not leviable on the amount representing the employees portion of canteen charges, which is collected by M/s Troikaa and paid to the Canteen service provider.

2. GST, at the hands of M/s Troikaa, is leviable on the amount representing the contractual worker portion of canteen charges, which is collected by M/s Troikaa and paid to the Canteen service provider.

3. ITC on GST paid on canteen facility is admissible to M/s Troikaa under Section 17 (5)(b) of CGST Act on the food supplied to employees of the company subject to the condition that burden of GST have not been passed on to the employees of the company.

4. ITC on GST paid on canteen facility is not admissible to M/s Troikaa under Section 17 (5)(b) of CGST Act on the food supplied to contractual worker supplied by labour contractor.

36. <u>GST on milling of food grains into flour for Public Distribution by Govt</u>

Case Name: In re Shiv Flour Mill (GST AAAR West Bengal)
Appeal Number: Order No. 02/WB AAAR/APPEAL/2022
Date of Judgement/Order: 22/08/2022
Courts: AAAR AAR West Bengal Advance Rulings

Whether the supply of service provided by the applicant to Food & Supplies Department, Govt. of West Bengal by way of milling of food grains into flour for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and what shall be rate of GST on such milling, if it does not fall under entry No. 3A?

The WBAAR, in its advance ruling dated 31.12.2021, has observed that the instant supply is a composite supply. The WBAAR has also observed that the instant composite supply undisputedly fulfils criteria (i) and (ii) in Para 7 above. Now, it has been observed that the value of goods in the instant composite supply is lesser than 25% of the total supply value. So the instant composite supply fulfils all the three criteria for qualifying for exemption under entry no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1136 FT dated 28.06.2017) as listed in para 7 above. In view of above discussion, we rule that in the instant case the supply of fortified whole meal flour to the Food & Supplies Department, Government of West Bengal will fall under entry no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1136 FT dated 28.06.2017) and exempt from taxation.

37. <u>GST on supply of fortified whole meal flour to Food & Supplies Department</u>

Case Name: In re Maa Laxmi Enterprise (GST AAAR West Bengal)
Appeal Number: Order No. 01/WB AAAR/APPEAL/2022
Date of Judgement/Order: 22/08/2022

Courts: AAAR AAR West Bengal Advance Rulings

Whether the supply of service provided by the applicant to Food & Supplies Department, Govt. of West Bengal by way of milling of food grains into flour for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and what shall be rate of GST on such milling, if it does not fall under entry No. 3A?

AAAR rule that in the instant case the supply of fortified whole meal flour to the Food & Supplies Department, Government of West Bengal will fall under entry no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1136 FT dated 28.06.2017) and exempt from taxation.

Judgements

1. **Rajasthan High Court Stays recovery of GST on Royalty**

   Case Name: Thekedar Vishnu Kumar Vs Union of India (Rajasthan High Court)

   Appeal Number: D.B. Civil Writ Petition No. 11423/2022

Date of Judgement/Order: 02/08/2022
Courts: Rajasthan High Court

Stay on the recovery of GST on Royalty- HC directed that the proposed recovery of GST on royalty shall remain stayed qua the petitioners. However, the respondents shall be at liberty to continue with the proceedings which have been initiated under the impugned notices.

2. **GST: Bail granted as trial likely to take its own time to conclude**

Case Name : Nileshbhai Natubhai Patel Vs State of Gujarat (Gujarat High Court)
Appeal Number: R/Criminal Misc. Application No. 11390 of 2022
Date of Judgement/Order: 05/08/2022
Courts: Gujarat High Court

Held that the present application is allowed and bail is granted after taking into consideration the maximum punishment and provisions of compounding the offences and also that trial will take its own time to conclude

Facts-

The applicant, Director of M/s. Madhav Copper Limited, filed a petition u/s. 439 of the Code of Criminal Procedure for regular bail. The applicant was arrested on 23.02.2022 by the Assistant Commissioner in connection with the alleged offences punishable u/s. 132(1)(c) by exercising powers u/s. 69 of GGST Act, 2017.

The registration of 39 suppliers of M/s. Madhav Copper Limited has been cancelled ab initio on the ground that those registered dealers were fictitious entities. Hence, the Input Tax Credit (ITC) availed from these registered dealers were not available to M/s. Madhav Copper Limited. On completion of the investigation, the respondent No.3 – Assistant Commissioner of State Tax-4, Enforcement Division – 2 filed a Criminal Complaint No.40504 of 2022 for the offences punishable under Section 132(1)(c) of the GGST Act, 2017 and CGST Act, 2017 read with Section 120B of the Indian Penal Code against the applicant and M/s. Madhav Copper Limited.

Conclusion-

Section 138 of the Act makes provision for compounding of offences under the Act, even after the institution of prosecution, on payment by the person accused of the offence, such compounding amount in such manner as may be prescribed. The compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences, on payment of compounding amount as may be determined by the commissioner, the criminal proceeding already initiated in respect of the said offence shall stand abated. According to the applicant, the purchases have been made by tax

invoices and E-Way Bills upon payment of applicable GST while dealing with the dealers having valid GSTIN. Taking into consideration the maximum punishment for the alleged offence and the provisions of compounding the offences, this Court deems it just and proper to exercise discretion is exercised in favour of the applicant, as trial will take its own time to conclude. Hence, the present application is allowed. The applicant is ordered to be released on regular bail after execution of a personal bond of Rs. 2,00,000 with one surety of the like amount to the satisfaction of the trial Court and subject to other specified conditions.

3. **HC imposed cost of Rs. 50000 for arbitrary GST registration cancellation**

Case Name: Drs Wood Products Vs State of U.P. (Allahabad High Court)
Appeal Number: Writ - C No. - 21692 of 2021
Date of Judgement/Order: 05/08/2022
Courts: Allahabad High Court

In the present case, the arbitrary exercise of power cancelling the GST registration in the manner in which it has been done has not only adversely affected the petitioner, but has also adversely affected the revenues that could have flown to the coffers of GST in case the petitioner was permitted to carry out the commercial activities. The actions are clearly not in consonance with the ease of doing business, which is being promoted at all levels. For the manner in which the petitioner has been harassed since 20.05.2020, the State Government is liable to pay a cost of Rs. 50,000/- to the petitioner. The said cost of Rs. 50,000/- shall be paid to the petitioner within a period of two months, failing with the petitioner shall be entitled to file a contempt petition.

4. **HC allows refiling of Appeal with Appellate Authority which was dismissed for non-filing of certified copy of order**

Case Name: Debabrata Santra Vs Assistant Commissioner of Revenue (Calcutta High Court)
Appeal Number: WPA 17055 of 2022
Date of Judgement/Order: 16/08/2022
Courts: Calcutta High Court

Calcutta High Court allows refiling of Appeal with Appellate Authority which was dismissed for non-filing of certified copy of order

5. **Robinson and purity Barley taxable under residual entry at 12%**

Case Name : Reckitt Benckiser (India) Ltd. Vs State of Odisha (Orissa High Court)
Appeal Number: TREV No. 176 of 2001

Date of Judgement/Order: 12/08/2022
Courts: Orissa High Court
Held that distinct commercial product Robinson Barley and Purity Barley cannot be classified as cereal. Hence taxable under residual entry @12% under Orissa Sales Tax Act, 1947.

Facts-

The main issue involved in the matter is that Robinson Barley and Purity Barley manufactured by the petitioner should be subjected to sales tax under Orissa Sales Tax Act, 1947 under entry meant for cereals covered under Entry 16 List C @4% or under the residual entry at 12%.

Conclusion-

In the present case, there can be no doubt that in trade parlance 'Robinson Barley and Purity Barley' would not be simply understood as 'barley'. In other words, they are identifiable, distinct, commercial products different from ordinary 'barley'. The distinct commercial product 'Robinson Barley' cannot, as pointed out in Satyanarayan Bhandar be classified as 'cereal' which is taxable @4% and has to be brought under the residual entry taxable @ 12%.

Held that Robinson Barley and Purity Barley manufactured by the Petitioner should be taxed under the residual Entry 189 of List C of the Rate Chart appended to the OST Act and not Entry 25 relating to 'cereals'.

6. **<u>State not Obliged to indicate HSN Code & GST Rates in Public Tender: SC</u>**

Case Name : Union of India & Others Vs Bharat Forge Ltd. (Supreme Court of India)
Appeal Number: SLP(C) No. 4960 of 2021
Date of Judgement/Order: 16/08/2022
Courts: Supreme Court of India

It is contended by the appellants that as far as the tenders relied upon by the writ petitioner produced in the counter affidavit as having been brought out wherein the HSN code is indicated, they are tenders issued by the other units of the Indian Railways. Since the first appellant is the Union of India, we would expect that if it is otherwise permissible to sustain the impugned judgment, it may not be fair to not have a uniform policy in the matter of award of largesse by the various units under it. However, the appellants do point out that even in the tenders which have been brought out, the HSN Code mentioned in the tender is shown as indicative only. It has been provided in the tenders relied upon by the writ petitioner that it will be the responsibility of the bidder to quote the correct HSN Code and the corresponding GST rate while submitting the offer. We may notice the relevant clause:

"A. 1. HSN number mentioned in tender 8504 is indicative only. It will be responsibility of the bidders to quote correct HSN number and corresponding GST rate while submitting offer.

2. Even if bidders quote different GST rates in offers, the offers shall be evaluated by IREP3 system based on the GST rate as quoted by each bidder and same will be used for determining the inter se ranking. Bidders may note that

I. It shall be the responsibility of the bidder to ensure that they quote correct GST code and HSN number.

II. Purchaser shall not be responsible for any misclassification of HSN number or incorrect GST rate if quoted by the bidder.

III. Wherever the successful bidder invoices the goods GST rate of HSN number which is different from that incorporated in the purchase order, payment shall be made as per GST rate which is lower of the GST rate incorporated in the purchase order or billed.

IV. Any amendment to GST rate or HSN number in the contract shall be as per the contractual conditions and statutory amendments in the quoted GST rate and HSN number, under SVC.

B. Are you eligible for availing benefits and preferential treatment extended to Micro and Small Enterprises (MSEs)? If so, the necessary documents as per special conditions for MSEs for claiming benefits and preferential treatment extended to MSEs to be attached.

C. In case the successful tenderer is not liable to be registered under CGST/ IGST/ UTGST/ SGST Act, the railway shall deduct the applicable GST from his/their bills under Reverse Charge Mechanism (RCM) and deposit the same to the concerned tax authority.

D. Performance statement of orders received and supplies made for last three years for subject item is must for all tenderers including approved sources."

Having regard to the terms, we cannot cull out a public duty to provide for the correct HSN code. Therefore, we cannot support the impugned judgment based on the issuance of tenders as contended.

7. <u>Imposition of penalty/ tax for failure to re-validate e-way bill without finding of evasion is unjustified</u>

Case Name: Sanskruthi Motors Vs Joint Commissioner (Kerala High Court)
Appeal Number: WP(C) No. 17223 of 2022
Date of Judgement/Order: 17/08/2022
Courts: Kerala High Court

Held that the officer was duty bound to consider the explanation offered by the petitioner for the expiry of the e-way bill. Hence, imposition of penalty/ tax on allegation that there was ample time to revalidate the e-way bill not justified as there was no finding of any attempt to evade tax.

Facts-

The petitioner is in the business of transportation of goods. It has an agreement with M/s. Tata Motors Limited for the transportation of commercial and passenger vehicles and chassis, which are driven to various destinations as required by that company. The petitioner, at the request of M/s. Tata Motors Limited, transported a new tipper lorry (the goods) from Tamil Nadu to Kozhikode, Kerala. The vehicle was intercepted and detained by the Assistant State Tax Officer of the Kerala GST Department, and a show cause notice was issued on 9.7.2019 at 12.20 p.m. It was found that the e-way bill had expired on 8.7.2019.

Since the vehicle was detained, the petitioner moved to the High Court, and the lorry was directed to be released on the production of a bank guarantee. Following the directions of the Court, the notice was adjudicated and Ext. P3 order was issued on 16.8.2019, imposing a penalty on the petitioner along with a demand for IGST. The petitioner preferred Ext. P4 appeal against Ext. P3 order under Section 107 of the CGST/SGST Acts.

Conclusion-

Division bench in the case of Satyam Shivam has held that the officer was duty bound to consider the explanation offered by the petitioner for the expiry of the e-way bill. In Ext P.3 (the impugned order), the explanation offered by the petitioner has been rejected, stating that no evidence of repair being carried out has been produced. The further justification for imposing a penalty/tax is that the petitioner had ample time to revalidate the E-way bill. There is no finding in Ext P.3 that there was any attempt to evade tax.

8. Sale of medicine in hospital services was not taxable separately if it was part of composite healthcare service

Case Name: Assistant Commissioner Vs Kota Eye Hospital and Research Foundation (Rajasthan High Court)

Appeal Number: D.B. Sales Tax Revision / Reference No. 139/2019

Date of Judgement/Order: 25/08/2022

Courts : Rajasthan High Court

Conclusion: In case of rendering of health care/medical services and not supply of goods, the value recovered by the hospitals towards the cost of medicines, implants, stents, lenses and various other charges towards room rent, supply of food could not be classifiable as sale or supply of goods but the transaction would be of service on account of Predominant Test/ Aspect Doctrine.

Held: The case of the Revenue was that the respondents-clinical establishments/hospitals/nursing homes purchased the medical implants like stents, eye-lenses, pharmacy and surgical items after payment of tax/VAT from dealers and utilized the same during the course of medical treatment of patients in-house and as the same constituted transfer of goods in terms of Section 2(35) of the RVAT Act, 2003. The same also amounted to sale in terms of Section 2(11) of the RVAT Act, 2003 and as they were selling the same for consideration, they qualified to be a dealer and alternatively, by virtue of Section 2(44) of the RVAT Act, 2003, as they carry out work of installation, the same amounted to “works contract”. It was noted that the respondents were

running health care services wherein the patients were categorized primarily in two categories; out patients and "in-patients" for administrative convenience. The out patients were those who visited a hospital for routine checkups or clinical visits. In-patients were those who were admitted in the hospital for the required treatment. The hospital was expected to provide not only primary services of medical treatment to in-patients but also to provide lodging, nursing care, supply of medicines, food and operational/ procedural treatment under the supervision of Doctor until discharge. There were bundle of services embodied to the primary services of medical treatment. The primary service without any doubt was of medical treatment but there were ancillary and incidental services of lodging, care, medicine, supply of food, implant of surgical items, installation of lenses, stents etc. Hence, the medicines, implants, room provided on rent used in the course of providing health care services/medical treatment to the patients admitted for diagnosis for treatment in the hospital or clinical establishment were undoubtedly naturally bundled in the main services of medical treatment and it was a composite supply to facilitate health care services. Whereas the out-patient pharmacy attached to the hospital provided drugs/medicines etc., upon valid prescription to outpatients and outside customers and receives consideration. No service of medical treatment was rendered and the dominant nature of the said transaction was sale of medicine. As far as out-patients were concerned, there was no control over its continuous treatment. The patient had absolute freedom to follow or not follow the prescription or to purchase the medicine from the hospitals' drug store or from outside. The services in such cases were advisory in nature. If the drug store/ hospital sold the medicine, it was an isolated transaction and not a composite supply of health care service and was therefore, not covered under the ambit of health care services.

9. **GST recovery without issue of Section 74(9) Order – HC directs dept to issue SCN**

Case Name : Prasanna Kumar Thakkar Vs Directorate General of Goods and Services Tax Intelligence (Calcutta High Court)
Appeal Number : M.A.T. No.677 of 2022
Date of Judgement/Order: 11/08/2022
Courts: All High Courts (8903) Calcutta High Court (408)

1. The appellant has already put in the deficit court fees vide filing no. A-14993 in the department. In view thereof, the defect, as pointed out by the Additional Stamp Reporter stands removed.
2. This intra-Court appeal is directed against the order dated 16th November, 2021 passed in W.P.A. No.1474 of 2021. By the said order, the prayers sought for by the appellant/writ petitioner for grant of an interim order pending disposal of the writ petition has been negated.
3. We have elaborately heard the learned Advocates appearing for the parties. The learned Advocate appearing for the appellant would submit that the writ petition itself can be disposed of by this Court and the appellant / writ petitioner does not for the time being press the prayer (a) in the writ petition, which is for issuance of a writ of declaration

that the provisions of Section 16(2)(c) and 16(2)(d) of the Goods and Services Tax Act, 2017 is unconstitutional, irrational and arbitrary. The said submission is placed on record and the said prayer for declaration stands struck off.

4. The appellant is aggrieved by the action of the respondents in allegedly recovering tax without issuance of any order under Section 74(9) of the Central Goods and Services Tax Act, 2017. The appellant would further contend that without intimating the appellant the reason, the input tax credit ledger has been blocked. Therefore, it is submitted that the action initiated by the respondent department is arbitrary, unreasonable and against the provisions of the Act.

5. The learned standing counsel appearing for the respondent department, on the other hand, would submit that during the course of investigation, it is the appellant, who had voluntarily come forward to deposit a sum of Rs.40 lakhs and the appellant cannot be heard to say that it is the department, which has effected such recovery. Further, the learned standing counsel, on instruction, submitted that the department is in the process of issuing show cause notice and the same would be shortly issued.

6. Considering the above facts and circumstances, we are of the view that this appeal and the writ petition can be disposed of with the following directions: - (i) The respondent / department is directed to issue show cause notice to the appellant within 15 days from the date of receipt of the server copy of this order granting not less than 10 days from the date of receipt of the show cause notice to submit a reply by the appellant. It is thereafter the show cause notice shall be adjudicated and a speaking order be passed on merits and in accordance with law. (ii) Till the aforementioned exercise is completed, the respondent / department is directed not to initiate any coercive action against the appellant. (iii) With regard to the submission that the appellant's input tax credit ledger has been blocked, the same is an independent issue and cannot be considered in this writ petition. However, liberty is granted to the appellant to work out his remedies in accordance with law on the said issue.

7. The appeal along the connected application as well as the writ petition are disposed of.

8. No costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

10. **<u>Goods/Vehicle cannot be Detained without Opportunity of Defending to Person Transporting</u>**

Case Name : AMI Enterprises Pvt. Ltd. Vs Union of India (Jharkhand High Court)

Appeal Number: W.P. (T) No. 2312 of 2022

Date of Judgement/Order: 10/08/2022

Courts: Jharkhand High Court

A bare perusal of the provisions of Section 129 shows that no goods or conveyance shall

be detained or seized without serving an order of detention or seizure on the person transporting the goods on the allegation of making transit in contravention of the provisions of the Act or Rule made thereunder. Sub-section (3) indicates that the proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1). Sub-section (6) provides that where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty. Apparently, the proceedings have been initiated on the same date and concluded also on the same date. Though, learned counsel for the respondent has stated that the proceedings were expedited at the instance of the tax payer on the same date, but there is nothing to substantiate such contention. The impugned adjudication order and the appellate order therefore both suffer from procedural infirmities and lack of proper opportunity to the petitioner or the person transporting to defend himself. As such, the impugned order dated 20th September, 2021 (Annexure-6) issued in Form GST MOV-09 and the appellate order dated 17th February, 2022 (Annexure-9) are set aside.

11. **Ex-parte Order are violative of principles of natural justice**

Case Name: G. Power Solution Vs State of Bihar (Patna High Court)
Appeal Number: Civil Writ Jurisdiction Case No.11384 of 2022
Date of Judgement/Order: 17/08/2022
Courts: Patna High Court

The Hon'ble High Court, Patna in the matter of M/s G. Power Solution V. State of Bihar [Civil Writ Jurisdiction Case No. 11384 of 2022 dated August 17, 2022] set aside the order passed by the revenue department for denying Input Tax Credit ("ITC"), raising demand, and direction given for freezing the bank account on the ground that the orders are in violation of principles of natural justice and was ex-parte in nature.
Facts:

M/s G. Power Solutions ("the Petitioner") has prayed for quashing the following orders:

- Order dated March 21, 2020 ("the Impugned order") passed by the Revenue Department ("the Respondent") under Section 73(9) of the Bihar Goods and Services Tax Act, 2017 whereby the ITC claimed by the Petitioner was denied for having been claimed after the expiry of due date.
- The consequential demand raised for INR 20,16,316 in Form GST DRC-07.

- The notice issued to a third person in Form GST DRC-13, issued by the Respondent to the banks wherein the direction was issued to freeze all the bank account of the Petitioner and his firm without even informing to the Petitioner. The Petitioner contented that the order appears to be ex-parte in nature.

Issue:

- Whether the prayers made by the Petitioner for quashing the above orders be considered?

Held:

The Hon'ble High Court, Patna in Civil Writ Jurisdiction Case No.11384 of 2022 dated August 17, 2022 has held as under:

- The order is bad in law for two reasons- (a) violation of principles of natural justice i.e. no sufficient time was afforded to the Petitioner to represent his case; (b) order passed ex-parte in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the Petitioner.
- Set aside and quashed the Impugned order; Summary of the order in Form GST DRC-07 and the notice to a third person in Form GST DRC-13, issued by the Respondent.
- The Petitioner undertakes to deposit 20% of the amount of the demand raised before the Assessing Officer within four weeks and such deposit shall be without prejudice to the rights and contention of the parties.
- Stated that, the amount deposited in excess by the Petitioner shall be refunded within two months from the date of passing the order.
- Directed for de-freezing of the bank accounts of the Petitioner, if attached in reference to the proceedings.
- The Assessing Authority shall decide the case on merits after complying with the principles of natural justice and opportunity of hearing shall be afforded to the parties and place on record all the essential documents.
- The Petitioner undertakes to fully cooperate in such proceedings and not take unnecessary adjournment and liberty shall be reserved to the Petitioner to challenge the order, if required and desired.

12. **<u>One-line order dismissing appeal for delay in submission is invalid</u>**

Case Name: Usha Gupta Vs Assistant Commissioner of State Tax (Calcutta High Court)
Appeal Number: WPA 17530 of 2022
Date of Judgement/Order: 10/08/2022
Courts: Calcutta High Court

The Hon'ble Calcutta High Court in the matter of M/s Usha Gupta v. The Assistant Commissioner of State Tax [WPA 17530 OF 2022 dated August 10, 2022] has set aside the order and remanded the matter back to the revenue department on the ground that the order passed against the

assesse is one-line order dismissing the appeal of the assesse on the ground of delay in submission without even supporting detailed reasons.

Facts:

M/s Usha Gupta ("the Petitioner") has challenged the order dated July 28, 2022 ("the Impugned order") passed by the revenue department ("the Respondent") on the ground that the adjudication summary does not contain any reason and specific allegation and no full text of the order along with summary order was furnished to the Petitioner at any point of time and also the Impugned order of the Respondent is a one-line order dismissing the appeal of the Petitioner on the ground of delay in submission of the appeal in question.

Petitioner's Contention:

- In support of its contention of delay in filing the appeal, the summary order came to the knowledge of the Petitioner, only when its bank account was debited.
- The delay in filing the appeal in question, it was submitted that it is protected by the order of the Supreme Court on major part of the delay which occurred during the Covid-19.

Issue:

- Whether the one- line Impugned order passed by the Respondent dismissing the appeal of the Petitioner on the ground of delay in submission was valid?

Held:

The Hon'ble Calcutta High Court in [WPA 17530 OF 2022 dated August 10, 2022] has held as under:

- The summary order is one-line order without containing any detailed supporting reason and that the order of the Respondent is also one-line order dismissing the appeal of the Petitioner on the ground of delay in filing the appeal without going into the merit of the appeal.
- Dispose of this writ petition by setting aside the Impugned order and remanding the matter back to the Respondent concerned to pass a fresh speaking order in accordance with law on merit of the said appeal without insisting on the issue of limitation, within a period of eight weeks from the date of communication of this order without granting any unnecessary adjournment to the Petitioner.
- It is needless to mention that at the time of disposal of the appeal in question, the Petitioner or its authorized representative shall be given opportunity of personal hearing. Further the Petitioner is granted by the liberty to make appropriate application in accordance with law for refund of the amount which has been collected in excess of the pre-deposit, before the authority concerned which shall be considered by them in accordance with law.

13. **Summary of SCN in GST DRC-01 cannot Substitute Proper SCN requirement**

Case Name: Roushan Kumar Chouhan Vs Commissioner of State Tax (Jharkhand High Court)

Appeal Number: W.P.(T) No. 1849 of 2022

Date of Judgement/Order: 03/08/2022

Courts: Jharkhand High Court

Summary of Show Cause Notice in Form GST DRC-01 cannot substitute the requirement

of a proper show cause notice under section 73(1) of the CGST Act, 2017? [Ref: Roushan Kumar Chouhan vs. Commissioner of State, Jharkhand & Ors in writ petition (T) No. 1849 of 2022, dated 03.08.2022]

In the matter of Roushan Kumar Chouhan vs. Commissioner of State, Jharkhand & Ors in writ petition (T) No. 1849 of 2022, dated 03.08.2022, the Hon'ble High Court of Jharkhand has quashed the impugned show cause notice dated 28.08.2020 for the period April, 2018 to March, 2019 and summary of show cause notice in Form GST DRC-01 dated 28.08.2020 and summary of orders contained in Form GST DRC-07 dated 12.12.2020. However, liberty was given to respondent to initiate fresh proceeding for the alleged contravention for the said tax period after issuance of proper show cause notice in accordance with law. These proceedings were initiated allegedly on account of a mismatch in GSTR-3B and GSTR-2A for the period in question and that the petitioners have taken undue ITC to which they were not entitled. Petitioners have also taken a plea that Summary of the Order contained in Form GST DRC-07 imposes 100% penalty which is impermissible under the provisions of Section 73(9) of the Act of 2017. 100% penalty can only be levied in a proceeding under section 74 (9) of the Act of 2017. No adjudication order has been uploaded. It is further submitted by petitioner that proceedings suffer from serious violation of principles of natural justices and the procedure prescribed in law. Therefore, the impugned show cause notices and the Summary of the Orders be quashed and the matters be remanded.

The Hon'ble High Court of Jharkhand considered the submissions of learned counsel for the parties and taken note of the materials on record. The Court held that notices under section 73(1) of the Act of 2017 of the respective writ petition is in the standard format and neither any particulars have been struck off, nor specific contravention has been indicated to enable the petitioner to furnish a proper reply to defend itself. The show-cause notices can therefore, be termed as vague.

This Court has, in the case of M/S. NKAS SERVICES PRIVATE LIMITED VS STATE OF JHARKHAND AND OTHERS IN W.P (T) 2659/2021 dated 09.02.2022 categorically held that summary of show cause notice in Form GST DRC-01 cannot substitute the requirement of a proper show cause notice under section 73(1) of the Act of 2017. It seems that the authorities have, after issuance of show-cause notice dated 28.08.2020 and Summary of show cause notices contained in GST DRC-01 of the same date, proceeded to issue Summary of the Order dated 12.12.2020. Respondents have also not brought on record any adjudication order. In this regard, the opinion of this Court rendered in the case of M/s NKAS SERVICES PRIVATE LIMITED Versus State of Jharkhand and others in W.P (T) 2659/2021 at paragraph-14 to 16 are profitably quoted hereunder:

> "14. We find that the show cause notice is completely silent on the violation or contravention alleged to have been done by the petitioner regarding which he has to defend himself. The summary of show cause notice at annexure-2 though cannot be a substitute to a show cause notice, also fails to describe the necessary

facts which could give an inkling as to the contravention done by the petitioner. As noted herein above, the brief facts of the case do not disclose as to which work contract, services were completed or partly completed by the petitioner regarding which he had not reflected his liability in the filed return as per GSTR-3B for the period in question. It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per section 75(7) of the JGST Act.

15 Learned counsel for the petitioner has relying upon the case of Bharti Airtel Ltd. (supra) and contended that the Apex Court has observed that the common portal of GSTN is only a facilitator. The format GST DRC-01 or 01A are prescribed format on the online portal to follow up the proceedings being undertaken against an assessed. They themselves cannot substitute the ingredient of a proper show cause notice. If the show cause notice does not specify a ground, the Revenue cannot be allowed to raise a fresh plea at the time of adjudication, as has been held by the Apex Court in a matter arising under Central Excise Act in the case of Shital International (supra) at para 19, extracted herein below:

> "19. As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show-cause notice, the Revenue cannot be permitted to build up a new case against the assesse. (See Comr. of Customs v. Toyo Engg. India Ltd., CCE v. Ballarpur Industries Ltd. and CCE v. Champdany Industries Ltd.) Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show cause notice dated 22-6-2001 relating to Assessment Years 1988-1989 to 2000-2001. However, in the show-cause notice dated 12-12-2000, the process of electrifying polish finds a brief mention. Therefore, in the light of the settled legal position, the plea of the learned counsel for the Revenue in that behalf cannot be entertained as the Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show-cause notice nor can it be allowed to take contradictory stands in relation to the same assesse."

In a notice under Section 74 of the JGST Act, the necessary ingredients relating to fraud or willful misstatement of suppression of fact to evade tax have to be impleaded whereas in a notice under Section 73 of the same act the Revenue has to specifically allege the violations or contraventions, which has led to tax not being paid or short paid or erroneously refunded or Input Tax Credit wrongly availed or utilized. It is trite law that unless the foundation of a case is laid down in a show cause notice, the assesse would be precluded from defending the charges in a vague show cause notice. That would entail

violation of principles of natural justice. He can only do so, if he is told as to what the charges levelled against him are and the allegations on which such charges are based. Reliance is placed on the opinion of the Constitution Bench of the Apex Court in the case of Khem Chand versus Union of India [AIR 1958 SC 300], which has also been relied upon in the case of Oryx Fisheries P. Ltd. Vs. Union of India reported in (2010) 13 SCC 427 and profitably quoted in our decision rendered in the case of the same petitioner in W.P (T) No. 2444 of 2021.

16. We are thus of the considered view that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice. The challenge is entertainable in exercise of writ jurisdiction of this Court on the specified grounds as clearly held by the decision of the Apex Court in the case of Magadh Sugar & Energy Ltd. Vs. State of Bihar & others reported in 2021 SCC Online SC 801, para 24 and 25. Accordingly, the impugned notice at annexure-1 and the summary of show cause notice at annexure-2 in Form GST DRC-01 is quashed. This Court, however is not inclined to be drawn into the issue whether the requirement of issuance of Form GST ASMT-10 is a condition precedent for invocation of Section 73 or 74 of the JGST Act for the purposes of deciding the instant case. Since the Court has not gone into the merits of the challenge, respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks from today"

Further, levy of penalty of 100% of tax dues reflected in the Summary of the Order contained in Form GST DRC-07 is also in the teeth of the provisions of Section 73(9) of the Act of 2017, wherein while passing an adjudication order, the Proper Officer can levy penalty up to 10% of tax dues only. The above infirmity clearly shows non-application of mind on the part of the Deputy Commissioner, State Tax, Godda Circle, Godda. Proceedings also suffer from violation of principles of natural justice and the procedure prescribed under section 73 of the Act and are in teeth of the judgment rendered by this Court in the case M/s NKAS SERVICES PRIVATE LIMITED (Supra).

14. <u>Bombay HC issues directions on filing of GST TRAN-1/revised GST TRAN-1</u>

Case Name: Unichem Laboratories Limited Vs Union of India (Bombay High Court)
Appeal Number: Writ Petition No. 109 of 2020
Date of Judgement/Order: 23/08/2022
Courts: Bombay High Court

(a) All Petitioners, through their respective units/offices registered under CGST Act and/or State Acts, as the case may be, can avail this window and file GST TRAN-1/revised GST

TRAN-1 at the units/offices between 01.09.2022 to 31.10.2022 in terms of the Hon'ble Supreme Court's order in Filco Trade (Supra)

(b) The GST TRAN-1/ revised GST TRAN-1 filed by the units/offices will be basis the manual ISD invoices issued / to be issued by ISD of Petitioner subject to aggregate credit not exceeding the ISD credit available with the ISD Petitioner

(c) The Central Board of Indirect Taxes and Customs (CBIC), keeping in mind the problems faced by various parties, to issue a clarification, after due deliberation, in relation to the distribution / reporting of ISD credit preferably within 21 days from the date this is Order is uploaded, keeping in mind the approach adopted by the Hon'ble Supreme Court of India in Filco Trade (Supra). Petitioners, may, if so advised, approach the CBIC in this regard.

(d) The concerned officers are given 90 days thereafter to verify the veracity of the claim/ Transitional Credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

15. <u>Canvat carry forward under GST regime cannot be denied for late payment</u>

Case Name: Assistant Commissioner Vs Ganges International Private Limited (Madras High Court)

Appeal Number: W.A.No.1648 of 2022

Date of Judgement/Order: 17/08/2022

Courts: Madras High Court

High Court held that carry forward of service tax eligible for CENVAT in erstwhile regime cannot be denied for late payment can be denied under GST due to Transitional Period and inability of the petitioner to claim through filing FORM GST TRAN 1. It is an admitted fact that the assesse is eligible to claim cenvat credit under the erstwhile Central Excise Act, prior to 30.06.2017, but they were unable to claim, due to transitional provision has come into effect from 01.07.2017. It is also not in dispute that they had paid the service tax for the period from April 2017 to June 2017 belatedly i.e., on 02.05.2018, after pointing out the same through departmental audit. Thereafter, the assesse filed an application for refund. The appellant rejected the claim of refund made by the assesse on the premise that there is no provision in the new regime to allow such refund as input tax credit in GST/credit in Electronic cash ledger/ payment in cash. The said order was put to challenge by the assesse by filing WP.No.528 of 2019. After considering the case of the assesse, the learned Judge was of the view that merely because the transitional provision has come into effect from 01.07.2017, the chance of making an application under section 140(1) to seek the refund or otherwise of the credit, which was subsequently accrued in the account of the assesse, cannot be denied. Observing so, the learned Judge ordered the said writ petition, by setting aside the order rejecting the claim of refund made by the assesse and remanding the matter to the appellant for fresh consideration.

16. **<u>If Assesse disputes GST Interest Liability then revenue to follow Section 73 or 74 procedure</u>**

Case Name : Bluestar Malleable Pvt. Ltd Vs State of Jharkhand (Jharkhand High Court) Appeal Number : W.P.(T) No. 2043 of 2020 Date of Judgement/Order : 18/08/2022 Related Assessment Year : Courts : All High Courts Jharkhand High Court

HC held that that if any assesse disputes the liability of interest under Section 50 of the JGST Act then the revenue will have to follow the specific procedure as stipulated under Section 73 or 74 of the JGST Act. In the instant case, admittedly; a notice was issued to the petitioner dated 6.11.2018 (Annexure-6 to W.P.T No.2043/20) thereafter, the petitioner duly replied in form of objection with regard to non-payment of interest vide its reply dated 9.1.2019 (Annexure-9 to W.P.T No.2043/20). However, the respondent-department vide letter dated 28.1.2019 repeated its earlier stand and refused to accept the petitioner's stand and the petitioner was directed to pay the balance amount of Rs.40,71,403/- towards interest payment after adjustment of refund amount sanctioned in favor of the petitioner (Annexure-10 to W.P.T No.2043/20). Thus, it clearly transpires that the respondents have not followed the procedure as enshrined in Section 73 or 74 of the JGST Act. Thus, the issue involved in the writ applications is squarely covered by the decision passed by this Court in the case of Mahadeo Construction (Supra).

9. Having regard to the facts of the case and the discussions made hereinabove and the law laid down by this Court, both these writ applications requires interference. Consequently, letter dated 6.11.2018 (Annexure-6) issued by the respondent No.3 whereby the petitioner was called upon to pay interest for the sum of Rs.72,49,126/- on account of alleged irregular Input Tax Credit as well as the impugned order dated 28.1.2019 (Annexure-10) whereby the objection filed by the petitioner towards payment of interest under Section 50 of JGST Act has been negated, are hereby, quashed and set aside. The appellate order is also quashed and set aside.

The matter is remitted back to the revenue to initiate a fresh proceeding with regard to the liability towards interest under Section 50 of JGST Act in accordance with law as stipulated in JGST Act. It goes without saying that after following the procedure and dependent on the proceedings, fresh refund order be issued in accordance with law.

17. **<u>Payment from electronic cash ledger under GST for SVLDRS allowed: HC</u>**

Case Name : Reliance Infrastructure Limited Vs Union of India (Bombay High Court)
Appeal Number: Writ Petition No. 8100 of 2021
Date of Judgement/Order: 11/08/2022
Courts: Bombay High Court

In Sew Infrastructure Ltd. vs. Dir. General of GST Intelligence DGGI2, Telangana High Court had directed GST Department to set off refund that was due to petitioner therein from the Income Tax Department. In that case, petitioner was unable to discharge its liability under SVLDRS because of the Covid Pandemic situation and financial difficulties and the only way the petitioner could discharge its liability as per Form No. SVLDRS – 3 was by utilizing the Income Tax refund of Rs.34,65,92,330/- which it was held entitled to. The GST Department in this case relied upon Sub Section (5) of Section 127 of the Finance Act, 2019 to show that the payment should only be made electronically through internet banking. The High Court held that petitioner shall be deemed to have made the payment determined under Form SVLDRS – 3 and the GST Department was directed to adjust with one that was due to petitioner from the Income Tax Department.

9. SVLDRS is a statutory scheme, that provides some reliefs to the assesse in varying degrees. There is force in the submission of Mr. Nankani that the scheme in question, being for the benefit of assesses needs to be construed liberally to effectuate the purpose. There is no dispute that the SVLDRS Scheme was introduced by Finance (no.2) Act, 2019 and notified in the Gazette of India Extra-ordinary on 01.08.2019. SVLDRS was introduced by the Union of India to provide relief to tax payers in the form of both dispute resolution as well as amnesty. It was a one-time measure to free a large segment of tax payers from their pending disputes with the Tax Administration, unload the baggage and allow businesses to move on. It provides both dispute resolution and amnesty in regard to past disputes of Central Excise, Service Tax and several other Indirect Tax Enactments. It was a beneficial scheme, which is being narrowly interpreted by respondents instead of being liberally interpreted. Respondents should adopt a reasonable and pragmatic approach so that a declarant can avail the benefits of the scheme and a declarant like petitioner cannot be put in a worse off condition than he was before making declaration under the Scheme.

In our view the SVLDRS has to be given a liberal interpretation and not a narrow interpretation, its intent being to unload the baggage relating to legacy disputes.

Here, petitioner has scrupulously abided by all the terms and conditions of the scheme. In the absence of any definition as to what amounts to “pay electronically through internet banking”, in our view even payment made by electronic cash ledger maintained by petitioner under the CGST Act also amounts to payment through internet banking. In the words of the Hon’ble M.C. Chagla, J, in The State of Bombay vs. Morarji Cooverji4, a petitioner in order to get relief from the court in a Writ Petition must satisfy the court that making of the order will do justice and that justice lies on his side. In this case, we are satisfied that justice is on the side of petitioner and making of an order in favor of petitioner by accepting its submissions will do justice.

Respondent No.4 is directed to issue within four weeks discharge certificate in Form SVLDRS – 4 through electronic form and if it cannot then it be issued in physical form.

18. <u>Bombay HC issues directions on filing of GST TRAN-1/revised GST TRAN-1</u>

Case Name: Unichem Laboratories Limited Vs Union of India (Bombay High Court)
Appeal Number: Writ Petition No. 109 of 2020
Date of Judgement/Order: 23/08/2022
Courts: All High Courts Bombay High Court

(a) All Petitioners, through their respective units/offices registered under CGST Act and/or State Acts, as the case may be, can avail this window and file GST TRAN-1/revised GST TRAN-1 at the units/offices between 01.09.2022 to 31.10.2022 in terms of the Hon'ble Supreme Court's order in Filco Trade (Supra)
(b) The GST TRAN-1/ revised GST TRAN-1 filed by the units/offices will be basis the manual ISD invoices issued / to be issued by ISD of Petitioner subject to aggregate credit not exceeding the ISD credit available with the ISD Petitioner
(c) The Central Board of Indirect Taxes and Customs (CBIC), keeping in mind the problems faced by various parties, to issue a clarification, after due deliberation, in relation to the distribution / reporting of ISD credit preferably within 21 days from the date this is Order is uploaded, keeping in mind the approach adopted by the Hon'ble Supreme Court of India in Filco Trade (Supra). Petitioners, may, if so advised, approach the CBIC in this regard.
(d) The concerned officers are given 90 days thereafter to verify the veracity of the claim/ Transitional Credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

19. **<u>HC allows revocation of cancellation of GST registration after expiry of statutory limitation of time</u>**

Case Name : Pearl and Co. Vs Commissioner of Commercial Taxes (Madras High Court)
Appeal Number : W.P.(MD)No.19127 of 2022
Date of Judgement/Order: 23/08/2022
Courts: Madras High Court

The petitioner used to furnish all the invoices, purchase and sales transactions particulars to the part time accountant, who uploaded monthly returns, GSTR-3B returns within the due dates and have also made payment of GST within time. This being so, the petitioner was severely affected by stomach pain and he had taken medical treatment, which was latterly diagnosed as Hernia and hence, he had undergone surgery and bed rest for several months. During this period, the civil work, undertaken by the petitioner were only executed to a limited extent and the staff not uploaded the progress of work and hence, the returns could not be filed. During the month of July 2022, the GSTIN registration was

cancelled. Therefore, they were unable to avail Input Tax Credit. He further submitted that the show cause notice, dated 05.01.2022, was issued by the second respondent. Due to cancellation of GSTIN registration, the petitioner is unable to carry on his business. He further submitted that by restoring the registration number, the state would benefit by receiving the tax components. The petitioner attempted to file a representation to revoke the cancellation of registration. The same was not accepted, since the request for revocation is not filed within the statutory period of 90 (30+60) days. The representation for revocation of cancellation of registration could not be done.

Court is of the view that restoring the registration would not cause any harm to the department on the other hand it would be beneficial for the state to earn revenue. Further, in the case of Tvl. Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others (W. P. Nos. 25048, 25877, 12738 of 2021 etc. batch), dated 31.01.2022. There some of the petitioner filed an appeal beyond the period of limitation either for filing application for revocation of cancellation, while some of them had directly filed a writ petition against the order cancelling the registration. While some of them filed appeal beyond the statutory period of limitation, there was further delay in filing the writ petition. However, considering the overall facts and circumstances of the case, it was held that no useful purpose will be served by keeping those petitioners out of the Goods and Services Tax regime, as such assesse would still continue to do business and supply goods/services. By not bringing them back to the Goods and Services Tax fold/regime, would not further the interest of the revenue.

Accordingly, this writ petition is allowed subject to the above conditions.

20. **<u>Goods cannot be seized from godown by invoking section 129 of CGST Act</u>**

Case Name: Mahavir Polyplast Pvt. Ltd. Vs State of U.P. (Allahabad High Court)
Appeal Number: Writ Tax No. 57 of 2020
Date of Judgement/Order: 06/08/2022
Courts: Allahabad High Court

Insofar as seizure of goods and demand of tax under Section-129 of the Act is concerned, it is unbelievable that two (not one), authority of the Mobile Squad of Commercial Tax Department chose to act with negligence. The provision of Section 129(3) of the Act could not be invoked to subject a godown premises to search and seizure operation unmindful of the Act that no action was taken or contemplated under Section 67 of the Act, as that would have mandated existence of “reasons to believe”, to subject that premise to search and seize goods or documents found therein. Also, both authorities of the Commercial

Tax Department namely, Sri Vijay Kumar-VIII, Assistant Commissioner (Mobile Squad)-5, Agra and Sri Prashant Kumar Singh-I, Assistant Commissioner (Mobile Squad)-2 Agra chose to exercise powers vested in them to search a vehicle carrying goods during transportation to proceed against goods lying in a godown.

They not only closed their eyes to the power and jurisdiction that never existed but they deliberately described the vehicle being checked as “UPGODOWN02” and “GODOWON” (as has been noted above).

That description was given by them, deliberately. Therefore, they cannot deny that they were aware that the subject search was not directed at any vehicle but at an immovable property namely a godown premise.

The Court does not wish to go deeper into the intention of the officers concerned in issuing such notices and drawing up such proceedings for which they had no jurisdiction as that would entail calling of personal affidavits of the officers at the cost of precious time of the Court. However, the officers are accountable for their acts. Therefore, let this order be communicated to the Commissioner Commercial Tax UP to look into the matter, call for explanation and take appropriate action commensurate to the misconduct, if any, that may be found committed by the erring officers and to take consequential and corrective action to avoid such occurrences, in future.

Insofar as the present petitioner is concerned, the entire proceedings drawn up against it under Section 129(3) of the Act, are found to be without jurisdiction.