DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT,

PUNJAB, PATIALA

GST UPDATE

(JANUARY 2023)

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GIST of GST Notifications

Centre's Notification No.	Subject
Notification No 01/2023-Central Tax	Seeks to amend the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 14/2017-Central Tax, dated the 1st July, 2017

(I) CENTRE GST NOTIFICATIONS

1. Notification No 01/2023-Central Tax

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUBSECTION (I)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION
No 01/2023-Central Tax

New Delhi, dated the 4th January, 2023

G.S.R (E).– In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017(13 of 2017), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 14/2017-Central Tax, dated the 1st July, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 818(E), dated the 1st July,
2017, namely: -

In the said notification, in the Table, after Sl. No. 8 and the entries relating thereto, the following Sl. No. and entries shall be inserted namely: -

Sl. No.	Officers	Officers whose powers are to be exercised
(1)	(2)	(3)
"8A.	Additional Assistant Director, Goods and Services Tax Intelligence or Additional Assistant Director, Goods and Services Tax or Additional Assistant Director, Audit	Superintendent"

[F. No. CBIC-20006/17/2022-GST]
(Raghvendra Pal Singh)
Director

Note: The principal notification No. 14/2017- Central Tax, dated the 1st July, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 818(E), dated the 1st July, 2017.

(II) ADVANCE RULINGS

1. ITC on trading of meat products & packed cold cuts spices & masala powder

Case Name: In Re Meat Mart Unit of the New Bangalore Ham Shop (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 07/2023
Date of Judgement/Order: 23/01/2023
Courts: AAR Karnataka Advance Rulings

The applicant has stated that they are trading in fresh and semi processed meat products like chicken, mutton, fish, pork and all type of packed cold cuts spices and masala powder etc. They are trading in both taxable and exempted goods. The percentage of exempted goods traded is around 90% and the balance 10% traded is taxable goods.

Q1. What percentage of GST input tax should be claimed for our nature of business as mentioned above for the following services received from our service providers.

a) GST paid for our shop on commercial rent to landlord.
b) GST paid on commission to Dunzo and Swiggy for ecommerce online service.
c) GST paid on service charges charged by paytm.
d) GST paid on service charges charged by Banks.

A1. Input tax credit has to be availed in terms of section 16 and 17 of CGST Act 2017 read with Rule 42 of CGST Rules 2017.

Q2. What percentage of GST input tax should be claimed for our nature of business as mentioned above for the following other general goods purchased for carrying on our business.

a) Packing material
b) Printed material
c) Capital goods like cutting machine, weighing scale, refrigerators, computers and hardware and software goods.

A2. Input tax credit has to be availed in terms of section 16 and 17 of CGST Act 2017 read with Rule 42 of CGST Rules 2017.

Q3. What will be the GST consequences if we purchased goods from unregistered and composition dealers?

A3. This question is not covered under the issues referred to in section 97(2) of CGST Act 2017, in respect of which an applicant can seek. Advance Ruling and hence this Authority refrains from giving any ruling.

2. GST on pre-packaged and labeled jiggery

Case Name: In Re Prakash and Company (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 06/2023
Date of Judgement/Order: 23/01/2023
Courts: AAR Karnataka Advance Rulings

Q.i. Whether all types of jaggery are covered under the Notification No. 6/2022-Central Tax (Rate) dated 13-07-2022?

A.i. All types of jaggery, pre-packaged and labeled are covered under S. No. 91A of Notification No. 1/2017 Central Tax (Rate) dated: 28.06.2017 as amended vide Notification No. 6/2022-Central Tax (Rate) dated 13-07-2022

Q.ii. If yes, what is the rate of tax?

A.ii. All types of jaggery, pre-packaged and labeled are exigible to GST at 5% (CGST at 2.5% and SGST at 2.5%).

Q.iii. If No, which type of jaggery does not fall under Notification No. 6/2022-Central Tax (Rate) dated 13-07-2022 and are exempted from tax?

A.iii. The question (i) above is answered in positive and hence this question is redundant.

3. GST on construction of Railway under Bridge /Tunnels executed to Indian Railways

Case Name: In Re S K Swamy and Company (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 05/2023
Date of Judgement/Order: 23/01/2023
Courts: AAR Karnataka Advance Rulings

AAR held that Works contract services like

a) construction of Railway under Bridge executed to Indian Railways by the Applicant is exigible to GST at 18% (SGST @ 9% and CGST @ 9%) if the Applicant is providing the services either as a main contractor or as a sub-contractor to main contractor.

b) construction of Tunnels executed to Indian Railways by the Applicant is exigible to GST at 18% (SGST @ 9% and CGST @ 9%) if the Applicant is providing the services either as a main contractor or as a sub-contractor to main contractor.

ii. Works contract services involving predominantly earth work (that is, constituting more than 75per cent, of the value of the works contract) executed to Indian Railways (Central Government) by the Applicant is exigible to GST at 12%(SGST @

6% and CGST @ 6%) if the Applicant is providing the services either as a main contractor or as a sub-contractor to main contractor.

iii. Supply of ballast to railways is exigible to GST at 5%(CGST @ 2.5% and SGST @2.5%) (HSN 2517) as per entry No. 126 of Schedule I of Notification No. 1/2017-Central Tax (Rate), dated: 28.06.2017

4. Catering services to Educational Institutions from 1st standard to 2nd PUC is exempt from GST

Case Name: In Re Sri Annapumeshwari Enterprises (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 04/2023
Date of Judgement/Order: 23/01/2023
Courts: AAR Karnataka Advance Rulings

Whether providing catering services to Educational Institutions from 1st standard to 2nd PUC is taxable or not according to Notification No.12/2017-Central Tax Rate- under Heading 9992? Providing catering services to Educational Institution from 1st standard to 2nd PUC is exempted as per entry No. 66 of Notification No.12/2017-Central Tax Rate as amended further.

5. GST on Works contract service to Bio Centers, Department of Horticulture & Center of excellence

Case Name: In re Sanjeevini Enterprises (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 03/2023
Date of Judgement/Order: 23/01/2023
Courts: AAR Karnataka Advance Rulings

AAR held that –

i. Works contract service provided to Bio Centers, Department of Horticulture and Center of excellence are not exempted from GST.
ii. ii. Providing Manpower service like data entry operator, security to Horticulture Department is exigible to GST at 18%(CGST @ 9% and KGST@9%).
iii. iii. Materials like fertilisers, soil and sand supplied for use of bio centers are not exempted under GST.

6. GST on designing and development of tools for the overseas OEMs/Machinist

Case Name: In re Precision Camshafts Limited (GST AAAR Maharashtra)
Appeal Number: Advance Ruling No. MAH/AAAR/DS-RM/16/2022-23
Date of Judgement/Order: 20/01/2023
Courts: AAAR AAR Maharashtra Advance Rulings

The moot issues before us are as to whether activity of appellant is an intermediary service as held by the MAAR or as contended by the appellant, an activity of design and development of patterns/tools used for manufacturing of camshafts, for a overseas customer is a composite supply where the principal supply is supply of services. As per submission made by appellant, it is appellant who prepares the drawing and designs of tool / pattern and also check feasibility of its manufacturing. The techno commercial offer is being made by the appellant to overseas OEM / Machinist. Overseas OEM / Machinist releases the purchase order, for specific number of units of tools, after approval of techno commercial offer. The appellant undertakes in-house drawing, design, modelling, simulation and documentation for manufacture of the tools. Whereas, it hires third party vendor for machining (manufacturing) the tool as per specification provided by the appellant. The third party vendors charge for the manufacture of tools, which is paid by the appellant. The third party vendor delivers the tool to appellant, of which appellant further raises supply invoice to overseas OEMs / Machinist specifying therein the description of goods (tools), quantity, rate per unit, etc. However, as industry practice in this sector appellant keeps such tools with it for further use in manufacture of camshaft. The invoice raised by the appellant also exhibits that the tools of specific designs as per the specifications of overseas customer are supplied to them. Thus, form perusal of the purchase order placed by the overseas customers and supply invoice raised by appellant, it is clear that dominant intention of overseas customer is to get the supply of manufactured pattern/tools from the appellant as per specification provided by them. From the facts of the case, it is clear that the appellant is making such supply of tools on his own against the consideration which is price for tools and hence, there is no issue of receiving commission from overseas customers. Appellant is not facilitating any supply between overseas entity and third party vendor. The impugned transaction is supply of goods i.e. tools from appellant to customer on principal to principal basis. Considering these facts of and definition of “intermediary” provided under section 2(13) of the IGST Act, 2017, it is very much clear that appellant is not an “intermediary”. Hence, the findings of the MAAR that the impugned activity is an

intermediary service is erroneous and not acceptable. The appellant first manufactures the tool as per the requirements and specification given by the customer. This tool is retained by the appellant and used for the manufacture and supply of camshafts. The appellant raises the tax invoice for this tool in the name of overseas customer in convertible foreign exchange though the tool is not physically exported to the customer. The ownership of the tools remains with the overseas customers. Thus, it is amply clear that impugned transaction between appellant and overseas customer is of supply of goods i.e. pattern/tool of specified specifications. The similar issue in case of IBEX Engineering Pvt Ltd vs. State of Karnataka has been decided by Hon'ble High Court of Karnataka [Sales Tax Appeal 91 of 2009 Order dated 9-2-2012], where appellant manufactured Moulds as per the order of overseas customers and received the payment labelled as "Tool Development Charges" from its foreign associate for manufacturing of Moulds. As like present case, the Moulds never moved out of the factory and used for manufacture of engineering parts which are subsequently exported to the overseas customer. The High Court held the impugned transaction as a sale of goods i.e. Moulds and is exigible to VAT. READ MORE On careful perusal of the definition of the term "composite supply" and the essential conditions enumerated in the definition, it is seen that the composite supply comprising two or more taxable supplies of goods or services or both, or any combination thereof should be made by a taxable person to a recipient. However, in the instant case, considering the facts of the case, it is amply clear that impugned transaction between appellant and overseas customer is of supply of goods i.e. pattern/tool of specified specifications. Hence, contentions of the appellant that impugned transaction is composite supply where the principal supply is supply of services is not valid. In view of the above discussion, we hold that the impugned transaction is supply of goods i.e. pattern/tool of specified specifications.

7. GST under RCM on renting of immovable property services received from SEEPZ/SEZ

Case Name: In re Portescap India Private Limited (GST AAAR Maharashtra)
Appeal Number: Advance Ruling No. MAH/AAAR/DS-RM/15/2022-23
Date of Judgement/Order: 13/01/2023
Courts: AAAR AAR Maharashtra Advance Rulings

AAAR held that any supply of goods or services or both made to a SEZ developer or SEZ unit for carrying out the authorised operation in SEZ will be considered as zero-rated supply. That is, the said supply will not attract any GST whatsoever. It is further mentioned here that this provisions of zero-rated supply will cover even the supply

of services which are specified under the reverse charge Notification 10/2017-I.T. (Rate) dated 28.06.2017 as amended by Notification No. 03/2018- C.T. (R) dated 25.01.2018. This is so because it is the settled proposition of the law that the specific provisions made in the Act will have greater legal force than that of a notification issued under same or any other provisions of the same Act. Hence the provisions laid down under section 16(1) of the IGST Act, 2017 will supersede over the notification issued under section 5(3) of the IGST Act, 2017, which enumerates the services which attract GST under reverse charge basis. It is also pertinent to mention here that the said provision of section 16(1) ibid, merely mentions about the supply of goods or services or both to the SEZ developer or SEZ unit. The said provision does not mention any thing about the type of the supplier. That is, whether the supplier supplying the services is located in DTA or in SEZ area. As long as the supply is being made to SEZ developer or SEZ unit for carrying out the authorised operation in SEZ, the same will be treated as zero-rated supply, and will not be subject to GST. Therefore, it will not matter in the present case that the impugned services of renting of immovable property is being provided by the SEZ developer, i.e. SEEPZ SEZ to the Appellant, and not by a supplier located in DTA as observed by the MAAR in the impugned ruling while holding that the provisions of section 16(1) ibid, will not be applicable in the Appellant's case as the impugned services of renting of immovable property is not being provided by the supplier located in DTA rather the same is being supplied by the SEZ developer, i.e., SEEPZ SEZ, hence the facility of LUT is not available to the Appellant as proposed by them. Thus, the contention put forth by the Respondent that the said services are being supplied by the SEZ developer, and not be supplier located in DTA does not hold water, and hence not sustainable. From the provisions of section 16 (1) and Section 5 (3) of IGST Act it is clear that the intention of the legislature is not to tax the supplies made to a unit in SEZ or a SEZ developer, which has been made zero rated under clause (b) of section 16 (1) of the IGST Act. 2017. By virtue of deeming provision under section 5 (3) of the IGST Act, 2017, the levy on procurement of services specified in Notification 13/2017 CT (Rate) falls upon the unit in SEZ or SEZ developer. Therefore, a unit in SEZ or SEZ developer can procure such service for use in authorised operation without payment of integrated tax provided the actual recipient i.e. SEZ unit or SEZ developer, furnishes a LUT or bond as specified in condition (i) of para I of notification No. 37/2017-CT. The actual recipient here in the subject supplies is a deemed supplier for the purpose of aforesaid condition. The appellant will not be required to pay any GST under RCM on the impugned supply of renting of immovable property services received SEEPZ SEZ, if appellant furnishes LUT. Further, as regards any other services supplied by the DTA to the SEZ unit or developer, it is stated that the aforesaid principle will also be applicable in such cases. That is all the supply of services procured by SEZ unit from the suppliers located in DTA for carrying out the authorised operation in SEZ will not attract any GST in accordance with the provision

of section 16(1) of the IGST Act, 2017, and the Appellant will not be required to pay any GST under RCM on the services received from DTA supplier for carrying out the authorized operation in SEZ, subject to LUT.

42. Thus, in view of the above discussions and findings, we pass the following order:

(i) that the Appellant are not required to pay GST under RCM on the impugned services of renting of immovable property services received from SEEPZ SEZ for carrying out the authorised operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services;

(ii) that the Appellant are not required to pay GST under RCM on any other services received from the suppliers located in DTA for carrying out the authorized operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services.

(III) JUDGEMENTS

1. GST Appeal: There cannot be any condonation beyond the cap or belated period

Case Name: Ramanujan Venkatesan Vs Joint Commissioner (Appeals- II) (Madras High Court)
Appeal Number: W.P. No. 34774 of 2022 and W.M.P. No. 34194 of 2022
Date of Judgement/Order: 02/01/2023 Related
Courts: All High Courts Madras High Court

Ramanujan Venkatesan Vs Joint Commissioner (Appeals- II) (Madras High Court) In this case date of communication to writ petitioner qua the GST Registration cancellation order is 08.03.2022. Three months therefrom elapsed on 08.06.2022 i.e., the prescribed period qua Section 107 of CG&ST Act elapsed on 08.06.2022. Condonable period of one month thereafter elapsed on 08.07.2022. The appeal was preferred by the writ petitioner only on 08.09.2022. Law is well settled that when there is a cap, Section 5 of the Limitation Act cannot be applied and going by Simplex Infrastructure Ltd. Vs. Union of India reported in 2018 SCC Online SC, 2681 [subsequently, (2019) 2 SCC 455], when there is a cap there cannot be any condonation beyond the cap or belated period. Sagufa Ahmed and Others Vs. Upper Assam Plywood Products Pvt. Ltd., and Others ((2021) 2 SCC 317) is the another case law which is of relevance.

2. Ex-parte assessment order passed in violation of principles of natural justice entails civil consequences

Case Name: Balram Singh Vs Union of India (Patna High Court)
Appeal Number: Civil Writ Jurisdiction Case No. 88 of 2023
Date of Judgement/Order: 20/01/2023
Courts: All High Courts Patna High Court

The Hon'ble Patna High Court in M/s Balram Singh v. Union of India & Ors. [Civil Writ Jurisdiction Case No. 88 of 2023 dated January 20, 2023] quashed and set aside the ex-parte assessment order passed by the Revenue Department rejecting the Input Tax Credit ("ITC") claim of the assessee and imposing the tax liability of INR 10,06,826/- , on the grounds that it was passed in violation of the principles of natural justice without providing opportunity of hearing or sufficient time to the assessee to represent its case, which entails civil consequences. Held that, opportunity of hearing shall be afforded to the assessee to place on record all essential documents and materials.

Facts: This petition has been filed by M/s Balram Singh ("the Petitioner") challenging the ex parte summary assessment orders dated February 16, 2020 and February 18, 2020 ("the Impugned Orders") passed by the Revenue Department ("the Respondent") for the period October 2018 to March 2019 wherein, ITC claim of the Petitioner was rejected and tax amounting to INR 10,06,826/- including penalty/interest was imposed without providing any further notice to the Petitioner. Further, the Respondent seized INR 20,00,000/- from the cash credit ledger of the Petitioner by way of recovery against the total liability. Issue: Whether the Impugned Orders passed by the Respondent are in violation of principles of natural justice?

Held: The Hon'ble Patna High Court in Civil Writ Jurisdiction Case No. 88 of 2023 held as under:

- Opined that, the Impugned Order is bad in law on the grounds of violation of principles of natural justice, as no fair opportunity of hearing or sufficient time was not afforded to the Petitioner to represent its case and the Impugned Order being ex parte in nature, does not assign any sufficient reasons by the Respondent for determining the amount due and payable by the Petitioner.
- Held that, the ex parte Impugned Order passed in violation of the principles of natural justice, entails civil consequences and opportunity of hearing shall be afforded to the Petitioner to place on record all essential documents and materials.
- Set aside the Impugned Orders with a direction to Petitioner to deposit 20% of the amount of the demand raised, before the Respondent within four weeks. Further stated that, if it is ultimately found that the Petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order.
- Directed the Respondent, to de-freeze/ de-attach the bank account(s) of the Petitioner, if attached in reference to the proceedings and to decide the case on merits after complying with the principles of natural justice and not to take any coercive steps against the Petitioner during pendency of the case.
- Further directed the Petitioner, to fully cooperate in proceedings and not to take unnecessary adjournment.
- Further directed the Respondent to decide the case on merits within a period of two months and shall pass a speaking order, assigning reasons, which can be challenged by the Petitioner, if required and desired.

3. Gaming services are not betting/gambling- Issue of SCN is abuse of process of law

Case Name: Myteam11 Fantasy Sports Private Limited Vs Union of India (Rajasthan High Court)
Appeal Number: D.B. Civil Writ Petition No. 1100/2023
Date of Judgement/Order: 18/01/2023 Related
Courts: All High Courts Rajasthan High Court

The petitioners have been served with a show cause notice under Section 74(1) of the Central Goods & Services Tax, 2017(for short 'CGST, 2017') alleging that the petitioner-Company by misclassifying their supply as service instead of actionable claims which are goods and by undertaking activities in the form of betting has avoided tax and as such why the demands of GST, interest thereon and penalty as referred to in the notice may not be confirmed. The petitioners through the present writ petition has thrown a challenge to the above show cause notice contending that the issue as to whether nature of gaming services as provided by it is in the nature of services or an actionable claim is no longer res-integra and has been decided by catena of the authorities which hold that the said games are game of skill and would not be covered as gaming of chance or gambling. Some of the games offered by the petitioners online have already been held to be games of skill rather than that of chance or that of betting/gambling. Thus when the matter is so settled by various Courts, the issuance of the impugned show cause notice is nothing but an abuse of the process of law. Accordingly, we call upon the respondents to file counter affidavit to the writ petition within a period of one month from today. The writ petition is directed to be listed for admission/final disposal immediately thereafter.

4. Delayed Appeal against GST Registration cancellation order – Power of HC to condone delay – Registry directed to place matter before Chief Justice of HC

Case Name: Paul Raj Engineering Vs Assistant Commissioner (Circle) (Madras High Court)
Appeal Number: W.P. Nos. 30542, 32896, 33188, 33234, 33310, 35062, 33766 of 2022
Date of Judgement/Order: 23/01/2023
Courts: All High Courts Madras High Court

Appeal against GST Registration cancellation order filed after stipulated time limit – Power of High Court to condone delay in such appeal filing – Registry directed to place

matter before Chief Justice of Madras High court as two contradictory views expressed by two Hon'ble Judges of Madras High Court.

5. Detention of goods & vehicle: HC quashes penalty order passed after 7 days from service of notice

Case Name: Deepam Roadways Vs Deputy State Tax Officer (Madras High Court)
Appeal Number: W. P. Nos. 476 of 2023
Date of Judgement/Order: 23/01/2023
Courts: All High Courts Madras High Court

Demand order u/s 129 of the CGST Act can't be passed beyond the period of 7 days from the date of service of notice The Hon'ble Madras High Court in the matter of Deepam Roadways v. the Deputy State Tax Officer and Ors. [W.P. No. 476 of 2023 and Ors. dated January 23, 2023] quashed the notice of detention of goods and the consequential demand order issued to the assessee, on the grounds that they were not in accordance with Section 129(3) of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). Held that, the demand order passed beyond the period of seven days from the date of service of the notice, is contrary to Section 129(3) of the CGST Act.

Facts: This writ petition has been filed by Deepam Roadways ("the Petitioner"), challenging the detention of its vehicle and goods by the Revenue Department ("the Respondent") on October 26, 2022. Further, within seven days of the detention, a Notice dated October 31, 2022 ("the Impugned Notice") was issued to the Petitioner. Consequently, an order dated November 10, 2022 ("the Impugned Demand Order") was passed under Section 129 of the CGST Act demanding an amount of INR 8,33,724/- towards payment of GST and penalty, after the expiry of seven days from the issuance of the Impugned Notice. The Petitioner contended that the Impugned Notice and the Impugned Demand Order were without jurisdiction and authority of law. Further, sought a direction to the Respondent to release the detained vehicle and goods.

Issue: Whether the Respondent adhered to Section 129(3) of the CGST Act while passing the Impugned Notice and the Impugned Demand Order?

Held: The Hon'ble Madras High Court in W.P. No. 476 of 2023 and Ors. held as under:

- Analyzed Section 129(3) of the CGST Act and noted that a notice of detention goods must be served by the proper officer within seven days of such detention and an order for payment of penalty must be passed within seven days of service of such notice.
- Observed that, the Impugned Notice was served within seven days of the detention of the vehicle and goods of the Petitioner, but the Impugned Order was passed after seven days of service of the Impugned Notice.

- Relied on its earlier judgments in a similar matter in the case of Udhayan Steels Private Limited v. Deputy Tax Officer (Int.) & Anr. [W.P.No.34268 of 2022 dated December 28, 2022] and in the case of K. Enterprises v. the Assistant/Deputy Commissioner & Anr. [W.P.No.22646 of 2022 dated August 29, 2022] wherein, the Court set aside the proceedings and directed the release the vehicle/goods for being contrary to statutory requirements. Further, it was held that the order of detention passed beyond the time lines stipulated under Section 129(3) of the CGST Act, is a serious flaw, which vitiates the proceedings for interception in full and in entirety.
- Held that, the Impugned Demand Order passed beyond the period of seven days from the date of service of the Impugned Notice is contrary to Section 129(3) of the CGST Act.
- Quashed the Impugned Notice and the Impugned Demand Order.
- Directed the Respondent to release the detained vehicle and goods of the Petitioner within one week.

  Relevant Provisions:

  Section 129 (3) of the CGST Act:

  " 129. Detention, seizure and release of goods and conveyances in transit.– …

  (3) 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)."

6. Lack of clarity w.r.t. reasons/ contraventions in SCN violates principles of natural justice

Case Name: Chitra Automobile Vs State of Jharkhand (Jharkhand High Court)
Appeal Number: W.P.(T) No. 4784 of 2022
Date of Judgement/Order: 24/01/2023
Courts: All High Courts Jharkhand High Court

Issue of DRC-07 within 5 days of issuance of DRC-01 is violation of principles of natural justice Lack of clarity w.r.t. reasons/ contraventions in SCN violates principles of natural justice The Hon'ble Jharkhand High Court in the matter of M/s. Chitra Automobile v. the State of Jharkhand and Ors. [W.P. (T) No. 4784 of 2022 dated January 24, 2023] quashed and set aside the Show Cause Notice ("SCN"), and consequential summary of the SCN in Form GST DRC-01 and summary of order in Form GST DRC-07, issued to the assessee, on the grounds that the SCN did not fulfil the ingredients properly and thus amounted to the violation of the principles of natural justice. Held that, the SCN must clearly state the

contravention for which the assessee is charged, in order to have the opportunity to the assessee for defending themselves.

Facts: M/s Chitra Automobile ("the Petitioner") is engaged in the business of trading of two wheeler bikes and its parts. For the furtherance of its business, the Petitioner receives input services and goods and claims Input Tax Credit ("ITC") on such inward supplies in accordance with Section 16 of the Central Goods and Services Act, 2017 ("the CGST Act"). The Petitioner was served with a SCN dated February 12, 2022 ("the Impugned SCN") along with the summary of the SCN in Form GST DRC-01, for alleged violation of the provisions of the CGST Act for the period March, 2019 and a total demand of INR 30,22,586/- including GST and interest was made. However, the Revenue Department ("the Respondent") issued summary of the order in Form GST DRC-07 dated February 12, 2022 ("the Impugned Order") for non-furnishing of reply to the SCN by the Petitioner. The Petitioner contended that the Impugned SCN was vague and did not mention the reasons for which it was charged and for such reasons the Impugned SCN was in violation of the rule of law and principles of natural justice. Further, the Impugned Order was issued just within five days of issuance of the Impugned SCN. The Respondent contended that the writ petition was not maintainable as the Petitioner has alternative remedy of filing appeal against any decision or order before the Appellate Authority under Section 107(1) of the CGST Act but it has not availed the same. Further, the Petitioner filed its Form GSTR 3B after the due-date and hence ITC to the tune of INR 22,01,732.12/- cannot be availed as it is in violation of Section 16(4) of the CGST Act and therefore the Petitioner is liable to pay the GST liability as issued in the Impugned Order.

Issue: Whether the Impugned SCN and the Impugned Order are sustainable?

Held: The Hon'ble Jharkhand High Court in W.P. (T) No. 4784 of 2022 held as under:

- Noted that, the Impugned SCN did not spell out the contraventions for which the Petitioner was charged and thus it would not be an exaggeration in treating the same as vague.
- Observed that, the Respondent without giving the opportunity of hearing the Petitioner had issued the Impugned Order, just within five days of issuance of the Impugned SCN.
- Further observed that, according to Rule 142(1)(a) of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules"), a summary of the SCN in Form GST DRC 01 should be issued along with the SCN under Section 73 of the CGST Act, which shall explain the contraventions in detail for which the assessee is being charged.
- Relied on its earlier Judgment in M/s NKAS Services Pvt. Ltd. v. State of Jharkhand & Ors. [W.P.(T) No. 2444 of 2021 dated October 6, 2021] wherein, it was observed that, if the SCN is not specific and contains vague or unintelligible allegations, it is sufficient to hold that the assessee is not given a proper opportunity to meet the

allegations made in the SCN. It was held that, the SCN must clearly state the specific reasons for the action being taken against the assessee as enumerated in the CGST Act in order for the assessee to have the opportunity to defend themselves.

- Held that, the Impugned SCN does not fulfil the ingredients of a proper SCN and thus amounts to the violation of natural justice.
- Quashed and set aside the Impugned SCN, Summary of the SCN in Form GST **DRC-01** and the Impugned Order.
- Allowed the Respondent to initiate fresh proceedings from the stage of issuance of SCN in accordance with law.

Relevant Provisions: Rule 142(1)(a) of the CGST Rules:

"The proper officer shall serve, along with the (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01"

Section 73 of the CGST Act: "73.

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts. –

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

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

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

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

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

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

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

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax."

7. ITC cannot be denied without granting opportunity to show genuineness of transactions

Case Name: Vishal Kumar Arya Vs Assistant Commissioner (Calcutta High Court)
Appeal Number: M.A.T. No.2004 of 2022
Date of Judgement/Order: 20/01/2023
Courts: All High Courts Calcutta High Court

Opportunity of hearing to be granted before denying ITC where sufficient documents are available to show genuineness of the transactions The Hon'ble

Calcutta High Court in Vishal Kumar Arya v. Assistant Commissioner, State Tax, Ultadanga Charge & Ors. [M.A.T. No.2004 of 2022 with I.A. No. CAN 1 of 2022 dated January 20, 2023] directed the assessee, to treat the demand order as Show Cause Notice ("SCN") and submit a reply along with all supporting documents, wherein, the assessee had sufficient documents to show genuineness of the transactions, in a matter denying Input Tax Credit ("ITC") to the assessee on the ground that, the Goods and Services Tax ("GST") Registration of the other end dealer was cancelled. Held that, opportunity should be granted to the assessee and decision should be taken on merits after considering the documents placed.

Facts: This intra court appeal has been filed by Vishal Kumar Arya ("the Appellant") challenging the order dated November 21, 2022 in W.P.A. No. 21605 of 2022 ("the Impugned Order") which was filed challenging Order-in-Original dated June 21, 2022 ("the OIO") passed by the Revenue Department ("the Respondent") under Section 74(9) of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). Initially, an SCN was issued by the Respondent to which the Appellant submitted its reply and the date of personal hearing was fixed to be June 20, 2022 however, the Appellant did not appear for the same. The Appellant on June 21, 2022 submitted a representation tendering unconditional apology. However, the OIO was passed denying the Appellant to claim ITC on the ground that the GST Registration of the other end dealer was cancelled. The Appellant submitted that there were sufficient documents to show that the transactions done by them are genuine.

Issue: Whether the Appellant can be allowed to claim ITC despite the fact that the GST Registration of other end dealer was cancelled?

Held: The Hon'ble Calcutta High Court in M.A.T. No.2004 of 2022 with I.A. No. CAN 1 of 2022 held as under:

- Noted that, the Appellant was denied to claim ITC on the ground that the GST Registration of the other end dealer was cancelled, although according to the Appellant, there were sufficient documents to show that the transactions done by them are genuine.
- Stated that, one more opportunity should be granted by the Respondent and decision should be taken on merits after considering the documents that may be placed by the Appellant.
- Remanded the matter back to the Respondent.
- Directed the Appellant to treat the OIO as SCN and submit a reply before February 10, 2023 along with all supporting documents in support of the contentions raised by the Appellant.
- Further directed the Respondent to fix the date for personal hearing and consider the explanations offered and the documents submitted by the Appellant and pass a speaking order on merits and in accordance with law.

  Relevant Provisions: Section 74 of the CGST Act:

"Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts-

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

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

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

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

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

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

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

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to

twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

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

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

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

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

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

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

8. GST registration cannot be cancelled without Application of mind by department

Case Name: Monirul Islam Vs State of West Bengal & Ors. (Calcutta High Court)
Appeal Number: M.A.T. No.2051 of 2022
Date of Judgement/Order: 20/01/2023
Courts: Calcutta High Court

Application of mind should be there on the part of the Revenue Department while cancelling the GST registration The Hon'ble Calcutta High Court in the matter of Monirul Islam v. State of West Bengal & Ors. [M.A.T. No.2051 of 2022 with I.A. No. CAN 1 of 2022 dated January 20, 2023] set aside the auto-generated order of cancellation of Goods and Service Tax ("GST") Registration of the assessee, on the grounds that there was a mistake on the part of the Revenue Department in passing the order. Held that, there should be application of mind by the Revenue Department while passing orders, cancelling GST Registration be it physical or auto-generated. Directed the assessee to pay all his dues and directed the Revenue Department to restore the GST Registration of the assessee in accordance with law.

Facts: Monirul Islam ("the Appellant") was a small dealer, who due to financial constraints was unable to remit taxes. The Appellant was served with a Show Cause Notice ("SCN") followed by order of cancellation of its GST Registration, both dated October 24, 2021 ("the Impugned Order") and the Appellant furnished a reply to such SCN on November 3, 2021. However, the Revenue Department ("the Respondent") in the Impugned Order stated that the Appellant had not submitted any reply to the SCN. Further stated that, such mistake in the Impugned Order was due to the reason that, it was system generated order. Subsequently, the Appellant filed an appeal before the Appellate Authority, which was dismissed vide an order dated November 25, 2022, on the grounds that it was time-barred. Further, the Appellant filed a writ petition challenging the order of the Appellate Authority, which was also dismissed. Being aggrieved, this intra-court appeal has been filed. It was contended that, the Appellant is willing to remit the taxes along with interest for belated payment and prayed that its GST Registration be restored.

Issue: Whether the Impugned Order is sustainable?

Held: The Hon'ble Calcutta High Court in M.A.T. No.2051 of 2022 with I.A. No. CAN 1 of 2022 held as under:

- Stated that, there should be application of mind when an order is passed, be it a physical order or an auto-generated order.

- Held that, there has been no proper application of mind on part of the Respondent while passing the Impugned Order.
- Set aside the Impugned Order.
- Directed the Appellant to pay the entire tax due along with interest and other charges, if any, within 10 days.
- Directed the Respondent to restore the GST Registration of the Appellant in accordance with law.

Relevant Provisions: Section 29 of the Central Goods and Services Tax Act, 2017:

"29. Cancellation or suspension of registration. –

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25 Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,— (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or (b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or (c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts: Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard. Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed: Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed."

9. GST: HC Grants bail as accused was co-operating & proceeding u/s 74 of CGST Act was pending

Case Name: Pradeep Jain Vs State of U.P (Allahabad High Court)
Appeal Number: Criminal Misc Anticipatory Bail Application U/S 438 Cr.P.C. No. - 5368 of 2021
Date of Judgement/Order: 19/01/2023
Courts: All High Courts Allahabad High Court

It is submitted by learned counsel for the applicant that proceeding u/s 74 of CGST Act is still pending, he is cooperating with the investigation/enquiry and did not misuse the liberty of aforesaid interim anticipatory bail which was granted on 22.03.2021 by the Coordinate Bench of this Court. Learned AGA for the State does not dispute the aforesaid factual aspect of the matter as argued on behalf of the appellant. In view of the above, aforesaid interim anticipatory bail order dated 22.03.2021 is made absolute till finalization of proceedings on the terms and conditions as indicated in the above order dated 22.03.2021.

10. HC directs GST dept to lift garnishee order & bank attachment as appellant paid mandatory pre-deposit

Case Name: Kajal Dutta Vs Assistant Commissioner of State Tax (Calcutta High Court)
Appeal Number: M.A.T. No.1924 of 2022
Date of Judgement/Order: 20/01/2023
Courts: All High Courts Calcutta High Court

The learned Advocate appearing for the appellant submitted that garnishee proceedings have been initiated by the authorities by way of attachment of the appellant's bank When the appeal was presented, the mandatory pre-deposit of 10% of the disputed tax has been complied with by the appellant. If that be so, no coercive action should be taken against the appellant till the appeal is heard and disposed of. In terms of the above direction, the appellant is granted liberty to file an appropriate interim application in the appeal petition and the appellate authority shall consider the same and pass appropriate orders for the purpose of lifting the garnishee order and the bank attachment. The appellant shall file the application in the statutory appeal not later than 10th February, 2023.

11. Seizure of Goods: HC directs appellant to file application before AO for relief under Section 129(1)(a)

Case Name: Surojit Das Vs Assistant Commissioner of State Tax (Calcutta High Court)
Appeal Number: M.A.T. No.36 of 2023
Date of Judgement/Order: 20/01/2023
Courts: All High Courts Calcutta High Court

The learned Advocate for the appellant would submit that in terms of Section 129(1)9a) of WBGST /CGST Act, the appellant can seek for release of the goods without prejudice to the rights and contentions of either parties. In fact, the learned Single Bench in its order dated 21st December, 2022 has recorded the submissions on behalf of the appellant that they are ready and willing to pay security equivalent to the penalty in terms of Section 129 (1) (a) of the WBGST/CGST Act. However, such a prayer has not been made before the authority in the forum, which is required to be made. Therefore, we dispose of the appeal with a direction to the appellant to file an application before the Deputy Commissioner of State Tax, Goods and Services Tax, Bureau of Investigation, South Bengal, Durgapur zone seeking relief under Section 129(1)(a) of the said Act and such application shall be filed within one week

from the date of receipt of the server copy of this judgment and order. On receipt of the said application, the said authority shall independently consider such a prayer uninfluenced by any of the observations made in its order dated 12th December, 2022, which is subject matter of the writ petition and such order shall be passed within a period of 10 days from the date on which the application is filed by the appellant.

12. Value of seized goods cannot be determined in a writ proceedings

Case Name: T.V.H.Express Vs State Tax Officer (Madras High Court)
Appeal Number: W .A.No.2630 of 2022
Date of Judgement/Order: 09/01/2023
Courts: All High Courts (9893) Madras High Court (1088)

The petitioner claims to be a transporter who was transporting goods for a dealer from the Tiruppur District in Tamil Nadu to a recipient in Hyderabad, Telangana. The consignment of Ready-Made Textile/ Hosiery Garments were being transported by the appellant for an unknown consignor and consigneer whose name has been later given as Star Handlooms in the affidavit filed in support of the Writ petition. About 58 bundles of Textile/ Hosiery Garments were being transported by the appellant and that out of 58 bundles 33 did not accompany necessary documents including invoices. For the balance, it can be inferred there was only lorry receipts. Under these circumstances, the lorry bearing registration number T.N. 39-Ck-5569 was detained by State Tax Officer (Intelligence),Roving Squad, Tiruppur on 4.3.2022 and that on the same day form GST MOV-02[Order for Physical Verification/Inspection of the Conveyance, Goods and Documents] was issued to the driver in charge of the aforesaid vehicle and the aforesaid vehicle along with the consignments were detained. As per the aforesaid Form GST MOV-02, the driver was unable to produce any document required under section 68 of the Respective GST Acts, 2017 and it was concluded that the supply of 60 bundles of Ready-Made Textile/ Hosiery Garments were without any documents required under Section 68 of the aforesaid Acts with an intention to evade tax due to the Government Exchequer. Therefore, in order to verify the genuineness of the goods quantity -wise, the appellant's vehicle was detained at the office of the Joint Commissioner (Taxes) , Intelligence, Erode. Thereafter, on the same day, a Physical Verification Report in Form GST MOV-04 was generated. It is at this stage it was found that 58 bundles of Ready-Made Textile/ Hosiery Garments were being transported without invoices and other documents. It is in the above round the respondent State tax Officer, Intelligence, Adjudication Erode issued an order of detention under Section 129 (1) read with Section 68 (3) of the Tamil Nadu Goods and Service Tax Act, 2017 and under The Central Goods and

Service Tax Act, 2017. Simultaneously, a notice in Form GST MOV-07 dated 4.3.2022 bearing reference GDR. No. 19/2021-2022 was issued to the appellant. Though in first Table to the above notice states that 58 bundles were being transported without invoices, in the subsequent table there is reference to only 33 bundles with their corresponding lorry receipt numbers. All the 33 bundles have been valued at Rs.20,000/per bundle. The notice also called upon the appellant to show cause as to why penalty under section 129 (1) (b) of the respective Goods and Service Tax Enactments should not be demanded an Rs. 11,60,000. In other words, there is an indication that 33 bundles accompanied lorry receipts without invoices under section 68(2) and for the balance 25 there were neither any invoices nor any lorry receipts. In the reply dated 15.03.2022 of the appellant also there was no clear explanation as to whether the appellant was carrying the goods for the said Star Handlooms of Tiruppur District or it was being transported by appellant for itself. The only response of the appellant in its reply date 15.3.2022 was that only two of the bundles would be valued at Rs. 20,000 each and that rest of the bundles the value would be between Rs.4,500 to Rs.5000 and not Rs.20,000 per bundle. The respondent State Tax Officer vide order dated 17.3.2022 has concluded that the owner has not come forward to reclaim the goods that were seized along with the petitioners conveyance. Therefore the appellant was liable to pay penalty. READ MORE Whether the value of the 33 out of 58 seized goods/bundles were valued between Rs. 4500 -5000 per bundle or R.20,000/- cannot be determined in a writ proceedings based on the submission of the The owner i.e. either the consignor or consignee have also not come forward to claim the Bundles. Therefore, the order passed by the respondent State Tax Officer cannot be interfered by this Court. It cannot be construed that the value of two of the bundles out of 58 bundles alone were Rs.20,000 and that rest of them were only between Rs. 4500 -5000. There cannot be determination of the value in a writ proceeding.

13. Bail Condition to deposit INR 70 Lakhs for alleged wrongful availment of ITC is not sustainable

Case Name: Subhash Chouhan Vs Union of India (Supreme Court of India)
Appeal Number: Criminal Appeal No. 186/2023
Date of Judgement/Order: 20/01/2023
Courts: Supreme Court of India

Bail Condition to deposit INR 70 Lakhs for alleged wrongful availment of ITC is not sustainable The Hon’ble Supreme Court in the matter of Subhash Chouhan v. Union of India [Criminal Appeal No. 186 /2023 dated January 20, 2023] set aside the condition imposed by the Hon’ble Chhattisgarh High Court, of depositing an amount

of INR 70,00,000/- for grant of bail to the assessee, in a matter of wrongful availment of Input Tax Credit ("ITC").

Facts: Subhash Chouhan ("the Appellant") was arrested on October 27, 2021 for alleged wrongful availment of INR 6,95,32,472/- as ITC by procuring invoices from fake and fictitious firm and also supplied goods without payment of tax and without issuing invoices to the tune of INR 27,70,559/-. The Hon'ble Chhattisgarh High Court vide order date June 21, 2022 ("the Impugned Order") granted bail to the Appellant subject to certain conditions. One of the conditions was that the Appellant shall deposit a sum of INR 70,00,000/- in favour of the Revenue Department within 45 days from the date of release. The Appellant contended that the condition to deposit INR 70,00,000/- for bail is not sustainable. Further, the final assessment was not complete so the Appellant cannot be presumed to be under the legal liability to pay such amount.

Issue: Whether the condition to deposit INR 70,00,000/- as a pre-requisite to grant bail is sustainable?

Held: The Hon'ble Supreme Court in Criminal Appeal No. 186 /2023 held as under:

- Observed that, such a condition cannot be imposed while granting bail.
- Held that, the condition directing the Appellant to deposit a sum of INR 70,00,000/- is not sustainable.
- Set aside the condition to deposit such sum of INR 70,00,000/-.
- Sustained rest of the conditions in the Impugned Order.

14. GST: Natural justice violation in trial administrative body cannot be cured by observing natural justice at appellate stage

Case Name: Chandni Crafts Vs Union of India (Rajasthan High Court)
Appeal Number: D.B. Civil Writ Petition No. 5460/2020
Date of Judgement/Order: 17/01/2023
Courts: All High Courts Rajasthan High Court

The authority conclusively found that the natural justice had not been followed by the adjudicating authority, however, on the basis that natural justice was duly followed during appeal proceedings, did not interfere with the order on account of the said aspect of violation of principle of natural justice. It is well settled that a failure of natural justice in the authority of first instance cannot be cured by sufficiency of natural justice in the appellate body, else the same would encourage the tendency of the authorities to give a short shrift to the proceedings before them. In the case of World Home Textiles (supra), the Madras High Court came to the following conclusion:- "7. When Rule 92(3) of the CGST Rules, 2017, makes it clear that hearing is mandatory before rejecting any application for refund, the second

respondent as well as the first respondent in their respective impugned orders have arbitrarily and by total non application of mind to the said Rule has rejected the petitioner's application for refund. Therefore, the refund application submitted by the petitioner will have to be considered afresh on merits and in accordance with law after giving sufficient opportunity of hearing to the petitioner by the second respondent." The Hon'ble Supreme Court in 63 Moon Technologies Ltd. v. Union of India: (2019) 18 SCC 401, pointed out that breach or defect in observing Rules of natural justice in the trial administrative body cannot generally be cured by observing natural justice at the appellate stage, particularly when a clear statutory right has given at the trial stage of an assessment of compensation first by the prescribed authority and then a right of appeal to the appellate Tribunal. In view of the above fact situation, wherein admittedly the principles of natural justice have been violated by the adjudicating authority and the appellate authority only on account of the fact that it had provided opportunity of hearing, did not interfere with the order of the adjudicating authority, both the orders cannot be sustained.

15. Passing of reassessment order without providing an opportunity of hearing is against principle of natural justice

Case Name: Kavita Krushna Kumar Vs Union of India (Gujarat High Court)
Appeal Number: R/Special Civil Application No. 10137 of 2020
Date of Judgement/Order: 19/01/2023
Courts: All High Courts Gujarat High Court

Gujarat High Court held that passing of reassessment order, alleging failure of submission of Form-F due to Covid lockdown, without providing an opportunity of hearing is against the principle of natural justice and hence liable to be quashed.

Facts- The petitioner is an individual and engaged in the business of retail sales of Cotton Seed Oil Cakes. She had applied for registration under Gujarat Value Added Tax Act, 2003 and under the Central Sales Tax Act, 1956 in November 2013. The certificate of registration was granted under the VAT Act and CST Act w.e.f. 27. 11. 2013. The petitioner transferred the Cotton Seed Oil Cakes from her local depot situated in Deesa to depot situation in Santpur, Abu Road, Sirohi, Rajasthan. The petitioner had prepared the invoice-cum-delivery challan and Form 402 prescribed under Rule 51 of the Gujarat Value Added Tax Rules, 2006 for verification on demand at check post. It was required to be generated online from the portal of Gujarat Commercial Tax Department and while preparing this Form, the registered person is required to state the nature of transaction, where it reflected that the invoice-cum-delivery challan was against the stock, which had been transferred and also the nature of the transfer. It was a Branch transfer against Form F. It is the say of the petitioner that the respondent authority had by way of an audit assessment

passed an order u/s. 34(2) of the VAT Act by accepting the declared turnover of the petitioner for local sales on 30.03.2019. On 02.07.2019, the first notice of reassessment under Rule 9(4) of the Central Sales Tax (Gujarat) Rules, 1970 had been issued upon the petitioner, but, due to closure of the business, the notice remained unserved. The second notice dated 10.01.2020 for reassessment was served upon the erstwhile consultant of the petitioner. The petitioner was informed by the consultant about the fixing of hearing on 10.01.2020. On 16.01.2020 the petitioner made an application before the Assistant Commissioner of Commercial Tax, Rajasthan for issuance of Form-'F' for F.Y. 2014-15. On 17.03.2020, the reassessment notice for the third time had been issued to the petitioner asking her to remain present with Form-'F' on 24.03.2020. However, in the meantime, there came an imposition of the partial lock-down in the State of Rajasthan and the complete lock-down from 23.03.2020 in the State of Gujarat. On 24.03.2020, the respondent No.3 since insisted the personal appearance, the petitioner's husband appeared along with the tax consultant and showed the inability to produce the Form-'F' due to the COVID-19 situation and made a request for adjournment. However, the order came to be passed by the respondent having taken note of the fact that the request is made for grant of time. This has aggrieved the petitioner and therefore, she is before this Court

Conclusion- In fact, no one was aware of the seriousness of the entire issue. And, yet, the fact remains that the officer concerned, having taken a note of the fact that the request has been made by the petitioner to the Rajasthan Authority for issuance of Form-'F', he has chosen not to accommodate the petitioner nor was he given an opportunity to tender the Form-F nor any opportunity of hearing was accorded. Therefore, this petition under Article 226 of the Constitution of India can be entertained bearing in mind the fact that this is a clear violation of principle of natural justice. Having recognized the fact that it was impossible for the petitioner to get the Form-'F' in a situation that prevailed at the relevant time he (Assessing Officer) continued to reassess the order and therefore, this petition not only under Article 226 of the Constitution of India is maintainable for the action being in breach of principle of nature justice, but the same deserves to be allowed quashing and setting aside the order of reassessment with all consequential reliefs.

16. e-bill expired without any fraudulent intent – HC Quashes Penalty order

Case Name: Orson Holdings Company Limited Vs Union of India (Gujarat High Court)
Appeal Number: R/Special Civil Application No. 18982 of 2018
Date of Judgement/Order: 18/01/2023
Courts: All High Courts Gujarat High Court

1. At the time of issuance of notice on 7.12.2018 in this petition which is filed under Article 226 of the Constitution of India, this Court has passed the following order: "1. This petition challenges the constitutional validity of rule 138(10) of the Central Goods and Services Tax Rules, 2017 / Gujarat Goods and Services Tax Rules, 2017 as being unconstitutional and violative of Articles 14, 19(1)(g) and 301 of the Constitution of India, to the extent the said provision restricts validity period of the e-way bill in terms of distance to be travelled in a day.
2. Mr.Vinay Shraff, learned advocate with Mr. Vishal Dave, learned advocate for the petitioners invited the attention of the court to the notice under section 129(3) of the Central Goods and Service Tax Act, 2017 (Annexure "J" to the petition), to point out that in terms of the said notice, the petitioner was directed to appear before the State Tax Officer-2. It was submitted that in response to the notice, the petitioner filed its reply. Reference was made to the impugned order passed under section 129(3) of the Act, to point out that the same has been passed on 28.09.2018 without waiting for the date of hearing, that is, 02.10.2018. It was submitted that therefore, the impugned order has been passed in breach of the principles of natural justice.
3. The attention of the court was invited to sub-section (4) of section 129 of the Act, which provides that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. It was submitted that despite the fact that in the show cause notice the date has been fixed, the order has been passed prior to the said date, without giving an opportunity of hearing to the petitioner, which is in breach of sub-section (4) of section 129 of the Act.
4. It was further pointed out that penalty is sought to be imposed under section 129(1) of the Act, whereas section 122(1)(xiv) of the Act provides that where a taxable person who transports any taxable goods without the cover of documents as may be specified in this behalf, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government, etc., whichever is higher. Ads by

5. Reference was made to section 73 of the Act, which provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts, and more particularly, to sub-section (8) thereof, which provides that where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. It was submitted that in the facts of the present case, the petitioner had deposited the amount of tax and penalty within thirty days from the date of issue of the notice and therefore, the petitioner was entitled to the benefit of sub-section (8) of section 73 of the Act.

6. Reference was also made to section 74 of the Act, which provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts, and more particularly, to sub-section (8) thereof, which provides that where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded. It was submitted that therefore, even in the case of fraud or willful misstatement or suppression of facts, the statute provides for payment of penalty equivalent to twenty-five per cent of the tax within thirty days from the date of the notice.

7. It was further submitted that the statute is required to be read as a whole and that section 129 of the Act ought not to have been read in isolation. Reliance was placed upon the decision of the Supreme Court in Kailash Chandra and others v. Mukundi Lal and others, AIR 2002 SC 829, wherein the court has held that a provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject matter dealt with in different sections or parts of the same statute is the same or similar in nature.

8. The attention of the court was also invited to the circular No.64/38/2018-GST dated 14th September, 2018 and more particularly, clause (5) thereof, which provides that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the situations enumerated thereunder. It was submitted that the situations enumerated in the said circular are illustrative and not exhaustive. Therefore, a mistake in writing distance can be deemed to have been included within the ambit of the said circular.

9. Another contention raised by the learned advocate for the petitioner is that in terms of the Government of India circular No.3/3/2017-GST dated 5th July, 2017, the

functions under different sections of the Central Goods and Service Act, 2017 or the rules made thereunder, are specifically delegated to the officers in terms of the said circular. It was pointed out that the powers under sub-section (3) of section 129 of the Act have been delegated to the Deputy or Assistant Commissioner of Central Tax. It was contended that the impugned order has been passed by the State Tax Officer, who is not an officer empowered to exercise powers under sub-section (3) of section 129 of the Act and therefore, suffers from lack of jurisdiction.

10. Having regard to the submissions advanced by the learned advocate for the petitioner, Issue Notice returnable on 10th January, 2019. Direct Service is permitted today."

2. On 13.10.2022, when the matter came up for hearing, Mr. Shah for the petitioners, on instructions, submitted that the petitioners have not pressed for the prayers at paragraphs 7(a) to 7(c) and thus, he is giving up the challenge to the vires, particularly, Rule 138(10) of the CGST Rules and GGST Rules.

3. The only prayers that survives for consideration of this Court are prayers para 7(d) and 7(e).

4. We have heard learned advocate for the petitioners who has urged that the case of the petitioners is covered by the decision of this Court in the case of Special Civil Application No.23835 of 2022 in the case of Shree Govind Alloys Pvt.Ltd. V/s State of Gujarat. It is further urged that in his case also, the way bill has expired and it appears to be bonafide and not with any fraudulent intent.

5. As the challenge to the Rule 138(10) of the CGST Rules has not been insisted, learned senior counsel Mr.Raval assisted by learned advocate urges that he has nothing to offer, whereas learned AGP Mr.Kathiriya appearing for the State in wake of the challenge given up of Rule 138(10) of the CGST Rules has urged this Court to consider the peculiar facts of this case, however, there is no dispute to the fact that in this case, this matter is squarely covered by the decision of Special Civil Application No.23835 of 2022.

6. Having heard both the sides, at the outset, it is to be noted that in case of Shree Govind Alloys Pvt. Ltd. (supra), the respondent had challenged the authority of the respondent demanding the tax and penalty under Section 129(3) of the Central Goods & Services Tax Act, 2017, where the goods, which were to be delivered on or before 17.10.2022, could not be delivered in time and on 19.10.2022 when inspected, some of the e-Way bill numbers had shown expired. The entire truck along with the goods had been seized on account of expiration of the e-Way bill. Therefore, the Court had, after a detailed consideration, held that e-Way bill had expired 41 hours before and the release of goods of conveyance and transit through the authority concerned. Relevant observations are made in paragraphs 6 to 10 are as under:

"6. We have heard learned advocates on both the sides and also have considered the material on the record. We notice section 129, which provides as under:

“Detention, seizure and release of goods and conveyances in transit 129(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released.-

(a) on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) xxx xxx xxx

3) 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)

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section(1), all proceedings in respect of the notice specified in sub-section(3) shall be deemed to be concluded.

(6) 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 fro 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 payable under sub-section (3); Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to deprecate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.” Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section93) or one lakh rupees, whichever is less:

7. It is not in dispute that in the instant case, e-Way Bill had expired 41 hours before and the release of goods of conveyance and transit through the authority concerned.

8. We could notice that the detention is also on the ground that the goods are of expiration of the eWay bill number, which had expired during the transit and the same cannot be the ground for detaining and seizure of M.S. Billet along with the vehicle truck.

9. This Court in Govind Tobacco Manufacturing Co. vs. State of U.P., [2022] 140 com 383 (Ahhahabad) has held that as there is expiry of e-Way bill on transit, the seizure of said vehicle and the goods is not permissible under the law. In the case before the High Court of Madhya Pradesh at Jabalpur in M/s. Daya Shaker Singh vs State of Madhya Pradesh passed in Writ Petition No.12324 of 2022 on 10.08.2022, where also the Court had intervened considering the fact that the respondent could not establish any element of evasion of tax with fraudulent intent or negligence on the part of the petitioner. Delay was of almost 4 1/2 hours before the e-Way bill could expire. It appeared to be bona fide and without establishing any fraudulent intention. Here also what is found is that there is no fraudulent intention for this to happen.

10. Resultantly, present petition stands allowed. The impugned order dated 04.11.2022 demanding the sum of Rs.7,53,364/- is quashed and set aside. The order of detention dated 19.10.2022 as well as the notice issued under section 129(3) of the Act dated 19.10.2022 are also quashed and set aside."

7. In the instant case also, as we could notice that the goods of the said vehicle has been detained at 6:05 p.m. at Amirgadh on 27.9.2018, after about expiry of 48 years. This case is squarely covered by the decision of this Court which has not been further challenged and even otherwise, from the facts which are robust in nature, it can be gathered that there does not appear to be any ill-intent on the part of the petitioner to use the expired e-Way bill. The company is situated at Howrah, West Bengal and the place of delivery was Jamnagar, Gujarat and in transit, this e-Way bill has expired.

8. The petition deserves to be allowed and is allowed.

9. The impugned order dated 28.09.2018 demanding a sum of Rs.63,40,000/- is quashed and set aside.

10. The order of detention as well as the further notice issued under Section 129(3) of the CGST Act in FORM GST MOV-07 is also quashed and set aside, with all consequential benefits.

11. The tax of Rs.11,41,200/- and the matching amount of penalty had been recovered, making it total of Rs.22,82,400/-. The penalty being an additional amount in wake of this quashment , the same shall be refunded to the petitioner with interest, within eight weeks.

12.Rule is made absolute to the aforesaid extent.

17. GST Registration cancellation: HC Quashes Appellate Authority order

Case Name: Siddharth Associates Vs State Tax Officer (Gujarat High Court)
Appeal Number: R/Special Civil Application No. 141 of 2023
Date of Judgement/Order: 11/01/2023
Courts: All High Courts Gujarat High Court

1. The petitioner is before this Court seeking to challenge the action of the respondent authority essentially on two counts firstly, because the order of cancellation of registration is in breach of principle of natural justice being very cryptic and non-reasoned order and secondly, the appellate authority on the ground of its not having powers to condone the delay has chosen not to decide the matter on merit.
2. The prayers sought for are as follow: "A. Your Lordships may be pleased to admit this petition; B. Your Lordships may be pleased to allow this petition; C. Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside order bearing No.498 Dispatch No.3977/78 dtd. 22.09.2022 (Annexure 'D' hereinabove) being passed by the respondent No.1 herein; D. Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside the order bearing Reference No.ZA240322119279Q dtd.25.03.2022 (Annexure 'C' hereinabove) being passed by the respondent No.2 herein; E. Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing the Respondent NO.2 to revoke GST registration of petitioner bearing No.24AACCK2846B2ZZ; F. Your Lordships may be pleased to grant such other and further relief/(s) that may be deemed fit and proper in the interest of justice in favour of the Petitioner."
3. The petitioner company engaged in the business of civil construction work is registered with the Goods and Service Tax Department and was holding the GST Registration No.24AACCK2846B2ZZ which was cancelled by issuance of show cause notice dated 29.11.2021 and the order impugned is dated 25.03.2022.
4. The appeal was preferred before the respondent No.2 which came to be rejected on the ground of the same having been filed after 75 days. The time limit for condonation of delay beyond 30 days, the appellate authority had shown its inability to condone the same and hence this petition.
5. The statutory appeal is provided before the GST Tribunal, which so far has not been constituted. In absence of any efficacious remedy, the petitioner is before this Court.
6. On advanced notice, the learned AGP, Ms. Pooja Ashar has appeared. She has pointed out to this Court that in absence of any reasonable ground, the delay cannot

be condoned and even if, that be the case the statutory limit provides for the delay be condoned by the appellate authority for the period of 30 days which is way beyond the stipulated time period and hence, there is no error in the order of the appellate authority.

7. Having heard the learned advocate, Mr .D. K. Trivedi for the petitioner and learned AGP, Ms. Ashar for respondent, in our opinion, the matter is covered by the decision of this Court rendered in case of Aggarwal Dyeing and Printing Works vs. State of Gujarat, reported in [2022] 137 com 332 (Gujarat).

8. In the decision of Aggarwal Dyeing and Printing Works (supra) this Court after considering the scheme of Act as well as the procedure contemplated under the provisions of the Act for cancellation of registration has held as under: “

10. Thus, upon appreciation of the scheme of Act, where specific forms have been prescribed at each stage right from registration, cancellation and revocation of cancellation of registration, the same are to be strictly adhered too. At the same time, it is equally important that the Proper Officer empowered under the said Act adheres to the principles of natural justice.

11. At the outset, we notice that it is settled legal position of law that reasons are heart and soul of the order and non communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. This Court is bound by the said judgments hereinafter referred to. The necessity of giving reason by a body or authority in support of its decision came for consideration before the Supreme Court in several cases. Initially, the Supreme Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the supreme Court in A.K. Kraipak v. Union of India [1970] 1 SCR 457. The Hon’ble Supreme Court vide judgments in the cases of Ravi Yashwant Bhoir v. District Collector, Raigad [2012] 4 SCC 407, Sant Lal Gupta v. Modern Cooperative Group Housing Society Ltd. [2010] 13 SCC 336; Kranti Associates (P) Ltd. vs. Masood Ahmed Khan [2010] 9 SCC 496; Abdul Ghaffar vs. State of Bihar [2008] 3 SCC 258, has expanded the horizon of natural justice and reasons have been treated part of the natural justice. It has gone to the extent in holding that reasons are heart and soul of the order. The absence of reasons renders an order indefensible/unsustainable particularly when it is subject to appeal/revision. It is to be noted that in the case of Kranti Associates (P) Ltd. (supra), the Hon’ble Supreme Court after considering various judgments formulated certain principles which are set out below: “

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by

f. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system. j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must becogent , clear and succinct. A pretence ofreasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny.

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making the said requirement is now virtually a component to human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553 at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions."

o. In all common law jurisdictions judgment play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process". Thus, the position of law that emerges from the decisions mentioned above, is that assignment of reasons is imperative in nature and the speaking order doctrine

mandates assigning the reasons which is the heart and soul of the decision and said reasons must be the result of independent re- appreciation of evidence adduced and documents produced in the case.

12. At this stage, it would be germane to refer to observations made by the Andhra Pradesh High Court in the case of MRF Mazdoor Sangh v. Commissioner of Labour 2014 (3) ALT 265, wherein the matter of cancellation of registration of trade union, it was held that: "The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues."

19.. In the result, all the writ applications deserve to be allowed solely on the ground of violation of principles of natural justice and, accordingly, the writ applications are allowed. We quash and set aside the respective show cause notices of all the writ applications, seeking cancellation of registration as well as the consequential respective impugned orders cancelling registration with liberty to the respondent No. 2 to issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicants, and to pass appropriate speaking orders on merits. It is needless to mention that it shall be open for the writ applicants to respond to such notices by filing objections / reply with necessary documents, if relied upon. We clarify that we have not gone into merits of the case."

9. We also further notice that the issue with regard to the power to condone the delay beyond the statutory time period prescribed under Section 107 is pending before this Court, without opining on that and concluding this issue to be decided at a future date, the show cause notice and the impugned order of the Appellate Authority requires to be quashed and set aside.

10. Resultantly, following the Coordinate Bench's decision in case of Aggarwal Dyeing & Printing Works (supra), this petition is ALLOWED solely on the ground of violation of the principles of natural justice. The show cause notice dated 29.11.2021 and the impugned orders dated 25.03.2022 and 22.09.2022 passed by the respondent-authorities are quashed and set aside granting a liberty to the respondent No.2 to issue a fresh show cause notice with particular reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicant and to pass appropriate speaking order on merit which shall be done physically as directed in the very decision. With the aforesaid, the GST Registration Number of the applicant stands restored forthwith and decide the matter by following the procedure of law.

18. Demand of tax and penalty for release of goods without mentioning the reasons is unsustainable

Case Name: Ram Prakash Chauhan Vs Commissioner of Delhi (Goods And Service Tax) & Anr (Delhi High Court)
Appeal Number: W.P.(C) 6924/2022
Date of Judgement/Order: 19/01/2023
Courts: All High Courts Delhi High Court

The Hon'ble Delhi High Court in Ram Prakash Chauhan v. Commissioner of Delhi (Goods and Service Tax) & Anr. [W.P.(C) 6924/2022 dated January 19, 2023] set aside the order raising a demand of tax and penalty for release of the goods. Held that, neither the Show Cause Notice ("SCN") nor the order of demand stated the reasons for imposing the tax liability as well as penalty. Further, the payment made by the Petitioner for release of the goods was not voluntary. Remanded the matter back and directed the Revenue Department to issue a fresh SCN and pass an appropriate order after affording a reasonable opportunity to the Petitioner to be heard.

Facts: Ram Prakash Chauhan ("the Petitioner") carries on the business of trading in steel/iron bars as a sole proprietor. The Petitioner had purchased a consignment of steel ("the goods") from M/s Mahendra Steels and sold it to M/s S.K. Integrated Consultant ("the Recipient") and the goods were transported directly to the Recipient through E-way bill dated October 19, 2020, containing all the details of the transport and clearly mentioning the Goods and Services Tax Identification Number ("GSTIN") of the Petitioner. However, since the goods were sold to the Recipient, therefore, their address was written on the E-way bill. During transit, the truck was intercepted by the GST Authorities ("the Respondent") on October 19, 2020 and the truck along with the goods were detained on the grounds that prima facie, the documents were found defective vide Order dated October 23, 2020 ("the Detention Order") and on the same date, an SCN under Section 129(3) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") was issued and an order of demand in Form GST MOV-09 was passed raising demand of INR 2,78,129 and penalty of equivalent amount ("the Demand Order"). Subsequently, the Petitioner paid the tax liability and penalty for release of goods and thereafter, filed an appeal before the Appellate Authority challenging the demand of tax and penalty, which was dismissed vide Order dated December 31, 2021 ("the Impugned Order") on the grounds that the order passed by the proper officer was legally justified and required no interference. Being aggrieved this petition has been filed by the Petitioner.

Issue: Whether the Petitioner is liable to pay tax and penalty under Section 129(3) of the CGST Act?

Held: The Hon'ble Delhi High Court in W.P.(C) 6924/2022 held as under:

- Noted that, the Respondent had not mentioned any specific reason for detaining the goods, raising the demand of tax or for levying penalty, in any of the orders passed as to why the documents accompanying the goods were found to be defective.
- Observed that, the order which formed the basis for penalising the Petitioner, does not disclose the discrepancy or mismatch between the E-Way Bills, quantity of the goods found in the vehicle and the invoices produced.
- Further noted that, there is an error in the E-Way Bill inasmuch as it does not reflect the name of the Petitioner but merely mentions the Petitioner's GSTIN.
- Stated that, it is unable to accept that the Demand Order and penalty is a consent order and the Petitioner was precluded from challenging the same. Further, the payment made by the Petitioner for release of the goods was not voluntary.
- Opined that, neither the SCN nor the Demand Order clearly sets out the reason for imposing the tax liability as well as penalty.
- Held that, it would be apparent to remand the matter to the Respondent to decide afresh after giving the Petitioner full opportunity to address the allegation against him.
- Set aside the Impugned Order and the Demand Order.
- Directed the Respondent to issue a fresh SCN within 2 weeks and pass an appropriate order after affording a reasonable opportunity to the Petitioner to be heard.

Relevant Provisions:

Section 129 of the CGST Act:

"Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released—

(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(3) 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).

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) 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 payable under sub-section (3): Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less: Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer."

19. Initiation of proceeding u/s 130 of CGST Act due to discrepancy in quantity in documents is justified

Case Name: SASI Pathirakunnath Vs Assistant State Tax Officer (Intelligence) (Kerala High Court)
Appeal Number: WP(C) No. 31445 of 2022
Date of Judgement/Order: 18/01/2023
Courts: All High Courts Kerala High Court

Kerala High Court held that discrepancy in quantity in the documents is sufficient for department to suspect the evasion of tax. Accordingly, initiation of proceedings u/s 130 of CGST/ SGST valid.

Facts- The first petitioner is stated to be the proprietor of an establishment known as 'A One Gold', having its place of business at Chembukavu in Thrissur district. The 2nd petitioner is an acquaintance of the 1st petitioner. The 2nd petitioner was travelling on a train from Thrissur to Alleppy on 07.09.2022. He was carrying some gold ornaments from Thrissur to Alleppy, at the instance of the 1st petitioner. 2nd petitioner was detained at about 02.35 pm by the officials of the Railway Protection Force (RPF). On being questioned as to the documents available with the 2nd petitioner for carrying the gold, he is stated to have shown certain documents on his mobile phone, which did not appear satisfactory to the Railway Protection Force. 2nd respondent initiated and concluded the proceedings u/s 130 of CGST/SGST Act which is under challenge in this writ petition.

Conclusion- There is no satisfactory explanation for the fact that there was a discrepancy in the quantity mentioned in the documents produced by the 1st petitioner in the evening before the Tax authorities and the quantity actually recovered from the petitioner. The fact that there was discrepancy in the quantity in the documents stated to have been produced and the quantity recovered from the 2nd petitioner itself, in my opinion, is sufficient for the Department to suspect the evasion of tax. I do not propose to find anything on merits regarding the order of adjudication issued by the 2nd respondent under Section 130 of the CGST/SGST Acts for the reason that it would not be proper to do so, considering the fact that the petitioners have appellate remedies against Ext.P18 order. Therefore, this question is being considered only for the purpose of deciding whether the officers were right in initiating proceedings under Section 130 of the CGST/SGST Acts. In the totality of the

facts and circumstances of the case, I am unable to find that there was any malice or ill-will or lack of jurisdiction in initiating proceedings under Section 130 of the CGST/SGST Acts. I make it clear that I have not found that Ext.P18 order is valid on its merits and it will be open to the petitioners to raise all their contentions before the appellate authority in a duly constituted appeal.

20. Migration of unadjusted TDS amount allowable under GST

Case Name: Subhash Singh Choudhary through its proprietor Vs State of Jharkhand through the Secretary-cum-Commissioner (Jharkhand High Court)
Appeal Number: W.P.(T) No. 2404 of 2020
Date of Judgement/Order: 09/01/2023
Courts: All High Courts Jharkhand High Court

Jharkhand High Court held that unadjusted TDS amount under Jharkhand Value Added Tax Act is allowed to be migrated under Jharkhand Goods and Services Tax Act, 2017.

Facts- Post implementation of GST, Petitioner claimed transition of the amount of credit of value added tax of Rs. 1,73,69,826/- by filing GST TRAN-1 online in GSTN Portal on 28th September, 2017. However, a Summary of Show Cause Notice in Form GST-DRC-1 was issued by Respondent No. 5-State Tax Officer, Bokaro, alleging, inter alia, that the Petitioner was not entitled for migration of the amount of credit of value added tax of an amount of Rs. 1,73,69,826/- and, accordingly, Petitioner was directed to show cause as to why entire claim of migration be not disallowed and interest and penalty be not imposed upon Petitioner for wrongful availment of ITC. Petitioner submitted its reply contending that Petitioner did not violate Section 140 of the JGST Act, but, Petitioner was communicated vide e-mail a Summary of Order in Form GST DRC-07 dated 19.01.2019, wherein the entire amount migrated by the Petitioner of Rs. 1,73,69,826/-was disallowed and interest and penalty was also imposed upon Petitioner. The Petitioner being aggrieved by the rejection of its claim of migration of credit of value added tax, preferred Appeal before the First Appellate Authority – Joint Commissioner of State Tax, Dhanbad Division, Dhanbad vide Appeal dated 04.03.2019 which was registered as Appeal Case No. BK/GST-03/2019-20. However, after Petitioner preferred the said Appeal, Rectification Order was passed by Respondent No. 5 in Form GST DRC-08, wherein earlier denial of migration of entire ITC of Rs. 1,73,69,826/- was reduced to denial of ITC only to a sum of Rs. 43,07,310/-i.e. an amount equivalent to excess TDS reflected in the quarterly return of the Petitioner. It is the specific case of the Petitioner that the Appellate Authority merely on alleged technicalities rejected the second appeal of the Petitioner. Further, it was the specific case of the Petitioner that neither the

original adjudication order nor the rectification order was ever communicated to the Petitioner and only the summary of order was communicated in Form GST DRC-07 and Form GST DRC-08 and, under the said circumstances, rejection of the appeal of the Petitioner on the ground that it has not enclosed along with Memo of Appeal the adjudication order and/or rectification order was not tenable in the eye of law.

Conclusion- Proviso to Section 140(1) of the JGST Act provides that a registered person shall not be allowed to tax credit where the said amount of credit is not admissible as input take credit under the GST Act. It was contended by the Respondents that since TDS was in the nature of output tax, it was not admissible as input tax credit under the GST Act and, hence, cannot be allowed to be migrated. In our opinion, the aforesaid restrictive interpretation sought to be given to the proviso is beyond the scheme of transitional provision. Ads by Thus, we are of the opinion that proviso Clause (i) to Section 140(1) of the JGST Act only restricts migration of such amount of credit where there is an express prohibition in respect of such transaction of claiming input tax credit under Section 17(5) of the GST Act.

21. GST officers have no power to seize cash during search operations

Case Name: Arvind Goyal CA Vs Union of India & Ors. (Delhi High Court)
Appeal Number: W.P.(C) 12499/2021
Date of Judgement/Order: 19/01/2023
Courts: All High Courts Delhi High Court

The Hon'ble Delhi High Court in Arvind Goyal CA v. Union of India & Ors. [W.P.(C) 12499/2021 dated January 19, 2023] has held that, seizure under Section 67 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") is limited to goods liable for confiscation or any documents, books or things which may be useful for or relevant to any proceedings and 'cash' does not fall within the definition of 'goods' therefore, the action of Goods and Services Tax ("GST") officers of taking away currency was illegal and without any authority of law.

Facts: Arvind Goyal ("the Petitioner") is a Chartered Accountant and a search proceeding was carried out at his residence on December 4, 2020 by GST officers, AE, Delhi ("the Respondent") and during this search, the Respondent found cash amounting to INR 1,22,87,000/- which was taken in possession, however, no seizure memo was issued, only a panchnama was drawn up which indicated that the Respondent have taken possession of certain items including cash amounting to INR 1,22,87,000/-. Further, the amount of INR 18,87,000/- was returned to the Petitioner along with the laptop and mobile phones seized during the search.

The Petitioner contended that:

- The Respondent had no reason to believe that any goods liable for confiscation were lying or any records relevant to the proceeding were available in their premises.
- Further, contended that the Respondent had no power to seize any cash in exercise of its powers under Section 67(2) of the CGST Act as currency is excluded from the definition of goods and thus cannot be seized.

The Respondent contended that they had merely "resumed" cash as is noted in the panchnama and therefore, the same cannot be considered as seizure. Being aggrieved, this petition has been filed.

Issue: Whether cash can be seized by the Respondent during search proceeding under Section 67(2) of the CGST Act?

Held: The Hon'ble Delhi High Court in W.P.(C) 12499/2021 held as under:

- Observed that, a plain reading of Section 67(2) of the CGST Act indicates that the seizure is limited to goods liable for confiscation or any documents, books or things, which may be "useful for or relevant to any proceedings under this Act".
- Further observed that, cash does not fall within the definition of goods and, prima facie, it is difficult to accept that cash could be termed as a 'thing' useful or relevant for proceedings under the CGST Act.
- Noted that, there is no provision that entitles the Respondent to "resume" assets therefore, the action taken by the Respondent was a coercive action and no provision in the CGST Act could support an action of forcibly taking over possession of currency from the premises of any person, without effecting the same.
- Opined that, the powers of search and seizure are draconian powers and must be exercised strictly in terms of the statute and only if the necessary conditions are satisfied.
- Held that, the action of taking away currency was illegal and without any authority of law.
- Directed the Respondent to return the balance amount along with the interest accrued thereon to the Petitioner and to release the bank guarantee furnished the by Petitioner.

Our Comments:

In this regard, a contrary view has been taken by the Hon'ble Madhya Pradesh High Court in Kanishka Matta v. UOI [Writ Petition No. 8204/2020 dated August 26, 2020] in a matter challenging seizure of cash amounting to INR 66,43,130/- by the GST officials during search. The Court observed that, the word "things" appearing in Section 67(2) of the CGST Act is to be given wide meaning and any subject matter of ownership within the spear of proprietary or valuable right, would come under the definition of "thing". Thus, it would cover cash also. Held that, a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) of the CGST Act, makes it clear that money can also be seized by authorized officer, therefore, the authorities had rightly seized the cash amount. Further, it was held that, unless and until the investigation is carried out and matter is

finally adjudicated, question of releasing such amount does not arise. The Court in the above judgment mainly relied on the word "things" as per Black's Law Dictionary and Wharton's Law Lexicon. Further it was observed that, it is a cardinal principle of interpretation of statute that, unreasonable and inconvenient results are to be avoided, artificially and anomaly to be avoided and most importantly, a statute is to be given interpretation which suppresses the mischief and advances the remedy. It is pertinent to note that, Section 2(52) of the CGST Act, specifically excludes 'money' and 'securities' from the definition of the term "goods" but, as per Section 67(2) of the CGST Act, if the proper officer has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under the CGST Act, then, he may seize such goods, documents or books or things. Therefore, this matter needs critical examination: Unless money (Currency) per se is included in the definition of "Goods", it cannot becomes the subject matter of proceedings under the GST Law. Whether the term "Things" can include Currency in its ambit, even when the definition of "Goods" excludes the same. Even for seizure of any documents, books or things, it is important to prove by the Revenue Department, that the proper officer has reasons to believe that any goods liable to confiscation or any documents or books or things, shall be useful for or relevant to any proceedings under the CGST Act. Hence, it may be concluded that GST authorities does not have unconditional powers to seize cash during search operations. Moreover, the CBIC had also issued Instruction No. 1/2022-23 [GST- Investigation] dated May 25, 2022, w.r.t. deposit of tax during the course of search, inspection or investigation wherein, it has been clarified that, there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings, to specifically state that, no recovery of tax is to be made by the GST Authorities during search, inspection or investigation under any circumstances, unless it is voluntary. The above Instructions were issued due to alleged use of force and coercion by the GST officers for making 'recovery' and for getting the amount deposited during search or inspection or investigation.

Relevant Provisions: Section 2(17) of the CGST Act: "(17) "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;"
Section 2(31) of the CGST Act: "(31) "consideration" in relation to the supply of goods or services or both includes—
(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government: Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"
Section 2(52) of the CGST Act: "(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply; "
Section 2(75) of the CGST Act: "(75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;"
Section 67(2) of the CGST Act: "Power of inspection, search and seizure: (2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things: Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer: Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act."

22. GST: Detention: Quashing of SCN at Initial Stage by HC – Declared as Pre-Mature by SC

Case Name: State of Punjab Vs Shiv Enterprises & Ors. (Supreme Court of India)
Appeal Number:
Civil Appeal No. 359 of 2023
Date of Judgement/Order: 16/01/2023
Courts: Supreme Court of India

GST: Detention: Quashing of Show Cause Notice (SCN) at The Initial Stage By HC – Declared As Pre-Mature By SC In State of Punjab Vs. M/s. Shiv Enterprises & Ors in CA No. 359 of 2023 in (SLP (C) No. 19295/2022 dated: 16.01.2023 the Hon'ble Supreme Court of India has set aside the judgment of the Hon'ble High Court of Punjab & Haryana in Shiv Enterprises Vs. State of Punjab & Ors, CWP No. 18392 of 2021/04.02.2022 and remitted back the same for fresh disposal by the tax authority who issued notice U/s. 130 of the GST acts. It is held that HC has erred in entertaining the writ petition against the SCN and quashing of notice is pre-mature and the merits of the case have to be considered by the original authority in an appropriate proceeding.

FACTS OF THE CASE

The consignment of the original writ petitioner, M/s. Shiv Enterprises was intercepted and a show cause notice (SCN) was issued U/s. 130 of the CGST/SGST/IGST Acts,2017 directing to explain within 14 days, why the goods in question and the conveyance shall not be confiscated and why the tax, penalty and other charges payable in respect of such goods and the conveyance shall not be payable. In the SCN, there was a specific allegation with respect to evasion of tax, which was yet to be considered by the appropriate authority on the original writ petitioner's appearing before the appropriate authority, who issued the notice. On receipt of the said notice the writ petitioner approached the Hon'ble High Court of Punjab & Haryana. The High Court entertained the writ petition against the show cause notice and set aside the show cause notice by observing that,

"it is clear that there is no allegation that the petitioner has contravened any provision of the Act or the rules framed thereunder much less with an intent to evade payment of tax. ……. the case alleged against the petitioner is that of wrongful claim of input tax credit. The petitioner or for that matter any registered person shall be entitled to tax credit of input tax on any supply of goods or services, only when he is able to show that the tax in respect of such supply has been paid to the Government either in cash or through utilization of input tax credit admissible in respect of the said supply. …… ….. Thus, the action of the respondents in initiating

proceedings U/s. 130 on the basis of show cause notice dated 14.09.2021 cannot be sustained.

HELD BY THE COURT

Apart from the fact that the observation of the HC is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice U/s. 130 of the Act was issued. Therefore, the opinion of the Court is that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority. The impugned judgment passed by the High Court to the extent quashing and setting aside the notice dated 14.09.2021 is set aside and remand the matter to the appropriate authority, who issued the notice.

23. Availment & passing of fake/ineligible ITC – HC Grants bail to accused

Case Name: Gaurav Kakkar Vs Directorate General of GST Intelligence (Rajasthan High court)
Appeal Number: Criminal Miscellaneous Bail Application No. 17536/2022
Date of Judgement/Order: 11/01/2023
Courts: All High Courts Rajasthan High Court

Bail granted for alleged availment/passing of fake ITC to avoid prolonged detention beyond statutory period The Hon'ble Rajasthan High Court in the case of Gaurav Kakkar v. Directorate General of GST Intelligence, Jaipur Zonal Unit [S.B. Criminal Miscellaneous Bail Application No. 17536/2022 dated January 11, 2023] has granted bail to the assessee in the matter of alleged creation of fake firms for availment and passing of fake/ ineligible Input Tax Credit ("ITC") of INR 19.65 crores. Held that, the trial is expected to be prolonged and if the bail is not granted, the period in judicial custody for the assessee may surpass the maximum punishment of five years.

Facts: Gaurav Kakkar ("the Petitioner") was arrested for offence under clauses (c), (f), (k) and (l) of Section 132(1) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") on November 4, 2022 for alleged creation of fake firms for availing and passing of ineligible ITC to facilitate existing beneficiary firms, to the tune of INR 19.65 crores based on fake invoices. The Petitioner contended that the Petitioner has falsely been implicated and the arrest was made without determining the tax liability and by wrongfully calculating the alleged ITC availed, based on frivolous grounds. Further, there is no risk of tampering with evidence or influencing witnesses as the challan of the case was already presented, therefore the Petitioner

should be granted bail as it would serve no useful purpose to keep them in jail. The Revenue Department ("the Respondent") contended that the Petitioner is alleged to be the mastermind behind creating fake firms for the purpose of fraudulently claiming ITC through false invoicing and that the evidence collected supports this and hence, the bail application should be rejected.

Issue: Whether the Petitioner be granted bail as challan was already presented?

Held: The Hon'ble Rajasthan High Court in S.B. Criminal Miscellaneous Bail Application No. 17536/2022 held as under:

- Observed that, given the extensive investigation and evidence gathered, the trial is expected to be lengthy, and if bail is denied, the defendant's time in judicial custody may exceed the maximum sentence of five years.
- Relied on the judgment of the Hon'ble Supreme Court in the matter of Vinay Kant Ameta v. UOI [Criminal Appeal No. 60/2022, dated January 10, 2022] wherein, the accused was directed to deposit INR 200 crores as a condition for grant of bail.
- Granted bail to the Petitioner with a condition to deposit INR 3 crores before the Respondent.
- Directed that the Petitioner be released on bail, provided, the Petitioner executes a personal bond in a sum of INR 2,00,000/- with two sureties of INR 1,00,000/- each for its appearance before the court for every hearing and whenever called upon to do so till the end of the trial.
- Directed the trial court to take receipt of the deposition of INR 3 Crores before attesting the bail bonds.

24. HC directs processing of GST refund withheld for wrong reflection of GST registration status

Case Name: Anuj Gupta Vs Commissioner of GST (Delhi High Court)
Appeal Number: W.P.(C) 16070/2022
Date of Judgement/Order: 13/01/2023
Courts: All High Courts Delhi High Court

It is the petitioner's case that the refund due to it has not been processed by the respondents as its GSTN registration has been incorrectly reflected as suspended. The application, in the format filed by the petitioner, indicates that it was duly supported by all relevant documents including form GSTR 2A. It is submitted on behalf of the respondents that the form GSTR 2A is not in the correct format. Concededly, the counter affidavit does not indicate any specific deficiency in the form as uploaded by the petitioner. Admittedly, form GSTR 2A is a system generated form. It is stated that certain columns in the form GSTR 2A are blank and therefore,

the application for refund has not been processed. According to the petitioner, the form GSTR 2A, as visible at its end, reflects all relevant particulars. The learned counsel appearing for the petitioner states that the scanned copy of the said form (Gstr 2A.pdf) was uploaded along with the application. In view of the above, the respondents are directed to examine whether the form GSTR 2A, as visible at the petitioner's end, reflects all relevant details. If it does, it would be apparent that there is a technical error is in the respondents' system. If it is found that such a problem exists, the respondents are directed to address the said technical problem within a period of one week from today and, in any event, process the petitioner's application for refund within a period of two weeks, on the basis of forms already filed. In the event the respondents cannot process the petitioner's application for refund, the respondents shall indicate the same to the petitioner within the aforesaid period.

25. GST: HC lambasts AO for passing order without application of mind & opportunity of hearing

Case Name: Ultratech Cement Limited Vs Union of India (Madhya Pradesh High Court)
Appeal Number: Writ Petition No. 617 of 2023
Date of Judgement/Order: 19/01/2023
Courts: All High Courts Madhya Pradesh HC

The court lambasts the assessing officer for passing order which shows total non application of mind and not granting opportunity of hearing to the petitioner in violation of section 75(4) of the CGST Act. The petitioner is a manufacturer. It availed ITC. There was mismatch in 2A V/s 3B. Credit was sought to be disallowed. Notice was issued. The petitioner replied. However, without hearing the petitioner, order came to be passed in Form DRC-07. Hence, petition was filed. The Hon'ble Court set aside the order and allowed the writ petition. The court lambasts the assessing officer for passing order which shows total non application of mind and not granting opportunity of hearing to the petitioner in violation of section 75(4) of the CGST Act. No time was granted to the respondent to file affidavit in reply as it would to the agony of the petitioner and waste precious judicial time. If the assessing officer had considered the reply of the petitioner, the occasion for filing writ petition would not have arisen. Directs that officer other than Assessing officer who passed the order should consider the reply of the petitioner.

26. HC directs revocation of GST Registration cancellation order on payment of interest & penalty

Case Name: Arabinda Bhowmick Vs Deputy Commissioner (Calcutta High Court)
Appeal Number: WPA 29053 of 2022
Date of Judgement/Order: 10/01/2023
Courts: All High Courts Calcutta High Court

By this writ petition, petitioner has challenged the impugned order of the Appellate Authority dismissing the appeal of the petitioner on the technical ground of delay of four days by the Appellate Authority concerned under the WBGST Act which was filed against the order of the Adjudicating Authority canceling the registration of the petitioner for non-filing of return and imposing penalty and interest as a condition for revoking the order of cancellation of registration. On earlier date of hearing on 4th January, 2023, petitioner expressed his willingness to pay the penalty and interest imposed by the Adjudicating Authority for revoking of the order of cancellation of his registration and Mr. Ghosh, learned Advocate appearing for the State respondents was asked to take appropriate instructions in the matter. Mr. Ghosh submits that there will be no difficulty in revoking the order of cancellation of the petitioner's registration, if the interest and penalty imposed is paid by the petitioner. Considering the facts and circumstances of the case and submission of the parties, this writ petition being WPA 29053 of 2022 is disposed of by directing the respondent Authority concerned to revoke the impugned order of cancellation of the petitioner's registration immediately, if the petitioner pays the interest and penalty within two weeks from date.

27. GST: SCN can still be Issued U/s. 73 – No Limitation For FY 2017-18 Under N/No. 13/2022 Dated: 05.07.2022

Case Name: Pappachan Chakkiath Vs. Asst: Commissioner & Ors (Kerala High Court)
Appeal Number: WPC No. 816 of 2023
Date of Judgement/Order: 11/01/2023
Courts: All High Courts Kerala High Court

GST: Show Cause Notice Can Still Be Issued U/S. 73 – No Bar Of Limitation Came Into Force For The Ay 2017-18 Under Notification No. 13/2022/05.07.2022 Disposing a writ petition in Pappachan Chakkiath Vs. Asst: Commissioner & Ors (WPC No. 816 of 2023/11.01.2023) the Hon'ble High Court of Kerala categorically held that proceedings U/s. 73 of the CGST/SGST Acts can be passed within an extended period

up to 30.09.2023 pertaining to the period from July,2017 to March,2018, in the light of Notification No. 13/2022/dated:05.07.2022 and consequently Show Cause Notices (SCN) can be issued with reference to that date – ie –prior to three months of the same.

FACTS OF THE CASE

The dealer/petitioner was served with an order U/s. 73 of the CGST/SGST Acts,2017 pertaining to the period from July 2017 to March 2018. The petitioner contends that the said proceedings is barred by limitation and therefore out of jurisdiction. That, U/s. 73 (10) of the CGST/SGST Acts, the time limit for completion of proceedings is three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised, relates. However as per Notification No. 13/2022/dated:05.07.2022 the time limit for issuance of an order for the FY 2017-18 has been extended upto 30.09.2023. According to him, the terms of the said notification relate only to the issuance of order and therefore, unless the SCN was issued within the time specified in sub-section (2) of Section 73 read with provisions of sub-section (10) of Section 73, the entire proceedings have to be declared as one without jurisdiction. In other words, the contention is that only the time limit for issuance of order has been extended and the time limit for issuance of a show cause notice has not been extended.

HELD BY THE COURT READ MORE

It is clear from a reading of Section 73 (2) that, the show cause notice to be issued under Section 73 (1) has to be issued at least three months prior to the time limit specified in sub-section (10) for issuance of order. When the time limit for issuance order under sub-section (10) of Section 73 for the financial year 2017-18 has been extended upto 30.09.2023, the only interpretation that can be placed on the provisions of Section 73(2) is that, the show cause notice can also be issued with reference to the date 30.09.2023 and not with reference to any other date. There is absolutely no ambiguity in the provisions requiring this Court to apply any rule of interpretation in favour of the assessee. Therefore, it is viewed that the petitioner has not made out any case for interference under Article 226 of the Constitution of India as it cannot be found that the impugned orders are issued without jurisdiction.

28. VAT on Hiring of Helicopters – Delhi HC to decide

Case Name: Pawan Hans Limited Vs Commissioner of Trade & Taxes (Delhi High Court)
Appeal Number: ST. APPL. 1/2023
Date of Judgement/Order: 12/01/2023
Related Assessment Year: 2006 to 2010
Courts: All High Courts Delhi High Court

The appellant states that it is in the business of chartering helicopters and has entered into agreements with various State Government and public sector entities for hiring of its helicopters. According to the VAT authorities, the agreements entail transfer of the right to use and therefore, the consideration would be taxable under the Delhi Value Added Tax Act, 2004. Tarun Gulati, learned senior counsel appearing for the appellant submits that the helicopters continue to be in possession and control of the appellant. The pilots manning the said aircraft are under rolls of the appellant. Further, the maintenance of the helicopters is also done by the appellant. He also submits that the appellant was registered with the Service Tax Authority for rendering the service of "Supply of Tangible Goods for Use Services". And, has duly paid the Service Tax as chargeable under the Finance Act, 1994. HC held that The issues raised in the present appeal require consideration and directed parties to file written submissions not exceeding three pages along with reference to the authorities relied upon by them, before the next date of hearing.

29. OVAT: No concessional VAT on Tyre, Tube & Flaps sold with Tractor-Trolley

Case Name: Maa Santoshi Engineering Jaipatna Vs State of Odisha (Orissa High Court)
Appeal Number: STREV 35 of 2016
Date of Judgement/Order: 03/01/2023
Courts: All High Courts Orissa High Court

A. The question whether the Tribunal was legally justified to tax tyre, tube and flaps when sold along with tractor-trolley as a single unit to be taxed separately @ 12.5% [up to 31.03.2011] and 13.5% [after 01.04.2011] and tractor-trolley without tyre, tube and flaps will be sold @ 4% is answered in the positive, i.e., in favour of the opposite party-Revenue and against the petitioner-dealer.
B. The question whether the dispute being the rate of tax the confirmation of penalty by the Tribunal is correct in law is answered in the positive inasmuch as

the penalty is imposed on the tax assessed invoking Section 42(5) of the OVAT Act, e., in favour of the opposite party-Revenue and against the petitioner-dealer.

C. The question whether the Tribunal was correct in confirming the imposition of maximum penalty by the assessing officer without taking into consideration the decisions relied on by the petitioner rendered in the case of Union of India Vrs. Rajasthan Spinning & Weaving Mills, (2010) 1 GSTR 66 (SC), which has been relied on by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Chandigarh Vrs. Pepsi Foods Ltd., 2010 (260) ELT 481 (SC), is answered in favour of opposite party-Revenue and against the opposite party.

30. Assessee allowed to rectify its GST Returns after the deadline

Case Name: Shiva Jyoti Construction Vs Chairperson, Central Board of Excise & Customs and others (Orissa High Court)
Appeal Number: W.P. (C) No. 18216 of 2017 (Case Number should have been 18216/2021)
Date of Judgement/Order: 12/01/2023
Courts: All High Courts Orissa High Court

The Hon'ble Orissa High Court in the matter of M/s. Shiva Jyoti Construction v. The Chairperson, Central Board of Excise & Customs and others [W.P. (C) No. 18216 of 2017 dated January 12, 2023] permitted the assessee to rectify its Goods and Services Tax ("GST") Returns filed for the months of September 2017 and March 2018, in order to claim Input Tax Credit ("ITC") benefit by the recipient, wherein B2C was erroneously mentioned, instead of B2B. Held that, the assessee will be unnecessarily prejudiced if it is not allowed to avail the benefits of ITC.

Facts: M/s Shiva Jyoti Construction ("the Petitioner") has filed this petition seeking to permit them to rectify the GST Return filed for the months of September 2017 and March 2018, wherein the Petitioner had wrongly mentioned B2C instead of B2B while filing Form GSTR-1 due to which the recipient was unable to avail the ITC. The Petitioner was unaware of such error until January 21, 2020. Thereafter, the Petitioner had made requests to the Revenue Department ("the Respondent") to allow it to rectify the Form GSTR-1. The Respondent rejected the request of the Petitioner vide letters of rejection dated June 19, 2020 and September 23, 2020 ("the Impugned Letters"), on the ground that the last date of filing the return was March 31, 2019 and the last date of carrying out such rectification was April 13, 2019. Thus, the deadline for the rectification of errors in Form GSTR-1 had crossed.

Issue: Whether the Petitioner can be allowed to make rectifications in its Form GSTR-1 after the deadline for rectification of errors had crossed?

Held: The Hon'ble Orissa High Court in W.P. (C) No. 18216 of 2017:

- Observed that, no loss would be caused to the Respondent by allowing the Petitioner to make the rectifications and that, the Petitioner will be unnecessarily prejudiced if it is not allowed to avail the benefits of ITC.
- Relied on the judgment of the Hon'ble Madras High Court in the matter of M/s. Sun Dye Chem v. the Assistant Commissioner (ST) [Writ Petition No.29676 of 2019 dated October 6, 2020]wherein, the Court allowed the assessee to rectify and correct its Form GSTR-1 for the Period August 2017 to December 2017 and redistribute the ITC available and directed the Revenue Department to enable amendment in Form GSTR-1.
- Set aside the Impugned Letters.
- Permitted the Petitioner to resubmit the corrected Form GSTR-1.
- Directed the Respondents to receive the forms manually and facilitate the uploading of details in the web portal within a period of four weeks.

31. GST order passed without granting opportunity of personal hearing is set aside

Case Name: Eagle Fibres Limited Vs State of Gujarat (Gujarat High Court)
Appeal Number: Special Civil Application No. 17506 of 2022
Date of Judgement/Order: 12/01/2023
Courts: All High Courts Gujarat High Court

Gujarat High Court held that order, making the addition of huge amount of tax, interest and penalty, passed in FORM GST DRC-07 without granting opportunity of personal hearing is liable to be set aside. Facts- This is a petition seeking direction to set aside the ex-parte order passed in FORM GST DRC-07 dated 14.04.2022 passed by the respondent no.2 without following the principles of natural justice and making the addition of huge amount of tax, interest and penalty of Rs. 2.40 Crores.
Conclusion- The decision of this Court in case of Graziano Trasmissioni India Pvt. Ltd. vs. State of Gujarat [2022(66) G.S.T.L. 38 (Guj.)] and Alkem Laboratories Ltd. vs. Union of India [2021(46) G.S.T.L. 113 (Guj.)] and other decisions will need to come to the rescue of the petitioner which insist on providing the opportunity of personal hearing when any adverse decision is contemplated, even without any request for personal hearing on the part of the party concerned. Held that, the petition is allowed quashing and setting aside the impugned order of assessment with all the consequential proceedings. Rule is made absolute to the aforesaid extent. The respondent is at liberty to initiate the proceedings from the stage where it had been left, by affording reasonable opportunity of hearing to the petitioner on intimating him even physically. We noticed that it is only through portal that the assessee is being served. Let the service be also effected physically through RPAD and thereafter, affording the reasonable opportunity, the order shall be passed in accordance with law.