DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT,

PUNJAB, PATIALA

GST UPDATE

(May 2023)

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(I) GIST of GST Notifications

Centre's Notification No.	Subject
Notification No. 10/2023-Central	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr from 1st August 2023.
Notification No. 11/2023-Central	Seeks to extend the due date for furnishing FORM GSTR-1 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
Notification No. 12/2023-Central	Seeks to extend the due date for furnishing FORM GSTR-3B for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
Notification No. 13/2023-Central	Seeks to extend the due date for furnishing FORM GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
Notification No. S.O. 37/P.A.5/2017/S.128/Amd./2023	Section 128 of the Punjab Goods and Services Tax Act, 2017
Notification No. S.O. 38/P.A.5/2017/S.148/Amd./2023	Section 148 of the Punjab Goods and Services Tax Act, 2017
Notification No.S.O. 39/P.A.5/2017/S.128/Amd./2023	Section 128 of the Punjab Goods and Services Tax Act, 2017
Notification No. No. G.S.R. 54/P.A.5/2017/S.164/Amd.(61)/2023	Section 164 of the Punjab Goods and Services Tax Act, 2017
Notification No. GSR 55/P.A./5/2017/S.164/Amd(62)2023	Section 164 of the Punjab Goods and Services Tax Act, 2017
Notification No. G.S.R. 56/P.A.5/2017/S.164/Amd. 2023	Section 164 of the Punjab Goods and Services Tax Act, 2017
NOTIFICATION NO. G.S.R. 57/P.A.5/2017/S.164.Amd.(64)/2023	Section 164 of the Punjab Goods and Services Tax Act, 2017
Notification No. 01/2021-Integrated Tax	Section 20 of the Integrated Goods and Services Tax

(II) STATE GST NOTIFICATIONS

1. Notification No. S.O. 37/P.A.5/2017/S.128/Amd./2023

(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 8th May, 2023

No. S.O. 37/P.A.5/2017/S.128/Amd./2023.-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017) (hereinafter referred to in this notification as the said Act), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.7/P.A.5/2017/S.128/2018, dated the 7th February, 2018, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 16th February, 2018, namely :–

AMENDMENT

In the said notification, after the fifth proviso, the following proviso shall be inserted, namely: –

"Provided also that the late fee payable for delay in furnishing of **FORM GSTR-4** for the Financial Year 2021- 22 under section 47 of the said Act shall stand waived for the period from the 1st day of May, 2022 till the 30th day of June, 2022.".

2. This notification shall be deemed to have come into force on and with effect from 26th day of May, 2022.

VIKAS PRATAP

Financial Commissioner (Taxation) to Government of Punjab,

Department of Excise and Taxation.

2. Notification No. S.O. 38/P.A.5/2017/S.148/Amd./2023

(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 8th May, 2023

No. S.O. 38/P.A.5/2017/S.148/Amd./2023.- In exercise of the powers conferred by section 148 of the Punjab Goods and Services Tax Act, 2017(Punjab Act 5 of 2017) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 66/P.A.5/2017/ S.148/2019, dated the 31st May, 2019 published in the Punjab Government Gazzette, (Extraordinary), Part III, dated the 24th June, 2019 namely :–

AMENDMENT

In the said notification, in the second paragraph, after the third proviso, the following proviso shall be inserted, namely: –

"Provided also that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in **FORM GST CMP-08** of the Punjab Goods and Services Tax Rules, 2017 for the quarter ending 30th June, 2022 till the 31st day of July, 2022.".

2. This notification shall be deemed to have come into force on and with effect from 05th day of July, 2022.

VIKAS PRATAP,

Financial Commissioner (Taxation) to Government of Punjab, Department of Excise and Taxation.

3. Notification No. S.O. 39/P.A.5/2017/S.128/Amd./2023

(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 8th May, 2023

No. S.O. 39/P.A.5/2017/S.128/Amd./2023.-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017, (Punjab Act No.5 of 2017), (hereinafter referred to in this notification as the said Act), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.61/P.A.5/2017/S.128/Amd./2019, dated the 9th May, 2019 published in the Punjab Government Gazette (Extraordinary), Part III, dated the 24th June, 2019, namely:-

AMENDMENT

In the said notification,-

(i) in the eighth proviso, with effect from the 20th day of May, 2021, for the Table, the following Table shall be substituted, namely: —

"Table

Serial Number	Class of registered persons	Tax period	Period for which late fee waived
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	March, 2021, April, 2021 and May, 2021	Fifteen days from the due date of furnishing return
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year	March, 2021	Sixty days from the due date of furnishing return
		April, 2021	Forty-five days from the due date of

	who are liable to furnish the return as specified under sub-section (1) of section 39	May, 2021	Thirty days from the due date of furnishing return
3	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to subsection (1) of section 39	January-March, 2021	Sixty days from the due date of furnishing return.”;

(ii) after the eighth proviso, with effect from 01st day of June, 2021, the following provisos shall be inserted, namely: —

“Provided also that for the registered persons who failed to furnish the return in **FORM GSTR-3B** for the months /quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of five hundred rupees:

Provided also that where the total amount of state tax payable in the said return is nil, the total amount of late fee under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees for the registered persons who failed to furnish the return in **FORM GSTR-3B** for the months / quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021:

Provided also that the total amount of late fee payable under section 47 of the said Act for the tax period June, 2021 onwards or quarter ending June, 2021 onwards, as the case may be, shall stand waived which is in excess of an amount as specified in column (3) of the Table given below, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in **FORM GSTR-3B** by the due date, namely: —

Table

Serial Number	Class of registered persons	Amount
(1)	**(2)**	**(3)**
1.	Registered persons whose total amount of state tax payable in the said return is nil	Two hundred and fifty rupees

2.	Registered persons having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year, other than those covered under S. No. 1	One thousand rupees
3.	Taxpayers having an aggregate turnover of more than Two thousand and five rupees 1.5 crores and up to rupees 5 crores in the hundred rupees". preceding financial year, other than those covered under S. No. 1	

2. This notification shall be deemed to have come into force on and with effect from the 1st June, 2021.

VIKAS PRATAP,
Financial Commissioner (Taxation) to Government of Punjab,
Department of Excise and Taxation.

4. Notification No. G.S.R. 54/P.A.5/2017/S.164/Amd.(61)/2023

PART III GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH) **NOTIFICATION**

The 9th May, 2023

No. G.S.R. 54/P.A.5/2017/S.164/Amd.(61)/2023.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

RULES

1. These rules may be called the Punjab Goods and Services Tax (Second Amendment) Rules, 2023.

(2) Save as otherwise provided in these rules, they shall be deemed to have come into force from the 5th day of July, 2022.

2. In the Punjab Goods and Services Tax Rules, 2017 (hereinafter referredto as the said rules), in rule 21A, in sub-rule (4), after the proviso, the following proviso shall be inserted, namely:

"Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under

rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.".

3. In the said rules, in Explanation 1 to rule 43, after clause (c), the followingclause shall be inserted, namely: –

"(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of Punjab, Department of Excise and Taxation no. S.O. 69/ P.A.5/2017/S.11/2017 dated the 1st of November,2017 published in the Gazette of Punjab Extraordinary dated the 1st of November, 2017.";

4. In the said rules, in rule 46, after clause (r), the following clause shall be inserted, namely: -

'(s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48-

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.":';

5. In the said rules, in rule 86, after sub-rule (4A), the following sub-rule shall be inserted, namely: -

"(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him, –

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of rule 96, in contravention of sub-rule

(10) of rule 96, along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.";

6. In the said rules, in rule 87, –

(a) in sub-rule (3), after clause (i), the following clauses shall be inserted, namely: -

"(ia) Unified Payment Interface (UPI) from any bank;

(ib) Immediate Payment Services (IMPS) from any bank;";

(b) in sub-rule (5), after the words “Real Time Gross Settlement”, the words “or Immediate Payment Service” shall be inserted;

7. In the said rules, with effect from the 1st July, 2017, after rule 88A, the following rule shall be deemed to have been inserted, namely: -

“88B. Manner of calculating interest on delayed payment of tax.-(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said subsection (3) of section 50.

Explanation. —For the purposes of this sub-rule, —

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed. (2) the date of utilisation of such input tax credit shall be taken to be, —

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.”;

8. In the said rules, in rule 89, –

(a) in sub-rule (1), after the fourth proviso, the following Explanation shall be inserted, namely: -

'Explanation. — For the purposes of this sub-rule, "specified officer" means a "specified officer" or an "authorised officer" as defined under rule 2 of the Special Economic Zone Rules, 2006.';

(b) in sub-rule (2), –

(i) in clause (b), after the words "on account of export of goods", the words ", other than electricity" shall be inserted;

(ii) after clause (b), the following clause shall be inserted, namely: -

"(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;";

(c) in sub-rule (4), the following Explanation shall be inserted, namely: -

"Explanation. – For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply, whichever is less.";

(d) in sub-rule (5), for the words "tax payable on such inverted rated supply of goods and services", the brackets, words and letters "{tax payable on such inverted rated supply of goods and services x (Net ITC÷ ITC availed on inputs and input services)}." shall be substituted;

9. In the said rules, rule 95A shall be deemed to have been omitted witheffect from the 1st July, 2019;

10. In the said rules, with effect from the 1st day of July, 2017, in rule 96, –

(a) in sub-rule (1), for clause (b), the following clause shall be deemed to have been substituted, namely: -

"(b) the applicant has furnished a valid return in **FORM GSTR3B:**

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in **FORM GSTR-1**, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;"; (b) in sub-rule (4),

(i) in clause (b), for the figures "1962" the figures and word "1962; or" shall be deemed to have been
substituted;

(ii) after clause (b), the following clause shall be deemed to have been inserted, namely: -

" (c) the Commissioner or an officer authorised by him, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter,is considered essential before grant of refund, in order to safeguard the interest of revenue."; (c) sub-rule (5) shall be deemed to have been omitted;

(d) after sub-rule (5), the following sub-rules shall be deemed to have been inserted, namely: -

"(5A)Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of State tax , electronically through the common portal in a system generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of State tax, Central tax , as the case may be, electronically through the common portal in a system generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5C) The application for refund in **FORM GST RFD-01** transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.";

(e) sub-rule (6) and sub-rule (7) shall be deemed to have been omitted;

11. In the said rules, in **FORM GSTR-3B, -**

(a) in paragraph 3.1, in the heading, after the words "liable to reverse charge", the brackets, words and figures "(other than those covered in 3.1.1)" shall be inserted;

(b) after paragraph 3.1, the following paragraph shall be inserted, namely: -

"3.1.1 Details of supplies notified under sub-section (5) of section 9 of the Punjab Goods and Services Tax Act, 2017 and corresponding provisions in Integrated Goods and Services Tax/ Centre Goods and Services Tax Acts.

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/ UT Tax	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator					
pays tax under sub-section (5) of section 9 [to be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of section 9 [to be furnished by the registered person making supplies through electronic commerce operator].";					

(c) in paragraph 3.2, in the heading, after the words, figures, brackets and letter **"supplies shown in 3.1(a)",** the word, figures, brackets and letter **"and 3.1.1(i)"** shall be inserted;

(d) in the table, under paragraph 4, in column (1), -

(i) in item (B), for the entries against sub-item (1), the following entries shall be substituted, namely: -

"As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17"; (ii) in item (D), -

(A) for the heading, the following heading shall be substituted,namely: -

"Other Details";

(B) for the entries against sub-item (1), the following entries shall be substituted, namely: -

"ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period";

(C) for the entries against sub-item (2), the following entries shallbe substituted, namely: -

"Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions";

(e) Under the heading the Instructions, after paragraph 3, following paragraphs shall be inserted, namely: -

"(4) An Electronic Commerce Operator (ECO) shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under subsection (5) of section 9 of the Central Goods and Services Tax Act, 2017 and shall report such supplies in 3.1.1(i) above.

(5) A registered person making supplies through an Electronic Commerce Operator (ECO) shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and shall report such supplies in 3.1.1(ii) above.";

12. In the said rules, in **FORM GSTR-9,** under the heading Instructions, (a) in paragraph 4, -

(A) after the word, letters and figures "or FY 2020-21", the word, letters and figures "or FY 2021-22" shall be inserted; (B) in the Table, in second column, -

(I) against serial numbers 5D, 5E and 5F, the following entries shall be inserted at the end, namely: –

'For FY 2021-22, the registered person shall report NonGST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.';

(II) against serial numbers 5H, 5I, 5J and 5K, for the figures and word "2019-20 and 2020-21", the figures and word "2019-

20, 2020-21 and 2021-22" shall respectively be substituted; (b) in paragraph 5, in the Table, in second column, -

(A) against serial numbers 6B, 6C, 6D and 6E, for the letters and figures "FY 2019-20 and 2020-21", the letters, figures and word "FY 2019-20, 2020-21 and 2021-22" shall respectively be substituted;

(B) against serial numbers 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, for the figures and word "2019-20 and 2020-21", the figures and word "2019-20, 2020-21 and 2021-22" shall be substituted;

(c) in paragraph 7, -

(A) after the words and figures "April 2021 to September
2021.", the following shall be inserted, namely: -

"For FY 2021-22, Part V consists of particulars of transactions for the previous financial year but paid in the FORM GSTR-3B between April, 2022 to September, 2022."; (B) in the Table, in second column, -

(I) against serial numbers 10 & 11, the following entries shall be inserted at the end, namely: -

"For FY 2021-22, details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of FORM GSTR-1 of April, 2022 to September,
2022 shall be declared here."; (II) against serial number 12,
-

(1) after the words, letters, figures and brackets "September, 2021 shall be declared here. Table 4(B) of FORM GSTR3B may be used for filling up these details.", the following entries shall be inserted, namely: -

"For FY 2021-22, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April 2022 to September 2022 shall be declared here. Table 4(B) of FORM GSTR-3B may be used for filling up these details.";

(2) for the figures and word "2019-20 and 2020-21", the figures and word "2019-20, 2020-21 and 2021-22" shall be substituted;

(III) against serial number 13, -

(1) after the words, letters and figures "reclaimed in FY 202122, the details of such ITC reclaimed shall be furnished in the annual return for FY 2021-22,", the following entries shall be inserted, namely: -

"For FY 2021-22, details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April 2022 to September 2022 shall be declared here. Table 4(A) of FORM GSTR-3B may be used for filling up these details. However, any ITC which was reversed in the FY 2021-22 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2022-23, the details of such ITC reclaimed shall be furnished in the annual return for FY 202223.";

(2) for the figures and word "2019-20 and 2020-21", the figures and word "2019-20, 2020-21 and 2021-22" shall be substituted;

(d) in paragraph 8, in the Table, in second column, (A) against serial numbers,
(I) 15A, 15B, 15C and 15D,
(II)15E, 15F and 15G, for the figures and word "2019-20 and 2020-21" wherever they occur, the letters, figures and word "2019-20, 2020-21 and 2021-22" shall respectively, be substituted.";

(B) against serial numbers 16A, 16B and 16C for the figures and word "2019-20 and 2020-21" wherever they occur, the figures and word "2019-20, 2020-21 and 2021-22" shall respectively be substituted.";

(C) against serial numbers 17 and 18, -

(I) after the words, letters and figures "for taxpayers having annual turnover above ? 5.00 Cr.", the words, letters and figures "From FY 2021-22 onwards, it shall be mandatory to report HSN code at six digits level for taxpayers having annual turnover in the preceding year above ? 5.00 Cr and at four digits level for all B2B supplies for taxpayers having annual turnover in the preceding year upto ? 5.00 Cr." shall be inserted;

(II) the following paragraph shall be inserted at the end, namely: -

"For FY 2021-22, the registered person shall have an option to not fill Table 18.";

13. In the said rules, in **FORM GSTR-9C,** under the heading
Instructions, -

(a) in paragraph 4, in the Table, in second column, for the figures and word "2019-20 and 2020-21", wherever they occur, the figures and word "2019-20, 2020-21 and 2021-22" shall be substituted;

(b) in paragraph 6, in the Table, in second column, against serial number 14, for the figures and word "2019-20 and 2020-21", the figures and word "2019-20, 2020-21 and 2021-22" shall be substituted;

14. In the said rules, after **FORM GST PMT-03,** the following form shall be inserted, namely: -

15. **"FORM GST PMT –03A**

[See rule 86(4B)]

Order for re-credit of the amount to electronic credit ledger

Reference No:

Date:

1. GSTIN –
2. Name (Legal) –3. Trade name, if any
4. Address –
5. Ledger from which debit entry was made- Cash / credit ledger 6. Debit entry no. and date –
7. Payment Reference Number (DRC 03): _____ dated _____
8. Details of Payment: -

Cause of Payment	(Deposit of erroneous refund of unutilised ITC or Deposit of erroneous refund of IGST)
Details of Refund Sanction order	1. Shipping Bill/ Bill of Export No. and Date _____ 2. Amount of IGST paid on export of goods _____ 3. Details of Exemption/ Concessional Rate Notification used for procuring inputs _____ 4. Amount of refund sanctioned _____ 5. Date of credit of refund in Bank Account _____ (or) 1. Category of refund and relevant period of refund_____ 2. GST RFD-01/01A ARN and Date ¬¬¬¬¬¬¬_____ 3. GST RFD-06 Order No. and Date _____ 4. Amount of refund claimed _____

	5. Amount of refund sanctioned _____

10. No. and date of order giving rise to recredit, if any 11. Amount of credit -

S.No.	Act (Central Tax/ State tax/UT Tax/ Integrated Tax/ CESS)	Amount of credit (Rs.)					
		Tax	Interest	Penalty	Fee	Other	Total
1	2	3	4	5	6	7	8

Signature
Name

Designation of the officer

Note: 'Central Tax' stands for Central Goods and Services Tax; 'State Tax' stands for State Goods and Services Tax; 'UT Tax' stands for Union territory Goods and Services Tax; 'Integrated Tax' stands for Integrated Goods and Services Tax and 'Cess' stands for Goods and Services Tax (Compensation to States)";

15. In the said rules, in **FORM GST PMT-06, -**

(a) Under the heading **Mode of Payment (relevant part will become active when the particular mode is selected)** for the portion starting with

" e-Payment (This will include all modes of epayment such as CC/DC and net banking. Taxpayer will choose one of this)"

and ending with "Note: Charges to be separately paid by the person making payment.", the following shall be substituted, namely: -

" e-Payment	Over the Counter (OTC)	IMPS

(This will include all modes of e-payment such as CC/DC, net banking and UPI. Taxpayer will choose one of this)	Bank (Where cash or instrument is proposed to be deposited)			
	Details of Instrument			
	Cash	Cheque	Demand Draft	

NEFT/RTGS

Remitting bank	
Beneficiary name	GST
Beneficiary Account Number (CPIN)	<CPIN>
Name of beneficiary bank	Reserve Bank of India
Beneficiary Bank's Indian Financial System Code (IFSC)	IFSC of RBI

Note: Bank Charges, if any, shall be paid separately to the bank by the person making payment.

IMPS

Remitting bank	
Beneficiary name	GST
Beneficiary Account Number (CPIN)	<CPIN>
Name of beneficiary bank	<Selected Authorized Bank>
Beneficiary Bank's Indian Financial System Code (IFSC)	<IFSC of selected Authorized Bank >

Amount	

Note: Bank Charges, if any, shall be paid separately to the bank by the person making payment.

(b) in the Table under the heading Paid Challan Information, for the words, letters and brackets "Bank Reference No. (BRN)/ UTR", words, letters and brackets "Bank Reference No. (BRN)/ UTR/RRN" shall be substituted;

16. In the said rules, in **FORM GST PMT-07,** in the Table,

(a) against serial number 6, in the third column, " namely:- "NEFT/RTGS column, for the following, shall be inserted, namely: -

"NEFT/RTGS	IMPS "

(b) after serial number 10 the following serial number and entries shall be inserted, namely: -

"10A.	Retrieval Reference Number (RRN) – IMPS.";	

17. In the said rules, in **FORM-GST-RFD-01, -**

(a) in **Statement-3,** in the Table, under the heading Shipping bill/Bill of export, after column 9, the following column shall be inserted, namely: -

"FOB value
9A";

(b) after **Statement-3A,** the following statement shall be inserted, namely: -

16. "Statement-3B [rule 89 (2) (ba)]

Refund Type: Export of electricity without payment of tax (accumulated ITC)

Sl. No.	Invoice/Document Details				REA Details					Tariff per	Units exp-	Value of
	Type of Docu-ment	No.	Date	Ener-gy expo-rted (Units)	Gener-ating Stat-ion	Per-iod	Ref. No.	Da-te	Sche-duled Ene-rgy Exp-orted (Unit-s)	Unit in Rs. (As per agree-ment)	orted (Lo-wer of cl. No. 5 and 10)	elect-ricity exp-orted in Rs. (11 x 12)
1	2	3	4	5	6	7	8	9	10	11	12	13
												”;

18. In the said rules, **FORM GST RFD-10 B** shall be deemed to have been omitted with effect from the 1stday of July, 2019.

VIKAS PRATAP,
Financial Commissioner (Taxation) to Government of Punjab,
Department of Excise and Taxation.

2833/5-2023/Pb. Govt. Press, S.A.S. Nagar.

5. **Notification No. GSR 55PA52017S164Amd(62)2023**

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 9th May, 2023

No. G.S.R. 55/P.A. 5/ 2017/S.164/Amd.(62)/2023.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

RULES

1. These rules may be called the Punjab Goods and Services Tax (Third Amendment) Rules, 2023.

(2) They shall be deemed to have come into force from the 1st day of October, 2022.

2. In the Punjab Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 21, after clause (g), the following clauses shall be inserted, namely:-

"(h) being a registered person required to file return under sub-section (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;

(i) being a registered person required to file return under proviso to sub-section (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.".

3. In the said rules, in rule 36 ,–

(a) in sub-rule (2), the words, letters and figure, ", and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person" shall be omitted;

(b) in sub-rule (4), in clause (b), after the words, "the details of", the words, "input tax credit in respect of" shall be inserted.

4. In the said rules, in rule 37,–

(a) for sub-rules (1) and (2), the following sub-rules shall be substituted, namely:-

"(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on

which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in **FORM GSTR-3B** for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1)."; and

(b) sub-rule (3) shall be omitted;

5. In the said rules, in rule 38,-

(a) in clause (a), in sub-clause (ii), the word, letters and figure, "in FORM GSTR-2" shall be omitted;

(b) in clause (c), for the words, letters and figure, "and shall be furnished in FORM GSTR-2", the words, letters and figure, " and the balance amount of input tax credit shall be reversed in FORM GSTR-3B" shall be substituted;

(c) clause (d) shall be omitted.

6. In the said rules, in rule 42, in sub-rule (1), in clause (g), the words, letters and figure, "at the invoice level in FORM GSTR-2 and" shall be omitted.

7. In the said rules in rule 43, in sub-rule (1), the words, letters and figure, "FORM GSTR-2 and" at both the places where they occur, shall be omitted.

8. In the said rules, in rule 60, in sub-rule (7), for the words "auto-drafted", the words "auto-generated" shall be substituted.

9. In the said rules, rules 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 shall be omitted.

10. In the said rules, in rule 83, in sub-rule (8), in clause (a), the words "and inward" shall be omitted.

11. In the said rules, in rule 85, in sub-rule (2), –

(a) in clause (b), for the words "said person;", the words "said person; or" shall be substituted; and

(b) clause (c) shall be omitted.

12. In the said rules, in rule 89, in sub-rule (1), –

(a) after the words " claiming refund of", the words, brackets and figures "any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or" shall be inserted;

(b) the first proviso shall be omitted;

(c) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted; and

(d) in the third proviso, for the words "Provided also that", the words "Provided further that" shall be substituted.

13. In the said rules, in rule 96 , in sub-rule (3), for the words, letters and figures, "FORM GSTR-3 or FORM GSTR-3B, as the case may be", the letters and figure, "FORM GSTR-3B" shall be substituted.

14. In the said rules, FORM GSTR-1A, FORM GSTR-2 and FORM GSTR-3 shall be omitted.

15. In the said rules, in FORM GST PCT-05, in Part-A, in the table, against Sr. No.1, under the heading "List of Activities", the words, "and inward", shall be omitted.

VIKAS PRATAP,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2833/5-2023/Pb. Govt. Press, S.A.S. Nagar.

6.Notification No. G.S.R. 56/P.A.5/2017/S.164/Amd. 2023

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 9th May, 2023

No. G.S.R. 56/P.A.5/2017/S.164/Amd.(63)/2023.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

RULES

1. (1) These rules may be called the Punjab Goods and Services Tax (Fourth Amendment) Rules, 2023.

(2) They shall be deemed to have come into force from the 15th day of November, 2022.

2. In the Punjab Goods and Services Tax Rules, 2017, in **FORM GSTR-9**, under the heading Instructions, in paragraph 7, -

(A) for the figures, letters and words "between April, 2022 to September, 2022", the figures, letters and words "of April, 2022 to October, 2022 filed upto 30th November, 2022" shall be substituted;

(B) in the Table, in second column, -

(I) against serial numbers 10 & 11, for the figures and words "April, 2022 to September, 2022", the figures, letters and words "April, 2022 to October, 2022 filed upto 30th November, 2022" shall be substituted;

(II) against serial number 12, for the figures and words "April 2022 to September 2022", the figures, letters and words "April, 2022 to October, 2022 upto 30th November, 2022" shall be substituted;

(III) against serial number 13, for the figures and words "April 2022 to September 2022", the figures, letters and words "April, 2022 to October, 2022 upto 30th November, 2022" shall be substituted.

VIKAS PRATAP,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

7. NOTIFICATION NO. G.S.R. 57/P.A.5/2017/S.164.Amd.(64)/2023

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 9th May, 2023

No. G.S.R. 57/P.A.5/2017/S.164/Amd.(64)/202 .- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

RULES

(1) These rules may be called the Punjab Goods and Services Tax (Fifth Amendment) Rules, 2023.

(2) They shall be deemed to have come into force from the 1st day of December, 2022.

2. In the Punjab Goods and Services Tax Rules, 2017, (hereinafter referred to as the said rules),

rule 122 shall be omitted.

3. In the said rules, rules 124 and 125 shall be omitted.

4. In the said rules, in rule 127,-

(i) in the marginal heading, for the word "Duties", the word "Functions", shall be substituted;

(ii) for the words "It shall be the duty of the Authority,-", the words "The authority shall discharge the following functions, namely:–" shall be substituted.

5. In the said rules, rule 134 shall be omitted.

6. In the said rules,

(a) rule 137 shall be omitted;

(b) after rule 137, in the Explanation, for clause (a), the following clause shall be substituted, namely:–

'(a) "Authority" means the Authority notified under sub-section (2) of section 171 of the

Act ;'.

VIKAS PRATAP,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

(III) CENTRE GST NOTIFICATIONS

1. Notification No. 10/2023-Central

GST E-INVOICING LIMIT REDUCED TO RS. 5 CRORE FROM - 01ST AUGUST 2023

Notification No. 10/2023-Central Tax Dated: 10th May, 2023 related to Central Goods and Services Tax Rules, involving a reduction in threshold limit for GST E-Invoicing from ten crore rupees to five crore rupees, effective from August 1, 2023.

Earlier registered person whose turnover exceeds Rs. 10 crore is required to comply with e-invoice provision which means he must generate e-invoice against each tax invoice, debit note, credit note issued to registered person.

Now on 10th May'2023 Ministry of Finance by Notification No. 10/2023 central tax has notified that person registered under GST and having turnover more than Rs. 5 Crore in any financial year from 2017-18 is required to comply with the e-invoice provisions w.e.f. 01st August 2023 i.e., he will be required to generate IRN/einvoice against followings: –

1. Each tax invoice, debit note & credit note issued to registered person.
2. Export Transactions

Above e-invoice applicable on supply of goods as well as supply of service and this is in addition to the generation of e-way bill.

However, e-invoice shall not be applicable on following types of registered person as notified by CBIC by **Notification no. 13/2020 – Central tax** amended time to time.

1. Insurance Company
2. Banking Company or a financial Institutions
3. SEZ Units
4. Government Department and Local Authorities
5. Goods Transport Agency.

This phased wise manner of covering the businesses is a welcome move by the Government, instead of simply rolling out its applicability on all the businesses at once. It started with the

threshold limit of Rs. 500 crores, then gradually brought down to Rs. 100 Crores, then Rs. 50 crores, then Rs. 20 crores, then Rs. 10 crores, and now finally to Rs. 5 crores (applicable from 1st Aug, 2023).

Lowering this threshold limit will widen the coverage area of Government's check, as there would be less scope of manipulation in invoices.

Notification No. 10/2023 is as below: –

Ministry Of Finance
(Department Of Revenue)
(Central Board of Indirect Taxes And Customs)
New Delhi

Notification No. 10/2023 – Central Tax Dated: 10th May, 2023

G.S.R. 355(E).—In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of August, 2023, for the words "ten crore rupees", the words "five crore rupees" shall be substituted.

[F. No. CBIC- 20021/1/2023-GST]
ALOK KUMAR, Director

Note : The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020was published in the
Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 196(E), dated the 21st March, 2020 and was last amended *vide* **notification No. 17/2022-Central Tax, dated the 1st August, 2022**, published *vide* number G.S.R. 612(E), dated the 1st August, 2022.

2. Notification No. 11/2023-Central

CBIC EXTENDS TIME LIMIT FOR FURNISHING FORM GSTR1 UNDER GST IN MANIPUR

Notifications No. 11/2023- Central Tax to extend the due date for furnishing FORM GSTR1 (Outward Supply Details) for registered persons whose principal place of business is in the State of Manipur till the thirty-first day of May, 2023

Central Board of Indirect Taxes and Customs has issued Notification No. 11/2023 under the Central Goods and Services Tax Act. The notification states that the time limit for furnishing the details of outward supplies in FORM GSTR-1 for the tax period April 2023 is extended until May 31, 2023, specifically for registered persons required to furnish returns under section 39(1) of the Act whose principal place of business is in the state of Manipur. The notification is effective from May 11, 2023.

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notifications No. 11/2023- Central Tax | Dated: 24th May, 2023

G.S.R. 384(E).—In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the **Central Goods and Services Tax Act, 2017** (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), **No. 83/2020 – Central Tax, dated the 10th November, 2020**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, after the third proviso, the following proviso shall be inserted, namely:-

> "Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the tax period April, 2023, for the registered persons required to furnish return under subsection (1) of section 39 of the said Act whose principal place of business is in the State of Manipur, shall be extended till the thirty-first day of May, 2023.

2. This notification shall be deemed to have come into force with effect from the 11th day of May, 2023.

[F. No. CBIC- 20006/10/2023-GST]

ALOK KUMAR, Director

Note : The principal **notification No. 83/2020- Central Tax, dated the 10th November, 2020** was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by **notification No. 25/2022 -Central Tax, dated the 13th December, 2022**, published in the Gazette of India, Extraordinary vide number G.S.R. 877(E), dated the 13th December, 2022.

3. Notification No. 12/2023-Central

CBIC EXTENDS DUE DATE FOR GSTR-3B FILING IN MANIPUR FOR APRIL 2023

Notification No. 12/2023- Central Tax to extend the due date for furnishing GSTR3B for April, 2023 for registered persons whose principal place of business is in the State of Manipur until May 31, 2023.

Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs has issued Notification No. 12/2023 under the Central Goods and Services Tax Act. The notification extends the due date for filing the GSTR-3B return for the month of April 2023 until May 31, 2023. This extension is applicable to registered persons whose principal place of business is in the state of Manipur and are required to furnish the return under section 39(1) of the Act. The notification is effective from May 20, 2023.

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)
Notification No. 12/2023- Central Tax | Dated: 24th May, 2023

G.S.R. 385(E).—In exercise of the powers conferred by sub-section (6) of section 39 of the **Central Goods and Services Tax Act, 2017** (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of April, 2023 till the thirty-first day of May, 2023, for the registered persons whose principal place of business is in the State of Manipur and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the **Central Goods and Services Tax Rules, 2017.**

2. This notification shall be deemed to have come into force with effect from the 20th day of May, 2023.

[F. No. CBIC- 20006/10/2023-GST] ALOK KUMAR,
Director

4. Notification No. 13/2023-Central

CBIC EXTENDS DUE DATE FOR GSTR-7 FILING IN MANIPUR FOR APRIL 2023

Notification No. 13/2023- Central Tax to extend the due date for furnishing GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notification No. 13/2023- Central Tax | Dated: 24th May, 2023

G.S.R. 386(E).—In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the **Central Goods and Services Tax Act, 2017** (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely

In the said notification, in the first paragraph, after the fourth proviso, the following proviso shall be inserted, namely: –

> "Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the **Central Goods and Services Tax Rules, 2017** under subsection (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the month of April, 2023, whose principal place of business is in the State of Manipur, shall be furnished electronically through the common portal, on or before the thirty-first day of May, 2023.".

2. This notification shall be deemed to have come into force with effect from the 10th day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
ALOK KUMAR, Director

Note : The principal **notification No. 26/2019 –Central Tax, dated the 28th June, 2019** was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by **notification No. 20/2020 –Central Tax, dated the 23rd March,**

2020, published in the Gazette of India, Extraordinary vide number G.S.R. 203(E), dated the 23rd March, 2020.

5. Notification No. S.O. 37/P.A.5/2017/S.128/Amd./2023

(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 8th May, 2023

No. S.O. 37/P.A.5/2017/S.128/Amd./2023.-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017) (hereinafter referred to in this notification as the said Act), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.7/P.A.5/2017/S.128/2018, dated the 7th February, 2018, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 16th February, 2018, namely :–

AMENDMENT

In the said notification, after the fifth proviso, the following proviso shall be inserted, namely: –

"Provided also that the late fee payable for delay in furnishing of **FORM GSTR-4** for the Financial Year 2021- 22 under section 47 of the said Act shall stand waived for the period from the 1st day of May, 2022 till the 30th day of June, 2022.".

2. This notification shall be deemed to have come into force on and with effect from 26th day of May, 2022.

VIKAS PRATAP,
Financial Commissioner (Taxation) to Government of Punjab,
Department of Excise and Taxation.

2831/5-2023/Pb. Govt. Press, S.A.S. Nagar

6. Notification No. S.O. 38/P.A.5/2017/S.148/Amd./2023

(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 8th May, 2023

No. S.O. 38/P.A.5/2017/S.148/Amd./2023.- In exercise of the powers conferred by section 148 of the Punjab Goods and Services Tax Act, 2017(Punjab

Act 5 of 2017) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 66/P.A.5/2017/ S.148/2019, dated the 31st May, 2019 published in the Punjab Government Gazzette, (Extraordinary), Part III, dated the 24th June, 2019 namely :–

AMENDMENT

In the said notification, in the second paragraph, after the third proviso, the following proviso shall be inserted, namely: –

"Provided also that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in **FORM GST CMP-08** of the Punjab Goods and Services Tax Rules, 2017 for the quarter ending 30th June, 2022 till the 31st day of July, 2022.".

2. This notification shall be deemed to have come into force on and with effect from 05th day of July, 2022.

VIKAS PRATAP,
Financial Commissioner (Taxation) to
Government of Punjab, Department of Excise
and Taxation.

2831/5-2023/Pb. Govt. Press, S.A.S. Nagar

7.Notification No.S.O. 39/P.A.5/2017/S.128/Amd./2023

(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 8th May, 2023

No. S.O. 39/P.A.5/2017/S.128/Amd./2023.-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017, (Punjab Act No.5 of 2017), (hereinafter referred to in this notification as the said Act), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.61/P.A.5/2017/S.128/Amd./2019, dated the 9th May, 2019 published in the Punjab Government Gazette (Extraordinary), Part III, dated the 24th June, 2019, namely:-

AMENDMENT

In the said notification,-

(i) in the eighth proviso, with effect from the 20th day of May, 2021, for the Table, the following Table shall be substituted, namely: —

"Table

Serial Number	Class of registered persons	Tax period	Period for which late fee waived
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	March, 2021, April, 2021 and May, 2021	Fifteen days from the due date of furnishing return
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year	March, 2021	Sixty days from the due date of furnishing return
		April, 2021	Forty-five days from the due date of

	who are liable to furnish the return as specified under sub-section (1) of section 39	May, 2021	Thirty days from the due date of furnishing return
3	Taxpayers having an aggregate date of turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to subsection (1) of section 39	January-March, 2021	Sixty days from the due date of furnishing return.”;

(ii) after the eighth proviso, with effect from 01st day of June, 2021, the following provisos shall be inserted, namely: —

“Provided also that for the registered persons who failed to furnish the return in **FORM GSTR-3B** for the months /quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of five hundred rupees:

Provided also that where the total amount of state tax payable in the said return is nil, the total amount of late fee under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees for the registered persons who failed to furnish the return in **FORM GSTR-3B** for the months / quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021:

Provided also that the total amount of late fee payable under section 47 of the said Act for the tax period June, 2021 onwards or quarter ending June, 2021 onwards, as the case may be, shall stand waived which is in excess of an amount as specified in column (3) of the Table given below, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in **FORM GSTR-3B** by the due date, namely: —

Table

Serial Number	Class of registered persons	Amount
(1)	**(2)**	**(3)**
1.	Registered persons whose total amount of state tax	Two hundred and fifty

	payable in the said return is nil	rupees
2.	Registered persons having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year, other than those covered under S. No. 1	One thousand rupees

(IV) CGST RATE NOTIFICATIONS

1. Notification No. 05/2023- Central Tax (Rate) [G.S.R. 348(E)]

TIME LIMIT TO OPT FOR FORWARD CHARGE MECHANISM FOR TRANSPORTERS EXTENDED TILL 31.05.2023

CBIC extends Time limit for filing Annexure -V to opt for Forward Charge Mechanism (FCM) for Transporters for the FY 2023-24 to 31st May 2023 vide Notification No. 05/2023- Central Tax (Rate) Dated: 9th May, 2023

Also Read Similar **IGST Notification No. 05/2023- Integrated Tax (Rate) Dated: 9th May, 2023**

Ministry of Finance
(Department of Revenue)
New Delhi

Notification No. 05/2023- Central Tax (Rate) Dated: 9th May, 2023

G.S.R. 348(E).—In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the **Central Goods and Services Tax Act, 2017** (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) **No. 11/2017-Central Tax (Rate), dated the 28th June, 2017**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, against serial number 9, in item (iii), in sub-item (b), in the entries under column (5), in condition (2), after the second proviso, the following provisos shall be inserted, namely:-

"Provided also that the option for the Financial Year 2023-2024 shall be exercised on or before the 31st May, 2023:

Provided also that a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration in Annexure V before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration whichever is later." [F. No. -CBIC-190354/63/2023-TO (TRU-II)-CBEC]

RAJEEV RANJAN, Under Secy.

Note : The principal **notification number 11/2017 -Central Tax (Rate), dated the 28th June, 2017** was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 690 (E), dated the 28th June, 2017 and last amended *vide* **notification number 03/2022-Central Tax (Rate), dated the 13th July, 2022** published in the official gazette *vide* number G.S.R. 541(E), dated the 13th July, 2022.

(V) INTEGRATED GST NOTIFICATIONS

1. Notification No. 01/2021-Integrated Tax

IGST: RELAXATION IN GST INTEREST RATE FOR MARCH &

CBIC vide Notification No. 01/2021-Integrated Tax Dated: 1st May, 2021 provides Relaxation in the interest rate based on Turnover to those who have to file GSTR 3B and also to Composition dealers. Relaxation is for Tax Period ending on 31st March 2021 and for 30th April 2021.

Ministry of Finance
(Department of Revenue)
(Central Board of Indirect Taxes and Customs)
New Delhi

Notification No. 01/2021-Integrated Tax Dated: 1st May, 2021

G.S.R. 311(E). In exercise of the powers conferred by section 20 of the **Integrated Goods and Services Tax**

Act, 2017 (13 of 2017), read with sub-section (1) of section 50 and section 148 of the **Central Goods and Services Tax Act, 2017** (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), **No. 6/2017 – Integrated Tax, dated the 28th June, 2017**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 698(E), dated the 28th June, 2017, namely:?

(i) In the said notification, in the first paragraph, in the first proviso, in the Table after S. No. 3, the following shall be inserted, namely: –

(1)	(2)	(3)	(4)
4	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	9 per cent for the first 15 days from the due date and 18 per cent thereafter	March, 2021, April, 2021

5	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 percent thereafter	March, 2021, April, 2021
6	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	March, 2021, April, 2021
7	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	Quarter ending March, 2021.".

2. This notification shall be deemed to have come into force with effect from the 18th day of April, 2021.

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

RAJEEV RANJAN, Under Secy.

Note: The principal **notification number 06/2017 – Integrated Tax, dated the 28th June, 2017**, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 698(E), dated the 28th June, 2017 and was last amended vide **notification number 5/2020 – Integrated Tax, dated the 24th June, 2020,** published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R.410(E), dated the 24th June, 2020.

APRIL 2021

(VI) IGST RATE NOTIFICATIONS

1. Notification No. 05/2023-Integrated Tax (Rate)

TIME LIMIT TO OPT FOR FCM FOR TRANSPORTERS EXTENDED TILL 31.05.2023

Notification No. 05/2023-Integrated Tax (Rate) Dated: 9th May, 2023- CBIC extends Time limit for filing Annexure -V to opt for Forward Charge Mechanism (FCM) for Transporters for the FY 2023-24 to 31st May 2023.

Also Read Similar **CGST Notification No. 05/2023- Central Tax (Rate) Dated: 9th May, 2023**

Ministry of Finance
(Department of Revenue)
New Delhi

Notification No. 05/2023- Integrated Tax (Rate) Dated: 9th May, 2023

G.S.R. 349(E).—In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 5, sub-section (1) of section 6 and clauses (iii), (iv) and (xxv) of section 20 of the **Integrated Goods and Services Tax Act, 2017** (13 of 2017), read with sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the **Central Goods and Services Tax Act, 2017** (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), **No. 8/2017-Integrated Tax (Rate), dated the 28th June, 2017**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 683(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, against serial number 9, in item (iii), in sub-item (b), in the entries under column (5), in condition (2), after the second proviso, the following provisos shall be inserted, namely:-

> "Provided also that the option for the Financial Year 2023-2024 shall be exercised on or before the 31st May, 2023:

Provided also that a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services

supplied by it during that Financial Year by making a declaration in Annexure V before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration whichever is later." [F. No. -CBIC-190354/63/2023-TO (TRU-II)-CBEC]

RAJEEV RANJAN, Under Secy.

Note : The principal **notification number 08/2017 – Integrated Tax (Rate), dated the 28th June, 2017** was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 683 (E), dated the 28th June, 2017 and last amended *vide* **notification number 03/2022-Integrated Tax (Rate), dated the 13th July, 2022** published in the official gazette *vide* number G.S.R. 542(E), dated the 13th July, 2022.

(VII) Advance Ruling

1. Input Tax Credit for Machinery Foundation and Structural Supports

Case Name : In re Colourband Dyestuff P Ltd (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2023/19
Date of Judgement/Order : 12/05/2023
Courts : AAR Gujarat (368) Advance Rulings (3191)

In re Colourband Dyestuff P Ltd (GST AAR Gujarat) Colourband Dyestuff P Ltd, a dye manufacturing company, has filed an application seeking an advance ruling on the eligibility of input tax credit (ITC) for the works contract services and materials used for the foundation and structural supports of their machinery. The applicant argues that the foundation and supports should be considered as part of the plant and machinery, which qualifies for ITC. The authority has considered the applicant's submissions, along with relevant provisions of the CGST Act, and examined the photographs and certificate provided. The authority concludes that ITC is not available for works contract services and materials used for the construction of an immovable property, except for plant and machinery. However, the foundation and structural supports are explicitly included in the definition of plant and machinery, making them eligible for ITC. The ruling provides a detailed analysis of each item's eligibility and clarifies the applicant's claim. AAR Ruled as follows:-

[a] Works contract services (WCS) taken for structure on which machineries are fixed to earth by foundation and services taken for setting up plant i.e. MS steel structure is eligible subject to findings from para 19 onwards. Input Tax Credit (ITC) on structure/shed, erected on the left side of the Sand mill and spray dryer and the ITC on the structure/shed [i.e. roof and its supports] is not eligible. ITC in respect of foundation and support structure in respect of ETP [Effluent Treatment Plant] and Transformer is blocked in terms of Section 17(5) of the CGST Act, 2017.

[b] Steel [TMT bar] being procured by the applicant company and used while taking works contract services for making the said foundation to fix machineries to earth is eligible subject to findings recorded in para 19 onwards.

2. GST on Old Gold Jewellery purchased & Sold after melting & HSN Code

Case Name : In re White Gold Bullion Private Limited (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 20/2023
Date of Judgement/Order : 15/05/2023
Courts : AAR Karnataka (438) Advance Rulings (3191)

In re White Gold Bullion Private Limited (GST AAR Karnataka) Whether the applicant purchasing second hand gold in the form of jewellery / parts of jewellery, from unregistered individuals and sells to registered / unregistered dealers, after melting the same, in the form of lumps / irregular shapes of gold, without changing the nature, (i.e.,) Gold remains gold, has to pay GST on the margin difference between the sale price and purchase prices as stipulated in Rule 32(5) of CGST Rules, 2017?

The applicant purchasing second hand gold in the form of jewellery / parts of jewellery, from unregistered individuals and selling to registered / unregistered dealers, after melting the same, in the form of lumps / irregular shapes of gold, cannot pay GST on the margin difference between the sale price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017.

Whether the HSN Code for Old Gold Jewellery purchased and after melting the purchased old gold jewellery is 7113?

The HSN Code for Old Gold Jewellery is 7113 and after melting into gold lumps or irregular shapes of gold the HSN Code is 7108.

(VIII) JUDGEMENTS

1. Pizza and Sandwich being 'Cooked food' entitled for exemption of VAT above 5%

Case Name : Devyani International Limited Vs Additional Commissioner It Commercial Taxes (Rajasthan High Court)
Appeal Number : S.B. Sales Tax Revision / Reference No. 58/2013
Date of Judgement/Order : 05/05/2023
Courts : All High Courts (10629) Rajasthan High Court (309)

Devyani International Limited Vs Additional Commissioner It Commercial Taxes (Rajasthan High Court) Rajasthan High Court held that Pizza and Sandwich categorized as 'Cooked Food' are entitled for exemption of payment of VAT in excess of 5%. Facts- The lis in question pertains to classification of 'pizza' and 'sandwich' under the Rajasthan Value Added Tax Act, 2003 (for short "RVAT"). The common issue for consideration of this Court is whether 'pizza' and 'sandwich' fall within the ambit of "cooked food" to claim benefit of exemption notification dated 09.03.2010? Since the issue involved is identical, STR No. 58/2013 is taken as lead file.
Conclusion- A bare perusal of the subsequent notification dated 09.03.2015 would reveal that the State Government had itself considered items like 'pizza' and 'sandwich' to be 'cooked food'. As rightly submitted by learned counsels for the petitioner-assessee, it is a settled position of law that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous. Since the State Government has included 'pizza' and 'sandwich' in the broad category of 'cooked food' in subsequent notifications dated 14.07.2014 and 09.03.2015, therefore the sale of 'pizza' and 'sandwich' would qualify as sale of 'cooked food' under the notification dated 09.03.2010 as well.

2. GST: Cash-credit account cannot be attached by Revenue being not debt

Case Name : J. L. Enterprises Vs Assistant Commissioner (Calcutta High Court)
Appeal Number : WPA 12132 of 2023
Date of Judgement/Order : 25/05/2023
Courts : All High Courts (10629) Calcutta High Court (590)

J. L. Enterprises Vs Assistant Commissioner (Calcutta High Court) The Hon'ble Calcutta High Court, in the case of J. L. Enterprises v. Assistant Commissioner, State Tax [W.P.A. No. 12132 of 2023 dated May 25, 2023] held that cash-credit facility is not a debt, thus cannot be attached through provisional attachment order.

Facts: M/s. J. L. Enterprises ("the Petitioner") a partnership firm was inspected by the State Tax Department Officers on March 04, 2023, the officers inspected the books on accounts and verified the records and found anomalies and later issued the FORM INS-01. Thereafter, a show cause notice ("the SCN") was issued for disallowing the ITC amounting to INR 1,15,92,650 and further demanding interest and penalty on the ground that the mobile phone exported were found active in Indian territory, e-invoice were generated after the goods left India and no e-way bills for purchased goods etc. Subsequent to issuance of the SCN FORM DRC-14 was issued to the Petitioner's banker for provisional attachment of cash-credit facility under Section 83 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). The Petitioner challenged the provisional attachment order before the Hon'ble Calcutta High Court with the contention that cash-credit limit is a facility provided by the bank to its customers to use the money. Thus, the cash-credit facility is not a debt to be attached by the Revenue department. Whereas the Revenue Department contended that Section 83 of the CGST Act, provides power to the Revenue Department to attach to provisionally attach the bank accounts to protect revenue in certain cases, the cash-credit facility is also a bank account issued by the bank which was used by the Petitioner for paying GST, thus provisional attachment was correct.

Issue: Whether cash credit facility can be attached by provisional attachment order?

Held: The Calcutta High Court in W.P.A. No. 12132 of 2023 held as under-

- Relied on, the judgement of Manish Scrap Traders v. Pr. Commissioner (2022 (64) G.S.T.L. 482 (Guj.)) wherein the Gujarat High Court specifically held that cash-credit account of the assessee cannot be provisionally attached in exercise of powers under Section 83 of the CGST Act.
- Held that, the cash-credit facility is not a debt and therefore, it cannot be made attachable.
- Further stated, when there is efficacious relief in the statute itself, the Petitioner should adopt such efficacious relief and file objection for releasing the cash-credit account before the appropriate authority.

Relevant Provisions: Section 83 of the CGST Act:

"Provisional attachment to protect revenue in certain cases.

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in

writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1)."

3. HC directs interest payment on GST illegally recovered without issuing SCN

Case Name : Samyak Metals Pvt Ltd Vs Union of India and others (Punjab and Haryana High Court)
Appeal Number : CWP No.26529 of 2022
Date of Judgement/Order : 24/05/2023
Courts : All High Courts (10629) Punjab and Haryana HC (401)

Samyak Metals Pvt Ltd Vs Union of India and others (Punjab and Haryana High Court) Punjab and Haryana High Court in the case of Samyak Metals Pvt Ltd Vs Union of India and others directed the GST department to refund an amount, which was allegedly recovered illegally without issuing any show cause notice or passing any order under Section 74 of the Central GST Act and Haryana GST Act, 2017. The Court also ordered the department to pay interest on the said amount.

Samyak Metals Pvt Ltd, engaged in the manufacturing of aluminium ingots, was embroiled in a legal dispute concerning the unlawful recovery of a considerable sum under the Goods and Services Tax (GST). This recovery was made following a search of the petitioner's business premises by the officers of Central GST Commissionerate, Faridabad. However, this search didn't result in the issuance of a show cause notice or any order under Section 74 of the Central GST Act and Haryana GST Act, 2017, thereby sparking the legal dispute.

The Court referred to previous similar cases, such as Modern Insecticides Ltd. vs Commissioner, Central Goods, and Service Tax, and Bhumi Associate vs. Union of India. These precedents upheld that no tax recovery should be made during search, inspection, or investigation unless voluntary. The Court found that the petitioner's deposit of tax during the search was not voluntary, and the amount cannot be retained if no summons had been issued under Section 74 (1) of the CGST Act.

In the present case, the Court noticed that the GST department failed to issue the acknowledgment form GST DRC-04 and failed to adhere to the provisions of Rule 142 (2) of the CGST Rules and Section 74 (1) of the CGST Act. This act was found contrary

to the Government instruction No.01/2022-23 issued by the CBIC on 25.05.2022, thereby leading to the judgment in favor of the petitioner.

This judgment underlines the significance of following due process in tax recovery cases, reflecting the commitment of the judiciary to protect the rights of taxpayers. The ruling sends a clear message to the tax departments about the importance of adhering to the prescribed procedures and regulations while recovering tax amounts. The requirement to refund the amount with interest underlines the seriousness with which such breaches are viewed. This landmark ruling is expected to have significant implications for future GST-related disputes and proceedings.

4. Provisional attachment u/s. 83 of CGST Act for securing revenue of another taxable person is unjustified

Case Name : Zhudao Infotech Private Limited Vs Principal Additional Director General &
Appeal Number : Anr (Delhi High Court)
Date of Judgement/Order : W.P.(C) 3428/2023
Related Assessment Year : 22/05/2023
Courts : All High Courts (10629) Delhi High Court (2450)

Zhudao Infotech Private Limited Vs Principal Additional Director General & Anr (Delhi High Court) Delhi High Court held that invocation of provisional attachment provisions u/s 83 of the CGST Act for securing the revenue of another taxable person (and not for the interest of government revenue) is unsustainable in law.

Facts- The petitioner (ZIPL) has filed the present petition under Article 226/227 of the Constitution of India impugning the orders dated 10.10.2022 and 06.10.2022 passed by respondents nos.1 and 2, respectively. In terms of the impugned orders, ZIPL's bank accounts were attached u/s. 83 of the Central Goods & Services Tax Act, 2017 (the CGST Act). By a communication dated 10.10.2022 addressed to the Branch Manager of Yes Bank Ltd., respondent no.1 also directed the Branch Manager, Yes Bank to hold at least ₹643 crores in ZIPL's Escrow / Nodal Account. ZIPL also impugns an order dated 01.02.2023, passed by respondent no.1 in effect, rejecting the objections raised by ZIPL under Rule 159(5) of the Central Goods & Services Tax Rules, 2017 ('the CGST Rules'). ZIPL contends that the orders passed under Section 83 of the CGST Act are illegal as there is no ground for the respondents to believe that it was necessary to attach ZIPL's bank accounts in the interest of the Revenue.

Conclusion- Thus, the bank accounts of ZIPL cannot be attached for securing the revenue of another taxable person. It is implicit that the bank accounts and assets of

only those taxable person or persons specified in Section 122(1A) of the CGST Act can be attached who may be liable for payment of any government revenue and the Commissioner is of the opinion that it is necessary to attach their assets in the interest of government revenue. A debt owed by any person to the taxable person, whose assets or bank accounts are liable to be attached under Section 83 of the CGST Act, can be attached being an asset of such a person. But the bank account of the person owing such debt cannot be subject to a provisional attachment order under Section 83 of the CGST Act.

5. Disqualification of Haj Group Organization because of uncertainty of GST amount is unjust

Case Name : AL Amanath Haj Services India Pvt. Ltd. Vs Union of India (Delhi High Court)
Appeal Number : W.P.(C) 7310/2023 & CM APPL. 28442/2023
Date of Judgement/Order : 25/05/2023
Courts : All High Courts (10629) Delhi High Court (2450)

AL Amanath Haj Services India Pvt. Ltd. Vs Union of India (Delhi High Court) Delhi High Court held that disqualification of Haj Group Organization merely on the basis of uncertainty in respect of the amount of GST to be paid is unjust.

Facts- The Haj Policy 2023 was announced by the Ministry of Minority Affairs (Haj Division) on 14th March, 2023. As per the said Policy, HGOs were categorized into Category 1 and Category 2 depending upon their experience and turnover. Applications were called by the Ministry in terms of the Policy and a list of eligible and ineligible HGOs were declared on 5th May, 2023. Thereafter, several writ petitions were filed before this Court by HGOs which were rendered ineligible or whose names were not found in the declared list on the ground that the reasons for declaring the Petitioners ineligible were not communicated by the Ministry. Considering the submissions made by the said HGOs, directions were issued by the Court vide order dated 9th May, 2023. In terms of the said order, the reasons for ineligibility are stated to have been communicated by the Ministry to various ineligible HGOs who were given time till 12th May, 2023 to remove the deficiencies. However, even thereafter a large number of HGOs have been declared ineligible, which has led to the filing of the present writ petitions. It has been observed by the Court that in a large number of matters, the main deficiency relates to alleged non-payment of GST.

Conclusion- The Court has perused the relevant clause in the 2023 Haj Policy. The same would reveal that while GST registration is mandatory and payment of GST is

also mandatory. If there is any uncertainty in respect of the amount of GST to be paid, the same would be an issue which would have to be considered by the GST authorities and, in the opinion of the Court, cannot operate as a disqualification of the abovementioned Petitioner HGOs. So long as the HGOs have a GST registration and have an explanation for the manner in which they have calculated and deposited GST prior to them filing of the application for allotment of quotas, disqualifying them would be unjust.

6. Court refuses to entertain writ if alternate remedy available

Case Name : Tvl.Sri Maharaja Industries Vs Assistant Commissioner (ST) (FAC) (Madras High Court)
Appeal Number : W.P. Nos. 16075 of 2023
Date of Judgement/Order : 24/05/2023
Courts : All High Courts (10629) Madras High Court (1193)

Tvl.Sri Maharaja Industries Vs Assistant Commissioner (Madras High Court) Madras High Court, in the matter of Tvl. Sri Maharaja Industries v. The Assistant Commissioner (ST) (FAC) [W.P Nos. 16075 of 2023], dismissed the writ petition, stating that if there is an alternative remedy available, the petitioner should pursue that remedy before resorting to a writ petition.

Facts: Tvl. Sri Maharaja Industries, ("the Petitioner") filed the writ before the Madras High Court contending that the Revenue department did not follow the principle of natural justice before passing the Orders namely, CST 706116/2008-09, CST 706116/2009-10, CST 706116/2010-11 and CST 706116/2011-12, respectively, dated December 02, 2022 ("the Impugned Orders"), did not considered the judgment of Hon'ble Supreme Court cited by the Petitioner and did not grant opportunity of personal hearing.

Issue: Whether writ can be filed if alternate remedy is available? Held: The Hon'ble Madras High Court in W.P. No. 16075, 16077, 16080 and 16082 of 2023 and W.M.P.Nos.15499, 15500, 15501, 15502, 15506,15508, 15509 & 15511 of 2023 held as under:

- Observed that, the Revenue department issued notice and the Petitioner has also submitted reply and thereafter enquiry was completed.
- Noted that, the prayer of the Petitioner does not stand correct as the finding were recorded only after considering the material produced by the Petitioner.
- Further Noted that, even if the petitioner is aggrieved due to any omission committed on the part of the department, there is an effective alternative

remedy available to the petitioner to challenge the impugned orders by way of filing appeal before the competent authority.

- Held that, the Petitioner was given sufficient opportunity as per compliance of the principles of natural justice.
- The High Court dismissed the writ petition.

7. IMFL- Tax on Entry of Goods under Local Area Act, 2007 – HC grants stay

Case Name : United Spirit Limited Vs State of U.P. (Allahabad High Court)
Appeal Number : Writ Tax No. 619 of 2023
Date of Judgement/Order : 22/05/2023
Courts : All High Courts (10629) Allahabad High Court (556)

United Spirit Limited Vs State of U.P. (Allahabad High Court)
The Revenue contended that the petitioner has an alternate remedy of appeal to the Commercial Tax Tribunal.
The petitioner already has gone to the appellate authority once, hence, petition should not be entertained The petitioner is a manufacturer of Indian made foreign liquor. It was assessed to entry tax under the Uttar Pradesh Tax on Entry of Goods into Local Area Act, 2007. The Assessment order was challenged before the appellate commissioner. Against rejection of appeal, the petitioner filed a writ petition.
The petitioner contended that under the schedule to the Entry Tax Act of 2000, IMFL was a notified commodity. However, the said act was held to be ultra vires by the Hon'ble High Court of Allahabad. The state, via ordinance, introduced the 2007 Act retrospectively. However, the schedule of the 2007 Act did not contain IMFL. Hence, the entire proceedings is without jurisdiction.
The Revenue contended that the petitioner has an alternate remedy of appeal to the Commercial Tax Tribunal. The petitioner already has gone to the appellate authority once, hence, petition should not be entertained.
The Hon'ble High Court of Allahabad, holds that there is substance in contention of the petitioner. Rejects preliminary objection of the Revenue. Grants stay against recovery of dues.

8. Services rendered to holding company under an agreement does not make service provider an intermediary

Case Name : McDonalds India Pvt Ltd Vs Additional Commissioner, CGST Appeals – II, Delhi & Anr. (Delhi High Court)

Appeal Number : W.P.(C) 11430/2022
Date of Judgement/Order : 18/05/2023
Courts : All High Courts (10629) Delhi High Court (2450)

McDonalds India Pvt Ltd Vs Additional Commissioner, CGST Appeals – II, Delhi & Anr. (Delhi High Court) Delhi High Court, in the case of M/s McDonalds India Pvt Ltd. v. Additional Commissioner, CGST Appeals – II, Delhi & Anr. [W.P.C No. 11430 of 2022 dated May 18, 2023], has overturned the order that denied the refund of tax paid on inputs. The court based its decision on the fact that the taxpayer was providing services to its holding company, rather than acting as a mediator between the holding company and franchisees in India, as alleged. The court held that the Appellate Authority could not raise additional grounds to reject the taxpayer's claim for refund on its own initiative in an appeal filed by the taxpayer.

Facts: M/s. McDonald's India Pvt. Ltd. ("the Petitioner") is a subsidiary of McDonald's Corporation, USA ("the foreign counterpart"). The Petitioner and foreign counterpart entered into 2 agreements namely, Master License Agreement ("MLA") and Service Agreement. As per MLA the petitioner has non-exclusive rights to certain intellectual property of the foreign counterpart including the right to sub-license and by exercising such right the Petitioner had entered into franchisee agreements with various parties in India. As per Service Agreement, the Petitioner is bound to perform the certain activities viz, conduct research on subjects including consumer attitudes, demographics, marketing and advertising strategy, investigate the timing and location of Restaurant openings and other strategic matters etc. The Petitioner filed refund of tax paid on inputs for the period April 2018 to March 2019 by claiming services rendered under the Service Agreement as 'zero-rated supplies' as per Section 16 of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act"). However, the Adjudicating Authority issued a Show Cause Notice dated August 14, 2020 ("the SCN"), proposing to reject the refund of tax paid on inputs amounting to INR 9,26,34,542/-. The Petitioner filed the reply to the SCN vide letter dated August 27, 2020. The Adjudicating Authority considered the reply but rejected the refund claim of the Petitioner vide an Order dated August 31, 2020 ("the Order in Original"). Being aggrieved, the Petitioner filed an appeal before the Appellate Authority, which rejected the refund claim of the Petitioner vide Order dated February 14, 2022 ("the Impugned Order"). Consequently, this petition has been filed.

Issue: Whether the Petitioner is an intermediary within the meaning of Section 2(13) of the IGST Act in respect of services given under the Service Agreement?

Held: The Hon'ble Delhi High Court W.P.(C) No. 11430/2022 held as under:

- Observed that, the Appellate Authority presumed that the Petitioner was acting as a mediator between prospective joint ventures and franchisees, where the main supplies were made by the foreign counterpart and ancillary supplies were provided by the Petitioner.
- Further observed that, the Appellate Authority failed to consider the fact that the MLA, which granted the Petitioner the right to enter into sub-licenses with franchisees, was a separate agreement.
- Stated that, it is essential that the principal service, the supplier of such services and the service purchaser are identified to ascertain whether the services performed by the Petitioner are those of a facilitator or one that arranges such services, which have not been analysed in Order-in-Original.
- Noted that, as per service agreement the service recipient is the foreign counterpart and the Petitioner is the service provider. There are no basis for the Appellate Authority to have concluded that the Petitioner acts as a mediator between joint ventures/ franchisees and the foreign counterpart. Thus, the Appellate Authority was wrong in considering the service provided by the Petitioner as intermediary services.
- Opined that, no additional grounds for rejecting the Petitioner's claim for refund could be raised suo motu by the Appellate Authority, in an appeal preferred by the Petitioner.
- Further observed that, the services provided by the Petitioner had no connection with the services as contemplated under Section 13(5) of the IGST Act.
- Set aside the Impugned Order and the Order in Original Remanded the matter back to the Adjudicating Authority to consider the Petitioner's case afresh.

Relevant Provision:

Section 2(13) of the IGST Act:

"(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;"

Section 13(5) of the IGST Act:

"13. Place of supply of services where location of supplier or location of recipient is outside India. – (5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held."

9. Payment of mandatory pre-deposit directed against detention order

Case Name : Haresh Kumar Vs Assistant Commissioner (ST) (Madras High Court)
Appeal Number : W.P. No.14628 of 2023
Date of Judgement/Order : 05/05/2023
Courts : All High Courts (10629) Madras High Court (1193)

Haresh Kumar Vs Assistant Commissioner (ST) (Madras High Court)
Madras High Court directed the petitioner to deposit maximum penalty of 200% of the tax involved in detention matter as once the mandatory pre-deposit is complied, the order has no force and all the further recovery proceedings will be subject to final outcome of the appeal.
Facts- The petitioner had transported consignment of goods vide tax invoice dated 18.04.2023, which was intercepted and detained by the first respondent.
An order of detention in Form GST MOV-06 dated 18.04.2023 was issued and therefore, the consignment that was in transit was detained even though it accompanied the E-Way Bill as is required under the provisions of the respective GST enactments and the Rules made thereunder. It appears that the respondents have detained the goods on the ground that the supplier, from whom the petitioner has purchased the goods, had wrongly passed on the Input Tax Credit and thereby entailing the petitioner to avail and utilize the same for discharging tax liability on the supplies made by the supplier.
The specific case of the petitioner is that the movement of goods by the petitioner is in accordance with the provisions of the respective GST enactments and the Rules made thereunder. If it is the case of the respondents that the supplier has wrongly passed on the input tax to the petitioner, it is for the Department to initiate appropriate proceedings to recover the same.
Conclusion- Once the order is stayed, the respondents can release the goods subject to such other safeguards that may be imposed by the appellate authorities under the respective Acts.
The very purpose of fixing the mandatory pre-deposit is to do away with the procedure of granting stay after hearing, which was delaying the disposal of the appeal earlier.
It is for this reason, mandatory pre-deposit was made so that the interest of the revenue can be safeguarded as the appeal would take longer time for final disposal. Although the Officer who detained the goods has become functus officio, once there is a mandatory pre-deposit, the order has no force and all further recovery

proceedings will be subject to the final outcome of the appeal. Therefore, to balance the interest of the revenue and the petitioner, I am of the view that there can be a direction to the petitioner to deposit the maximum penalty of 200% of the tax to safeguard the interest of the revenue.

10. GST Registration cannot be cancelled by merely describing Firm as Bogus: Allahabad HC

Case Name : Star Metal Company Vs Additional Commissioner Grade (Allahabad High Court)
Appeal Number : Writ Tax No. 397 of 2023
Date of Judgement/Order : 19/05/2023
Courts : All High Courts (10629) Allahabad High Court (556)

Star Metal Company Vs Additional Commissioner Grade (Allahabad High Court)
Allahabad High Court has ruled that the cancellation of GST registration cannot be solely based on labeling a firm as bogus. The court quashed the orders passed by the authorities that canceled the petitioner's GST registration and rejected their revocation application. The court stated that cancellation of registration should be supported by valid grounds as specified in Section 29(2) of the GST Act and that the petitioner should have been given an opportunity to be heard. The respondent authority is given the option to issue a fresh notice based on specific grounds mentioned in the Act.

11. UPGST: Allahabad HC Upholds Penalty based on Corroborative Evidence

Case Name : Jalsa Resorts Vs. State of U.P. (Allahabad High court)
Appeal Number : Writ Tax No. - 206 of 2022
Date of Judgement/Order : 01/05/2023
Courts : All High Courts (10629) Allahabad High Court (556)

Jalsa Resorts Vs. State of U.P. (Allahabad High court)
Allahabad High Court has upheld a tax penalty imposed on Jalsa Resorts under Section 74 of the Uttar Pradesh Goods and Service Tax Act (UPGST Act). The penalty was based on corroborative evidence provided by the Special Investigation Branch. The resort owner failed to reply to the show cause notice and did not produce relevant documents for assessing the correct tax. High Court do not find any substance in the submission of the learned counsel for the petitioner that the assessment order is based on presumption. The appellate authority has examined each and every document submitted by the petitioner as well as the documents recovered by the Special Investigation Branch. The court found that the assessment order was not based on presumption and affirmed the penalty imposed by the authorities.

12. Classification & taxation of LAN connection cables (CAT-5 & CAT-6) under Rajasthan VAT

Case Name : Compuage Infocom Limited Vs Assistant Commissioner (Rajasthan High Court)
Appeal Number : S.B. Sales Tax Revision / Reference No. 182/2017
Date of Judgement/Order : 30/05/2023
Courts : All High Courts (10629) Rajasthan High Court (309)

Compuage Infocom Limited Vs Assistant Commissioner (Rajasthan High Court)
1. The present Sales Tax Revisions / References (for short “STRs”) were admitted on following questions(s) oflaw:-
IN STR NOs. 182-187/2017
“Whether the LAN Connection Cable (CAT-5, CAT-6) is taxable under S. No. 3 or 24 of Part A of Entry No. 65 of Schedule-IV or at General Rate as per Schedule-V appended to the Rajasthan Value Added Tax Act, 2003 (for short “RVAT Act”)?”
In STRs 75-80/2018, STRs 4-6/2019, STRs 9- 10/2019, and STR 30/2019:

"(i) Whether the ld. Tax Board was correct in law in holding that the networking products such as Routers, Switches, Hubs, LAN Cards and LAN cables etc. sold by the petitioner are not computer peripherals hence was taxable @ 12.5% / 14% and not @ 4% / 5%.

(ii) Whether the ld. Tax Board was correct in law while dismissing the appeal in restricting its findings/reasons only to the extent of CAT-5 and CAT-6 cables and not giving any findings/reasons whatsoever in respect of networking products such as Routers, Switches, Hubs, LAN Cards sold by the petitioner?"

2. Since the common question of classification of 'CAT-5 / CAT-6 cable' is involved in all these STRs, with theconsent of the parties, all these STRs were heard together.

3. Learned counsels for the petitioner-assessee submits that the petitioner/companies were engaged in thebusiness of selling computer and computer related products, including the networking cables (CAT-5 / CAT-6) whose primary function is data transmission. Learned counsels for the petitioner-assessee contends that the petitioner-assessee was rightly classifying the networking cables as 'computer peripherals' and accordingly discharging its VAT liability by treating the same as computer system and peripherals, as classifiable under Entry 3 of Part A of Schedule IV of the RVAT Act. Learned counsels further contends that all the authorities below have erred in law by classifying the networking cables under the residuary head and not the specific head and therefore erroneously imposed additional tax and interest upon the petitioner-assessee. In support of their contention that CAT-5 / CAT-6 cable would form part of 'computer peripheral', learned counsel for the petitioner-assessee made the following submissions:

3.1) The first submission of learned counsels for the petitioner-assessee is that the revenue has not discharged itsonus to prove that CAT-5 / CAT-6 cables would not be included in the broad and expansive definition of 'computer peripherals'. It is submitted that neither any expert / technical opinion was sought nor any evidence was brought on record to prove their point. It is submitted that as per settled position of law, onus or burden to show that a product falls within a particular tariff item is always on the revenue and since the revenue has failed to discharge its onus, the reference ought to be allowed in the favour of the petitioner-assessee. Reliance in this regard is placed on Apex Court judgments of Union of India vs. M/s Garware Nylons Ltd. reported in (1996) 10 SCC 413, Voltas Ltd. vs. State of Gujarat reported in [(2015) 80 VST 12 (SC)], Commissioner of Central Excise vs. Hindustan Lever Ltd. reported in (2015) 10 SCC 742, Commissioner of Central Excise, Calcutta vs. Sharma Chemical Works reported in [(2003) 132 STC 251 (SC)], M/s Hindustan Poles Corporation Limited vs. Commissioner of Central Excise reported in [(2006) 145 STC 625 (SC)] and

judgment of Division Bench of this Court in the case of State of Rajasthan and Ors. vs. Deys Medical Stores Ltd. and Ors. (DBCWP No. 2139/1999 decided on 27.07.2007).

3.2) The second submission of learned counsels for the petitioner-assessee is that the Revenue as well as thelower adjudicating authorities have given an extremely restrictive meaning to the term 'computer peripherals' to only include input and output devices, which is contrary to the judgments of this Court in the case of M/s Kores (India) Limited & Ors. vs. The Assistant Commissioner (S.B. STR No. 24/2015 decided on 19.02.2016), M/s Sharp Business Systems (India) Ltd. vs. The Assistant Commissioner (S.B. STR No. 185/2016 decided on 26.05.2017); judgments of Madras High Court in the case of State of Tamil Nadu vs. CMC Limited reported in ((2014) 75 VST 413 (Mad.)], Canon India Pvt. Ltd. vs. State of Tamil Nadu reported in ((2015) 80 VST 483 (Mad.)] and judgment of Delhi High Court in the case of Ricoh India Limited vs. Commissioner reported in ((2012) 52 VST 49 (Delhi)].

3.3) The third submission of learned counsels for the petitioner-assessee is that it is an established cannon ofclassification that a specific entry would override a general entry. Reliance in this regard is placed on Apex Court judgments of Commissioner of Commercial Tax, U.P. vs. A.R. Thermosets (Pvt.) Ltd. reported in (2016) 16 SCC 122, State of Maharashtra vs. Bradma of India Ltd. reported in ((2005) 140 STC 17 (SC)],

Hindustan Poles Corporation vs. Commissioner of Central Excise, Calcutta reported in ((2006) 145 STC 625 (SC)], and Krishi Utpadan Mandi Samiti and Ors. vs. Ved Ram reported in [2012 (277) ELT 299 (SC)]. It is stated that a special entry must prevail over the general entry and that the residuary clause can be invoked only if the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the tariff items. It is contended that since the goods in question, i.e. CAT-5 / CAT-6 cables, are primarily used as an ancillary computer product, the same would be included in the broad category of 'computer peripheral'.

3.4) The fourth submission of learned counsel for the petitioner-assessee is that as the CAT-5 and CAT-6 cables are primarily and predominantly used to physically connect the computer system to a network, the same would necessarily have to be included in the broad definition of 'computer peripheral', as per the common parlance test and end usage test. Reliance in this regard is placed on Apex Court judgment of Atul Glass Industries (Pvt.) Ltd. and Ors. vs. Collector of Central Excise and Ors. reported in (1986) 3 SCC 480 and judgment of this Court in the case of Assistant Commissioner vs. M/s Voltas Limited (S.B. STR No. 232/2020 decided on 30.11.2022). It is contended that merely because CAT-5 and CAT-6 cables are also used for other applications like telecommunication, cable network or CCTV cameras etc., the same would not preclude them from being covered by the definition of 'computer

peripherals', especially when it is an admitted and undisputed fact that CAT-5 / CAT-6 cables are essential to physically connect the computer system to a network.

3.5) The fifth submission of learned counsel for the petitioner-assessee is that the Entry No. 3 of Part A of Schedule IV of the RVAT Act was subsequently amended in 2013 to specifically include 'networking items for LAN and WAN' and similarly Entry No. 24 of Part A of Schedule IV of the RVAT Act was also amended in 2013 to specifically include CAT-5 and CAT-6 cables. It is contended that the said amendment made it clear that the intention of the legislature was always to include the CAT-5 and CAT-6 cable in Part A of Schedule IV of the RVAT Act. It is submitted that it is a settled position of law that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous or capable of more than one interpretation. Reliance in this regard is placed on Apex Court judgments of Pappu Sweets and Biscuits vs. Commissioner of Trade Tax U.P Lucknow reported in [(1998) 111 STC 425 (SC)], and V.M. Salgaocar and Bros. Pvt. Ltd. vs. Commissioner of Income Tax reported in (2000) 5 SCC 373.

3.6) Learned counsel for the petitioner-assessee have also relied upon the IT & ITES Policy of 2007, introduced by the State of Rajasthan, wherein as per para 2.11.2, VAT on all IT products was rationalised at the minimum rate of 4%. Similarly, learned counsels for the petitioner-assessee have also relied on Chief Minister's finance speech made while introducing State Budget for the year 2013-14. The relevant part of the budget speech is reproduced as under:

Relying upon the above, learned counsels for the petitioner-assessee contends that the intention of the Government was always to impose VAT @ 4% / 5%. It is further contended that the Government acknowledged the difficulties faced by different assessee who were dealing with computer items and therefore sought to clarify the specific rate of VAT leviable on such items. In furtherance of the same, the Entry No. 3 and 24 of Part A of Schedule IV of the RVAT Act were amended to include networking items and CAT-5 / CAT-6 cables for which the applicable rate of tax was 4% / 5%. Learned counsels contends that the said amendment was only clarificatory in nature and was having a beneficial intent to it and therefore the benefit of the same was available retrospectively as well. In this regard, learned counsels for the petitioner-assessee have also placed reliance on Apex Court judgment of Suchitra Components Ltd. vs. Commissioner of Central Excise, Guntur reported in (2006) 12 SCC 452. Further, in support of their contention that speech made by ministers, while introducing bills/budgets, can be relied on to throw light on the object and purpose of provisions of law, learned counsels have relied on Apex Court judgment of Kerala

State Industrial Development Corporation Ltd. vs. Commissioner of Income Tax reported in [(2003) 259 ITR 51 (SC)].

3.7) Learned counsels for the petitioner-assessee have also relied upon judgments delivered by Hyderabad Bench of Income Tax Appellate Tribunals (for short "ITAT") in the case of Ushodaya Enterprises Ltd. vs. ACIT (ITA Nos. 1241/Hyd/2008 & 591/Hyd/2010; decided on 31.10.2013) reported in (2014) 41 taxman.com 304, judgments of ITAT Mumbai Bench in the case of IBAHN India Pvt. Ltd. vs. DCIT-1(3) (ITA No. 4932/Mum/2015; decided on 11.01.2016) reported in (2016) 66 taxman.com 239 and in the case of Deputy Commissioner of Income Tax, 2(1) vs. Datacraft India Ltd. reported in [2011 (9) ITR(Trib) 712 (Mumbai)] in support of their contention that when any device is used as a part of the computer and its functions, then it would also be termed as computer.

4. Per contra, supporting the concurrent findings of the authorities below, learned counsels for the revenue submits that no question of law worth consideration arises in the present STRs. Learned counsel for the revenue submits that CAT-5 or CAT-6 cable are essentially networking cables, whose use and application is not restricted to computer networking and they are used in a wide array of services, including telecommunication, cable networks, CCTV cameras, etc. Learned counsel for the revenue contends that the authorities below have rightly restricted the definition of computer peripherals to those hardware apparatus whose usage is confined to operation of computer only. Learned counsel for the revenue further submits that the judgments relied upon by the petitioner-assessee (supra), on the definition of computer peripheral, has been rightly distinguished by the learned Tax Board as the article under consideration in those cases were some sort of hardware equipment, whereas the present case pertains to classification of networking cables which can also be used independently of the computer for various other purposes.

5. Heard the arguments advanced by both the sides, scanned the record of the STRs and considered thejudgments cited at Bar.

6. The lis in question pertains to classification of CAT-5 and/or CAT-6 cables for the purpose of determining the applicable rate of tax as per the RVAT Act. According to the petitioner-assessee, the CAT-5 / CAT-6 cable would fall under Entry 3 or Entry 24 read with Entry 28 of Part-A of Schedule IV to the RVAT Act, whereas as per Revenue, the CAT-5 / CAT-6 cable would fall under the residuary entry of Schedule V to the RVAT Act.

The relevant entries, as amended from time to time, are reproduced as under:-

"Entry No. 3 of Part-A of Schedule IV: (As on 01.04.2006): Computer system and peripherals, electronic diaries:- 4%

Entry No. 3 of Part-A of Schedule IV (As on 01.06.2006): Computer system and peripherals, computer printers and electronic diaries:- 4%

Entry No. 3 of Part-A of Schedule IV (As on 09.03.2010): Computer system and peripherals, computer printers excluding multifunctional devices and electronic diaries:- 5%

Entry No. 3 of Part-A of Schedule IV (As on 06.03.2013): Computer system and peripherals, networking items for LAN and WAN including wired and wireless switch, routers, modem, webcams, IP surveillance system, computer printers including multifunctional devices and electronic diaries:- 5%

Entry No. 3 of Part-A of Schedule IV (As on 09.03.2015): Computer system and peripherals excluding tablet computer knows by whatever name like i-pad, e-book reader, phablet, slaste etc., networking items for LAN and WAN including wired and wireless switch, routers, modem, webcams, IP surveillance system, computer printers including multifunctional devices and electronic diaries:- 5%

Entry No. 24 of Part-A of Schedule IV (Since 01.04.2006): Optical fibre cables and joining kits and material thereof:- 4%

Entry No. 24 of Part-A of Schedule IV (As on 06.03.2013): Optical fibre cables, networking cables of different types such as Flat Cables, CAT 3 cables, CAT 5 cables, CAT 6 cables, Unshielded Twisted Pair (UTP) cables, joining kits and joining materials thereof.

Entry No. 28 of Part-A of Schedule IV (Since 01.04.2006): Parts of 1 to 27 above:- 5%

Entry No. 28 of Part-A of Schedule IV (As on 06.03.2013): Parts and Accessories (other than cover and carrying cases) of 1 to 27 above.

Entry No. 78 of Schedule V: Goods not covered in any other Schedule appended to the Act or under any notification issued under section 6 of the Act.:-12.5% / 14% as applicable during relevant years."

7. The petitioner-assessee was self-classifying the networking cables as per the entries mentioned in Part A ofSchedule IV to the RVAT Act and paying tax accordingly at the rate of 4% / 5%. After the survey conducted by the Revenue, the differential tax, interest and penalty was imposed upon the petitioner-assessee as according to the Revenue the networking cables had to be classified in the residuary entry which attracted tax at the rate of 12.5% / 14%. The learned Tax Board upheld the levy of tax and interest but set aside the penalty. As per settled position of law, a specific entry would always trump a general entry and the burden would always be on the Revenue to prove that the goods in question would have to fall in general entry as opposed to the specific entry. From the perusal of the order(s) of the Tax Board, it appears that the decision of the learned Tax Board was based on the following factors:

a) that the networking cables are not integral/essential to the functioning of a computer;

b) that networking cables are not hardware equipment or apparatuses, which are generally considered ascomputer peripherals/computer accessories;

c) that the networking cables are not exclusively used with computer as they have different applicationsindependent of computers.

8. The word 'computer system' and 'peripheral' is not defined anywhere in the RVAT Act. At this juncture, itwould be apt to consider the way in which it has been interpreted by different Courts. In the case of M/s Kores (India) Limited (supra), Coordinate Bench of this Court observed as under:

"16. The Multi Function Device comprising of computer printer, fax machine, photocopier and scanner – all-in-one, with the fast technology development, is an office equipment, which combines the aforesaid three or four devices and functions in one unit, and is largely used while attached with computer, though it may be used in some respects, as stand alone equipment, or even with or without being attached to the computer, like fax machine, as a part of it. The scanner, which produces digital image of the documents canned can be used only with the aid of computers, if the scanned image has to be transmitted to any other destination, though such transmission can be made possible through mobile phone also, as contended by the learned counsels for the Revenue. With the technology fast developing, it is now possible to do so and use Multi Functional Device with remote sensors in the computer system or Wi-fi. Therefore, actual and physical connection with the computer may not be even necessary. The major user of the Multi Functional Devices, the taxability of which is in question before this Court, is as a computer printer and one study in this regard produced by the learned counsels for the Assessees by the World Book Encyclopedia, indicates that typical page consumption analysis discloses that of the total output, 67% is printed, 30% is copied and 3% is faxed. The Assessees before this Court also contended that the dominant use of Multi Functional Device in question is computer printer only, with which the documents in the computer system is printed with the help of the said equipment or machine. The dissection or separation of the various parts of this machine to decide the taxability of rate thereof, is not called for, but if admittedly, this device can be used as computer printer also, there appears to be no justification to tax it in the Residuary Entry, ignoring the specific entry relating to computer printers and its peripherals. It is well settled legal position that the Residuary Entry can be resorted to only if the commodity in question cannot be brought under the specific entries, and this proposition, is not disputed by either side before this Court

17. That as a matter of fact, the entry is wider, which includes not only computer printers, but computer peripherals also. This Court finds no justification in the contention raised by the learned counsels for the Revenue, that the word peripherals has to be construed narrowly to limit and include only accessories like, mouse, webcam or keyboard, as computer peripherals, to be taxed @ 4% under the said entry, and not to include therein the Multi Functional Devices"

Further, in the case of M/s Sharp Business (India) Ltd. (supra), Co-ordinate Bench of this Court observed as under:-

"15. On perusal of the above and taking into consideration the entry 7, in my view, the "FM" would certainly can be said to be covered under entry 7 of Schedule-IV reproduced hereinbefore. It is a case where "FM" as noticed hereinbefore becomes operative only when there is a telephone line/connection and unless and until there is a telephone line/connection, "FM" does not operate. Therefore, it has been held to be falling in the entry 7 of Schedule-IV of the RVAT Act, and I concur with the reasoning of this court (supra). Merely because "FM" specifically has not been included in entry 7, is no reason to infer that it will fall in Schedule-V. Once the claim of the assessee is that it fall under entry 7 Schedule-IV, then the revenue has to bring material on record, which has not been brought on record."

Further, in the case of CMC Limited (supra), the Madras High Court observed as under:-

"It is not in dispute that "router" is a device falling outside the main part, namely, computer and it is partially or completely dependent on the host and expands the capabilities of the computer and it does not form part of the core architecture. What are all computer peripherals have not been defined in serial No. 22 of entry 68 of Part B of the First Schedule to the TNVAT Act, 2006. Therefore, whatever goods, which are falling within the definition of "peripheral" would be entitled to such a benefit. We find that "router", from the nature of its use in conjunction with the computer as has been defined by the Appellate Deputy Commissioner and the Tribunal based on relevant computer related dictionary and data, is a peripheral of a computer. It is also held by the Tribunal that "router" is a computer network device that transmits data from one area to another and expands the capabilities of the computer, hence, it does not form part of core computer architecture. Therefore, we find that the Appellate Deputy Commissioner as well as the Tribunal are justified in holding that the goods sold by the assessee, namely, router, is a computer peripheral, falls under serial No. 22, entry 68 of Part B of the First Schedule to the TNVAT Act, 2006."

Further, in the case of Canon India Pvt. Ltd. (supra), upheld by the Hon'ble Supreme Court of India, the Madras High Court held as under:-

"8. Coming to the case on hand, assuming that the other interpretation given by the lower authorities is not accepted, on a conspectus of the issue raised by the petitioner and the orders passed by the authorities below, we find that the issue that has to be decided is whether image runner-multifunction network printer is a "peripheral" of a computer or such other device having different functional capability which would fall under other entries as contended by the Department. It is seen from the order of the authorities below that the technical details of the image runner have already been submitted before the lower authorities.

9. The first issue that the petitioner has been canvassing is the predominant use of the goods in question. Itis the specific plea of the petitioner before the original authority as well as before the first appellate authority that the image runner is predominantly a multi-function network printer and it performs other functions like scanning, fax, documents storage and copying. Besides the facility of network printing, the add on features of scanning, fax, photocopying make the goods a multi-function device.

10. The fact that the goods in question work in conjunction with a computer, personal, mini, mainframesand laptops of analog and digital varieties is not in dispute. It is also not in dispute that this equipment is an input and output device. The printer and the scanner of different kinds fall within the definition of "peripheral". If it is a standalone photocopier machine or fax machine, then the Department would have a case and counter. Photocopying is not the primary function of the equipment in question, as it works in conjunction with the computer. The distinction is evident from the reading of entry 18(i) of Part B of Schedule I and entry 14(iv) of Part D of Schedule I of the TNGST Act. Peripherals in relation to computer personal, mini, mainframes and laptops of analog and digital varieties would fall under entry 18(i) of Part B of Schedule I, whereas electronic instruments including cash registers, tabulating and calculating machines, electronic duplicating machines, reprographic copiers including duplicators, xerox and photo copying machines and any other electronic apparatus for obtaining duplicate copies fail under entry 14(iv) of Part D of Schedule I."

Further, in the case of Ricoh India Limited (supra), the Delhi High Court held as under:

"15. The question, therefore, which is raised and has to be answered, is whether the multi functional machines or printers are computer peripherals or not? The term "peripheral" has not been defined in the VAT Act and, therefore, has to be given its natural and common sense meaning. A computer mainly consists of Central Processing Unit, which cannot operate and function without peripherals like monitor, keyboard, printer etc. Some of the peripherals may be mounted or housed in the computer cabinet itself like Hard Disc, CD ROM, Mic etc. Sometime peripherals can be

separate and have to be attached to the Central Processing Unit. The term "peripheral" has been defined in Oxford Dictionary to mean as under:-

'(of a device) able to be attached to and used with computer, though not an integral part of it'

16. A multi functional machine can be a computer peripheral, if its principal or sole purpose is to be attached and function as a computer ancillary. A multi functional machine will be and qualify as a computer peripheral when its main/predominant purpose is to scan documents, load data or work as an input devise of the computer or work as an output device to take printouts etc. from the computer. At the same time, there can be photocopiers, whose main purpose is to copy or act as a duplicating machine to make copies of documents. Incidentally, they may also be used as a printer. This would require elucidation and examination of factual matrix in each case and the machine in question on case to case basis."

9. From the analysis of the aforesaid judgments, it is clear that the term peripheral has been given an expansivemeaning and is not restricted to input/output devices, as contended by the Revenue. It is also clear that even if the goods in question can have different applications independent of computer, the same would not preclude them from being considered computer peripheral if they are also being used in computer system to expand the capabilities of computer system.

10. The goods in question, i.e. CAT-5/CAT-6 cable, are admittedly used to connect the computer to a network astheir primary function is high speed data transmission. They are essential for wired connection of a computer to a local network or to the Internet. The Revenue contends to keep the definition of 'peripheral' limited to those items that are essential to keeping the computer operational, but the Revenue has failed to consider the meaning of the word 'operational' in its different contexts. For many end users, in this day and age, it is a necessity to be able to connect their computer to a network so as to make their computer 'operational' for their usage. The connection to external network may be to local area network (LAN) or wide area network (WAN) and it may be wired or wireless. But even if it is wireless, it would have to be with aid of another device. Be that as it may, merely because the connection can also be established wirelessly would not preclude the networking cables from being included in the broad definition of 'peripheral' as they are also used with computer system to connect the computer to a network.

11. These authorities can be multiplied, as various such authorities of the Tribunals were also cited before thisCourt, but it is not considered necessary to reproduce and discuss all such cases in detail, especially when the learned counsels for the Revenue failed to bring out any contra view on this issue from any other High Court or the Hon'ble Supreme Court of India.

12. In the opinion of this Court, the learned Tax Board has erroneously taken a hyper technical view that sincethe CAT-5/CAT-6 cables don't directly fall in the category of the items mentioned in the above quoted judgments, the said judgments are distinguishable and not applicable. The learned Tax Board has erred in law by not applying the correct ratio of the above quoted judgments in their true sense.

13. Even otherwise, the order impugned of the learned Tax Board and the authorities below deserve to bequashed and set aside for the following additional reasons:-

13.1) The burden to prove that a specific product falls within a particular tariff is always on the revenue, moreso when the revenue is trying to classify products in the residual entry as against the specific entry. In the instant case, the revenue has utterly failed to adduce any evidence, technical or otherwise, to substantiate its claim that CAT-5 or CAT-6 cable are not covered in Part-A of Schedule IV to the RVAT Act which specifically deals with IT Products.

13.2) As per the IT & ITES Policy 2007 also, a flat rate @ 4% was prescribed for the sale of IT related products.

13.3) The Entry No. 3 and 24 of Part-A of Schedule IV to the RVAT Act was subsequently amended tospecifically include "networking items" in Entry 3 and "networking cables of different types such as Flat Cables, CAT 3 cables, CAT 5 cables, CAT 6 cables" in Entry 24. What is significant is that the amendment was brought into force the same day of the introduction of State Budget for the year 2013-2014, wherein while introducing the Budget, the Hon'ble Chief Minister specifically acknowledged the difficulties faced by different businesses engaged in the sale of 'computer related items' and resolved to set a clear rate of tax on such items. Subsequently, the amendment, as stated above, was brought in force and the networking items and networking cables were specifically mentioned in Part-A of Schedule IV to the RVAT Act. As rightly submitted by learned counsels for the petitioner- assessee, it is a settled position of law that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous. A bare perusal of the subsequent amendment would reveal that the State Government had itself considered networking items and networking cables within the specific entries numbering 3 and 24 of Part-A of Schedule IV to the RVAT Act. A bare perusal of the text of the Hon'ble Chief Minister's speech, as reproduced above, would also reveal that the amendment was brought to remove ambiguity/difficulty in taxation and was thus an amendment in the nature of a clarification and thus having a beneficial purpose and hence would also have retrospective application as well. Reliance in this regard can be placed on Apex Court judgment of Suchitra Components Ltd. (supra)

and Kerala State Industrial Development Corporation Ltd. (supra), as cited by learned counsels for the petitioner-assessee.

13.4) In the case of petitioner/Rashi Peripheral Pvt. Ltd., the Tax Board has imposed additional differential taxand interest on the entire turnover amount based on the minuscule sale of CAT-5/CAT-6 cable made by the petitioner-assessee, which constituted less than 5% of the total turnover of the petitioner-assesse whereas the other 95% of the turnover was based on sales of other networking items that were undisputedly covered by the judgments of various High Courts cited before the Tax Board.

However, with complete disregard to that, the Tax Board had restricted its findings to that of classification of CAT-5 and CAT-6 and on the basis of the same, imposed tax and penalty on entire turnover.

13.5) Lastly, the argument qua HSN adopted by learned counsel for the revenue is also not applicable in thegiven facts as the same was never raised in the original application or in the show cause notice. The argument qua HSN was never raised before Appellate Authority or the Tax Board, nor was it the foundation of the show cause notice or the original order and therefore the plea qua HSN cannot be raised at this stage. Even otherwise, HSN can only be used for limited purpose of aid and assistance in matters pertaining to RVAT Act as the HSN has not been adopted under RVAT Act and it thus lacks statutory force. In the given case, for the reasons as stated above, it can safely be concluded that the goods in question would fall under Part-A of Schedule IV to the RVAT Act and therefore resort to HSN is not necessary.

14. In view of the foregoing analysis, the question(s) of law framed hereinabove have to be answered in favourof the petitioner-assessee and against the Revenue.

15. Accordingly, all these STRs are allowed. The orders impugned of the learned Tax Board and the authoritiesbelow are quashed and set aside.

16. Pending application(s), if any, shall stand disposed of.

17. A copy of this order be placed in each of the file.

13. Recording of reasons mandatory for initiation of proceedings u/s 35(7) of JVAT

Case Name : Mishri Lal Jain Vs State of Jharkhand (Jharkhand High Court)
Appeal Number : W.P. (T) No. 3910 of 2022
Date of Judgement/Order : 10/05/2023
Courts : All High Courts (10629) Jharkhand High Court (106)

Mishri Lal Jain Vs State of Jharkhand (Jharkhand High Court) Jharkhand High Court held that it is mandatory to record reasons for initiation of proceedings under Section 35(7) of the Jharkhand Value Added Tax Act (JVAT Act). Non-recording of the same makes the proceedings untenable in law.

Facts- The instant writ petition has been preferred against the order passed by the learned Commercial Taxes Tribunal, whereby the revision petition and review petition of the petitioner have been rejected and the determination of sale price of Iron Ore sold by the petitioner on the basis of average rate of neighbouring mines in exercise of the powers under Section 35(7) read with Section 30(4) of the Jharkhand Value Added Tax Act, 2005 (JVAT Act) has been upheld. The petitioner is engaged in the business of mining and trading of iron ore, and Iron ore extracted from mines is known as "Run of Mines (ROM)" which requires further processing and screening. Petitioner's premise does not have processing and screening facility and thus, only ROM was being sold by the petitioner. The Assessment proceeding of the petitioner was completed wherein, in alleged exercise of power u/s 35(7) r/w Section 30(4) of the JVAT Act, tax and interest has been imposed upon the petitioner on the alleged ground that petitioner has concealed its Gross Turn Over (for short GTO). The assessing officer despite taking actual figure of sale price, has taken the value of goods sold on the basis of average sale price of nearby mines i.e., M/s. Rungta Mines Ltd.

Conclusion- It is only after recording of reasons for initiation of proceedings under Section 35(7) the exercise for determination of value of goods at the time of sale and assessment of tax on such price is to be done by giving the dealer an opportunity of being heard. At this stage it is further appropriate to observe that the condition of recording satisfaction under proviso to Section 35 (7) is a prerequisite before initiation of proceedings and cannot be dispensed with by the AO. In other words, the assessing officer is duty bound to record his reasons before initiating any proceeding. It appears that the petitioner had also specifically raised this plea before the AO before passing of the revised assessment order and also before the appellate authority thereafter at the second instance.

It is reiterated that recording of satisfaction is sine qua non before proceeding to impose tax and penalty upon the assessee under Section 35(7) of the JVAT Act. Any such satisfaction is to be based on tangible materials as are found by the AO as the provisions are penal in nature where an assessee is found to be indulging in tax evasion by suppression or concealment of actual sales or turnover by selling goods at a higher price than shown by him. Learned Tribunal has completely failed to consider that the requirement of law for initiating a proceeding under Section 35(7) by recording reasons has not been fulfilled by the Assessing Officer.

14. GST: Authorized representation without instructions & without verifying records is untenable

Case Name : Bhavadharani Builders Vs Deputy Commissioner of CGST and Central Excise (Madras High Court)
Appeal Number : W.P.(MD). No. 11631 of 2023
Date of Judgement/Order : 11/05/2023
Courts : All High Courts (10629) Madras High Court (1193)

Bhavadharani Builders Vs Deputy Commissioner of CGST and Central Excise (Madras High Court) Madras High Court held that without instructions, without verifying the records, the petitioner cannot direct his representatives to appear. Accordingly, such representation is untenable in law.

Facts- Issue involved here is that the Superintendent have issued notice of personal hearing dated 14.11.2022 and the date of personal hearing was fixed on 25.11.2022. But the petitioner has sought an adjournment vide reply dated 23.11.2022 citing his illness. Thereafter, the second respondent has issued personal hearing Notice dated 23.02.2023 directing the petitioner to appear for the personal hearing fixed on 01.03.2023. After receipt of the notice, the petitioner has sent adjournment letter dated 27.02.2023 informing that he has been admitted in Hospital as inpatient and he is undergoing treatment for which he has produced the Medical Certificate. Thereafter, the respondents have issued one more notice dated 10.03.2023, wherein the Superintendent informed that the petitioner should appear for personal hearing on 16.03.2023. Immediately, the petitioner has sent an adjournment letter dated 14.03.2023 seeking "two months time" to file reply to the show cause notice for which the petitioner also enclosed the certificate of the Hospital where he has been diagnosed as having cancer in his right leg. However, the respondents declined to grant adjournment and passed an impugned order dated 20.04.2023.

Conclusion- This Court is of the considered opinion that without instructions, without verifying the records, the petitioner cannot direct his representatives to appear. Moreover, the petitioner is having full knowledge of the transactions. Therefore, the petitioner sought time to appear for the personal hearing. Even to instruct his representatives on facts, the petitioner ought to verify the records and instruct, for which he needs time. Therefore, this Court is of the considered opinion that since the Hon'ble Division Bench has granted 60 days time, that cannot be cited as reason for declining adjournment, when an assessee is seeking adjournment based on his illness and medical treatment. Further, it is seen that 60 days time was granted to the

respondents to issue notice and thereafter 90 days time was granted for passing orders and hence the reasons cited by the respondents is erroneous.

15. GST: Attachment of bank account without any tangible material is unsustainable

Case Name : Sidhivinayak Chemtech Private Limited Vs Principal Commissioner CGST (Delhi High Court)
Appeal Number : W.P.(C) 17547/2022
Date of Judgement/Order : 16/05/2023
Courts : All High Courts (10629) Delhi High Court (2450)

Sidhivinayak Chemtech Private Limited Vs Principal Commissioner CGST (Delhi High Court) Delhi High court held that attachment of bank account under section 83 of the Central Goods and Services Tax Act, 2017 merely on the basis of suspicion and without any tangible material is unsustainable.

Facts- The petitioner company was incorporated on 05.09.2012, under the provisions of the Companies Act, 1956 and claims that it is engaged in the trade of industrial chemicals relating to the pesticide industry. The petitioner has two principal places of business. One in the State of Uttar Pradesh and the other in Haryana. It is registered with the GST Department for its principal place of business in Uttar Pradesh for its place of business in the State of Haryana. For carrying out the import of industrial chemicals, the petitioner has been granted Importer-Exporter Code (IEC) No.0512052859 by the Directorate General of Foreign Trade, Ministry of Commerce and Industry, Government of India. On 20.05.2022, respondent no. 2 issued a summons u/s. 70 of the CGST Act to the petitioner company's director, Shri Raman Kumar and Shri Indresh Kumar Yadav, who is employed as a supervisor with the petitioner, to appear at the office of respondent no.1 and tender statements in connection with investigations aboutthe fraudulent use of Input Tax Credit (ITC) of ₹36.6 crores by M/s Best Crop Science LLP and M/s Best Crop Science Pvt. Ltd. Later on 05.09.2022, on becoming aware that its bank account was provisionally attached, the petitioner filed its objection (in Form GST DRC-22A) under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 (the Rules) with respondent no.1.

Conclusion- It is necessary to bear in mind that attachment of a bank account would in effect result in the closure of the business of a taxpayer and has the propensity to cause irretrievable harm. The said drastic action is impermissible merely on the basis of suspicion and without any tangible material. The mere suspicion that the petitioner is a dummy company, which is founded based on statements that one of the directors of the petitioner company was, or is an employee of M/s Best Agrolife Group, and is

in complete disregard of the corporate documents of the petitioner, would clearly fall foul of the requirement of forming an opinion, as it does not meet the standards required for taking an action under Section 83 of the CGST Act.

16. Orissa HC Stayed demand of penalty & interest in absence of GSTAT

Case Name : Prafulla Kumar Sahoo Vs Commissioner of CT & GST Odisha (Orissa High Court)
Appeal Number : W.P.(C) No. 15842 of 2023
Date of Judgement/Order : 17/05/2023
Courts : All High Courts (10629) Orissa High Court (202)

Prafulla Kumar Sahoo v. Commissioner of CT & GST Odisha (Orissa High Court)
The Hon'ble Orissa High Court in Prafulla Kumar Sahoo v. Commissioner of CT & GST Odisha, Banijyakar Bhavan & Ors. [W.P.(C) No. 15842 of 2023 & I.A. No. 7254 of 2023 dated May 17, 2023] had stayed the demand of penalty and interest raised by the Revenue Department, during the pendency of writ petition, subject to the condition that the assessee deposits the entire amount of tax demanded within a period of 15 days, since the assessee wanted to avail the remedy under the provisions of law by approaching GST Appellate Tribunal ("GSTAT").
Facts: This petition has been filed by Prafulla Kumar Sahoo ("the Petitioner") challenging the Order dated April 12, 2023 ("the Impugned Order") passed the by Joint Commissioner of State Tax (Appeal) ("the First Appellate Authority") demanding the amount of penalty and interest, wherein, the appeal preferred by the Petitioner under Section 107(1) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") had been rejected. The Petitioner contended that the Petitioner is not liable to pay the tax and penalty against the Impugned Order as the Petitioner had already deposited 10% of the demanded tax amount before the First Appellate Authority and there is no GSTAT constituted as on date.
Issue: Whether the demand of interest and penalty is liable to be stayed in absence of the GSTAT?
Held: The Hon'ble High Court in W.P.(C) No. 15842 of 2023 held as under: Issued notice to the Revenue Department. Noted that, in case the Petitioner wants to avail the remedy by preferring appeal before the GSTAT, the Petitioner would be liable to pay 20% of the disputed tax for consideration of its appeal. Observed that, the Petitioner wants to avail the remedy under the provisions of law by approaching GSTAT, which has not yet been constituted. Held that, the amount of penalty and interest demanded shall remain stayed during pendency of the petition, subject to

the condition that the Petitioner deposits the entire amount of tax demanded within a period of 15 days. Relevant provision: Section 112(1) of the CGST Act:

"Appeals to Appellate Tribunal 112. (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal."

17. GST: Turnover relating to different states needs to be assessed separately

Case Name : Jai Bharath Travels Vs Deputy Commissioner (St) (Andhra Pradesh High Court)
Appeal Number : Writ Petition No. 1588 of 2023
Date of Judgement/Order : 09/05/2023
Courts : All High Courts (10629) Andhra Pradesh HC (171)

Jai Bharath Travels Vs Deputy Commissioner (St) (Andhra Pradesh High Court) Andhra Pradesh High Court held that turnover of same assessee in different states cannot be assessed by department of one State. Accordingly, turnover relating to bus business for the States of Andhra Pradesh, Telangana, Tamilnadu and Puducherry needs to be assessed separately.

Facts- The petitioner challenges the Assessment, Penalty & Interest order passed by 1st respondent under the SGST and CGST Acts 2017 for the tax periods 2017-18, 2018-19, and 2019-20 (upto November 2019) as without jurisdiction, without authority, contrary to law and violative of principles of natural justice and set aside the said order. The petitioner engaged in plying passenger buses in different States i.e., Andhra Pradesh, Telangana, Tamilnadu, and Puducherry. The 1st respondent obtained information from M/s Abhibus and wrongly assessed the petitioner to tax in respect of the total turnover of the petitioner relating to all four States. As per statute, the 1st respondent must assess the petitioner to tax in respect of the turnover relating to A.P. State only and the turnover relating to other States will be excisable to tax as per the relevant statute of those States. Therefore, the impugned Assessment Order is unsustainable.

Conclusion- we deem it apposite to give an opportunity to the petitioner to furnish the relevant data showing the turnover of the petitioner relating to A.P, Tamilnadu, Telangana and Puducherry separately for appreciation of the Authorities and to make

fresh assessment in accordance with law. The Writ Petition is allowed and the impugned Assessment Order dated 15.12.2022 passed by 1st respondent under SGST /CGST Acts, 2017 for the tax periods 2017-18, 2018-19 and 2019-20 (up to November, 2019) is hereby set aside and liberty is given to the petitioner to submit the relevant records showing the turnover relating to his bus business separately for the States of Andhra Pradesh, Telangana, Tamilnadu and Puducherry for the relevant period before 1st respondent, on the condition of petitioner depositing admitted tax less the tax already deposited within three (3) weeks from the date of receipt of copy of this order, in which case, the 1st respondent shall consider the same and after affording an opportunity of hearing to the petitioner, pass fresh assessment order for the relevant period on merits and in accordance with the governing law and rules expeditiously. No costs.

18. GST: Bank Account attachment without Notice: HC Quashes Writ & directs to file appeal

Case Name : Twisha Educational Private Limited Vs Addl. CT & GST Officer (Orissa High Court)
Appeal Number : W.P (C) No.11358 of 2023
Date of Judgement/Order : 01/05/2023
Courts : All High Courts (10629) Orissa High Court (202)

Twisha Educational Private Limited Vs Addl. CT & GST Officer (Orissa High Court)
No relief granted against Attachment Order by High Court on ground of alternate appellate remedy available The Hon'ble Orissa High Court in the case of Twisha Educational Private Limited v. Addl. CT & GST Officer [W.P (C) No.11358 of 2023 dated May 01, 2023] directed the assessee to file an appeal before the appropriate authority under Section 107 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"), as assessee claims that the GST authorities attached their bank account without issuing any prior notice. The Court has advised the assessee to pursue their remedy through the established appellate process rather than seeking relief through a writ petition.
Facts: This Petition has been filed against the assessment order dated February 10, 2022 for the period 2017-18 and 2018-19 attaching the Bank accounts of Twisha Educational Pvt Ltd. ("the Petitioner") by Addl. CT & GST Officer ("the Respondent") without any prior notice, which is being challenged. Issue: Whether the Writ Petition is maintainable before the High Court, considering the availability of the appellate remedy under Section 107 of the CGST Act?

Held: The Hon'ble Orissa High Court in W.P (C) No.11358 of 2023 held as under:

- Directed the Petitioner to file an appeal before the appropriate authority under Section 107 of the CGST Act and advised the Petitioner to pursue their remedy through the established appellate process rather than seeking relief through a writ petition.
- Further, the Court dismissed the writ petition on the basis that the petitioner has an alternative remedy available through the appellate process.

19. Adjustment of refund towards amount of tax due without any notice is unjustified

Case Name : TML Business Services Limited Vs Deputy Commissioner of State Tax (Bombay High Court)
Appeal Number : Writ Petition No. 8343 of 2019
Date of Judgement/Order : 04/05/2023
Courts : All High Courts (10629) Bombay High Court (1611)

TML Business Services Limited Vs Deputy Commissioner of State Tax (Bombay High Court) Facts- Petitioner statedly is a limited company engaged in procuring vehicles from Tata Motors Limited ("TML") and selling them to dealers within and outside the State of Maharashtra. Pursuant to an assessment u/s. 23 of the Maharashtra Value Added Tax Act, 2002 for F.Y. 2010-2011, AO passed an Assessment Order raising a demand of Rs. 17,76,93,422 including tax and interest. Aggrieved by the same, the Petitioner filed an appeal which resulted in a reduced demand of Rs. 14,00,74,890. For F.Y. 2011-2012 an assessment order dated 21 August 2017 was passed raising a demand of Rs. 9,67,02,366/- including tax and interest. A first appeal was filed by the Petitioner against this order which resulted in an order for refund of Rs.10,69,89,606/- on 28 February 2019. It is the Petitioner's case that the said order was received on 5 April 2019. Being desirous of availing benefit of the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019 (the "Amnesty Scheme") for settlement of its dues with respect to the year 2010-2011, the Petitioner withdrew the intimation made in Form-314 on 12 April 2019, informing Respondent No.1 of the same and also requested Respondent No. 1 to keep the refund of Rs. 10,69,89,606/- for the year 2011-2012 on hold. On 13 May 2019, Petitioner made an application under the Amnesty Scheme for F.Y. 2010-2011 for settlement of dues by making a payment of Rs. 8,46,84,821/-.It is the case of the Respondents that since past dues of the Petitioner amounting to Rs. 14,00,74,890/- were already available for recovery since 12 April 2019, as per the proviso of Section 50 (1) of MVAT Act, the Commissioner was mandated to first apply the excess towards the recovery of any amount due from the dealer and then proceed to refund the balance amount, if any, u/s. 50 (1) of the MVAT Act It was argued that as the petitioner had

already submitted an application to settle the dues for the year 2010-2011 in accordance with the Amnesty Scheme's provisions, the petitioner argued that the respondents were not permitted to adjust the refund of Rs. 10,69,89,606 against the liability of Rs. 14,00,74,890 for the year. Thereafter, a Defect Notice was issued which showed a zero amount in the short paid column. Further, a refund adjustment order was issued by the erstwhile petitioner informing that the refund of Rs. 10,69,89,606/- which was due to them would be adjusted towards the amount of tax due for the year 2010-2011. The petitioner replied to the Defect Notice and recorded that the action of the Respondents in adjusting the refund was unfair and unjust.

Conclusion- It is only pursuant to the Defect Notice, Petitioner figured out that the excess amount would not be refunded to the Petitioner and it is only on 23 May 2019 pursuant to the Refund Adjustment Order that the Petitioner came to know that the refund of Rs. 10,69,89,606/- granted for the year 2011-2012 would be adjusted towards the amount of tax due for the period 2010-2011. There was no notice whatsoever of this adjustment to the erstwhile Petitioner. These actions of the Respondent Authorities in our view cannot be countenanced. Apart from the general law that no action adverse to a party can be taken without giving the party an adequate notice and an opportunity of defending, the provisions of the MVAT Act also mandate the Respondents to put the Assessee on notice before making any adjustment of refund. Section 32 as quoted above, also appears to suggest this.

In our view, the Defect Notice and the Refund Adjustment Order are apart only by a day and this could not have provided sufficient opportunity to the Petitioner even to seek redressal of his grievance from the Authorities. Even while the Authorities had not responded to the communication dated 12 April 2019 of the Petitioner, whereby the Petitioner had requested the Authorities to keep the refund amount on hold as they were in the process of filing an application under the Amnesty Scheme, the Respondent Authorities, in our view, could not have, while the application for the Amnesty Scheme was under consideration in the absence of any response to the erstwhile Petitioner's communication dated 12 April 2019 gone ahead without any notice to the Petitioner and adjusted the refund amount for the year 2011-2012 against the dues for the year 2010-2011 and that too when the Petitioner had already filed the application under the Amnesty Scheme which was accepted by the Respondent Authorities alongwith the payment of Rs. 8,46,84,821/-under the said scheme.

20. Bihar Entertainment Tax Act, 1948 cannot survive after 101st Amendment: HC

Case Name : K.B. Tea Product Pvt. Ltd. Vs Commercial Tax Officer (Supreme Court of India)

Appeal Number : Civil Appeal No. 2297 of 2011

Date of Judgement/Order : 12/05/2023

Courts : Supreme Court of India (2119)

DEN Networks Limited Vs State of Bihar (Patna High Court)

HC held that We have to reiterate that the inconsistent provisions in the Bihar State legislations which were sought to be continued for one year or till the amendment or repeal by the respective State Legislatures, by virtue of Section 19 of the 101st Amendment, was only those laws relating to tax on goods or services or on both, and not any other tax levied properly by a legislature, for which the power was sourced to the Constitution as it existed prior to the 101st Amendment, which power stood denuded after such amendment. Entertainment tax levied under the Bihar Entertainment Tax Act, 1948 was a levy and collection made by the State through its Commercial Tax Officers, validly legislated under Entry 62 of List II as it existed prior to 101st Amendment. It cannot be sustained after the 101st Amendment as the amendment to Entry 62 required the levy and collection to be by a local self-government institution and not the State Government. Taxes other than on goods or services or on both, cannot survive after the Constitutional amendment since the same was not saved by the transition provision under Section 19 of the amendment. The tax on goods which earlier was under the general sales tax regime and then under the Value Added Tax regime can continue by virtue of the repeal and amendment, brought in by virtue of Sections 173 and 174 of the State Goods and Services Tax Act; within one year of the 101st amendment. The transitional provision under Section 19 specifically provides for continuance of the inconsistent provisions of any law on any tax on goods or services or on both; with reference to the Constitution as it exists after the 101st Amendment, which were consistent with the Constitution as it existed prior to such amendment, for one year or till such a repeal or amendment is brought by the State Legislature, whichever is earlier. By virtue of the specific provision provided in Section 19 it does not necessarily mean that such levy and collection can be only for one year. If no repeal and amendment is made to the inconsistent State legislations then of course such levy could have been made and collected only till the expiry of one year from the commencement of the amendment. However, by bringing in Section 173 under the State Goods and Services Tax Act, the earlier enactment by which the levy of tax on goods was made by the State Legislature, the Value Added Tax Act, would stand repealed and by the saving clause under Section 174 the assessments and recovery of arrears with respect to any such tax, surcharge, penalty, fine, interest etc. would survive, notwithstanding the repeal as proper proceedings de hors the repeal. This is only by reason of the repeal and saving having been brought in by the State Legislature in an enactment, which is in tune with Section 19 of the 101st Amendment; within one year of the commencement of the subject

amendment. As far as the general sales tax, the same was saved by a transition provision in the VAT Act and by the repeal and saving in the State Goods and Services Tax Act, even that levy and collection survives validly, after the Constitutional amendment. By virtue of the repeal and saving clause the taxes imposed by such legislations, the provisions of which would be inconsistent with the Constitution as it exists after the 101st amendment could be continued to be levied and collected by way of appropriate proceedings under the earlier enactments, as if the said enactments were not repealed. This interpretation does not, however, hold good for taxes other than goods or services since the 101st Amendment to the constitution by Section 19, the transition provision, only saves the taxes so levied on goods or services or on both. The Bihar Entertainment Tax Act, 1948 was one enacted when the field of legislation in Entry 62 to List II of Seventh Schedule, existed as it did prior to the 101st Amendment. It is clear from the provisions of the said Act & Rules and the notification issued thereunder that the levy and collection of such tax was also the responsibility of the Commercial Tax Officers, the collected amounts going into the consolidated fund of the State. While retaining the tax on entertainments in the 101st Amendment it was specifically indicated that taxes on entertainments & amusements can be sustained; i.e. under Articles 245, 246 & 265 of the Constitution of India, only to the extent levied and collected by a Local Self Government Institution i.e. a Panchayat, Municipality, Regional Council or a District Council. Hence, the tax as it was levied on entertainments under the Bihar Entertainment Tax Act, 1948 cannot survive after the 101st Amendment since it is not levied and collected by a local self-government institution. That the State could now bring out an enactment taxing entertainments, also levying tax on Cable TV Networks, by permitting such levy and collection to be made by the local self-government institutions, cannot at all be disputed. However, it is a moot question as to whether a repeal and saving clause as in the Bihar Goods and Services Tax Act, in such a new enactment brought under Entry 62 as it exists now in the Constitution, can provide for a repeal and saving as available under Sections 173 and 174 of the BGST Act, to sustain the levy and collection after the 101st Amendment. This is because the transitional provisions under Section 19 does not make the same applicable to tax on entertainments and confines it to tax on goods or services or on both. We need not dwell into the same since neither is there existing a repeal or saving clause in such an enactment nor even was such an enactment brought in. It could have been done only if there was a foundational empowerment by a transition clause, in the nature of Section 19 permitting the survival of such entertainment tax levied and collected under the unamended Entry 62, as was permitted in the case of goods or services and the legislation was brought in, within one year from the commencement of the 101st amendment. The periods we are

concerned with are 01.01.2016 to 31.03.2016, the full Assessment Year of 2016-2017 and 01.04.2017 to 30.06.2017, prior to the amendment and after the amendment. If we understand the levy to have been made on the taxable event having occurred, that is the giving of connection and the collection being deferred to every month, when the subscription is paid, then as per the Act of 1948; it occurs on the giving of the set-top boxes, creating a liability on the taxable person to pay tax determined at a definite quantum, from the fees generated from the subscribers. But, it cannot be collected after the 101st Amendment, for even a period of one year, since there is no transition provision to save the taxes levied on entertainment by a legislation under the un-amended Entry 62 and there could be no question of a collection too, raised validly. The Act of 1948 in the State of Bihar, by which the State, through its Commercial Tax Officers collect entertainment tax inter alia from the proprietors of cable television networks cannot survive the 101st Amendment, since the field of taxation available to the State under the amended Entry 62 of List II is confined to those levied and collected by the local self-government institutions. The tax for the period prior to the amendment, though levied on the taxable event occurring, cannot also be collected since there is no transition provision available under the 101st Amendment making such collection of entertainment tax permissible for one year or by way of a repeal; by an enactment, consistent with the amendment, with a saving clause for continuance of the levy and collection under the old Act as it was never repealed. Despite our finding that the Act of 1948 levies the tax on the MSO, the petitioner as the proprietor, prior to the 101st amendment, such levy and also collection as indicated in the impugned orders have to be set aside since post amendment neither the levy nor the right to collect tax, as it existed earlier, survives. The impugned orders are hence set aside, only on the ground of the authorities under the Act of 1948 having been denuded of the power to levy and collect the tax as per the enactment, after the 101st amendment. The State also is denuded of the power to make an enactment in the nature of the Bihar Entertainment Tax Act, 1948 after the 101st Amendment. The repeal and the saving clause provided under the BGST Act does not inure to the benefit of the State since the enactment and the levy made by it cannot be sustained after the 101st amendment. We hence, allow the writ petition, setting aside the impugned order.

21. Doctrine of legitimate expectation invocable where amendment is not made in consonance with public interest

Case Name : K.B. Tea Product Pvt. Ltd. Vs Commercial Tax Officer (Supreme Court of India)

Appeal Number : Civil Appeal No. 2297 of 2011
Date of Judgement/Order : 12/05/2023
Courts : Supreme Court of India (2119)

K.B. Tea Product Pvt. Ltd. Vs Commercial Tax Officer (Supreme Court of India) Supreme Court held that amendment to section 2(17) of West Bengal Sales Tax Act, 1994 by omitting the word 'blending of tea' from definition of 'manufacture' stopped the benefit of exemption from payment of sales tax. Enactment of such amendment without appropriate justification by the Government brings in play doctrine of legitimate expectation.

Facts- The appellants enjoyed the benefit of exemption from payment of sales tax as provided under Section 2(17) and Section 39 of the Act, 1994 for a period of two years till Section 2(17) came to be amended by the West Bengal Finance Act, 2001. Section 2(17) of the Act, 1994 came to be amended by the West Bengal Finance Act, 2001 w.e.f. 01.08.2001, whereby the words "blending of tea" were omitted from the definition of "manufacture" provided under section 2(17) of the Act,1994. Consequently, the exemption from payment of sales tax, which was granted to the appellants came to be stopped and even the eligibility certificate was required to be modified. The aforesaid action / order was challenged before the Tribunal first and thereafter before the High Court. The Tribunal dismissed the application, which has been confirmed by the High Court by the impugned judgment and order. The impugned judgment and order passed by the High Court is the subject matter of present appeals, claiming the exemption from payment of sale tax as per earlier 1999 Scheme.

Conclusion- In the present case at hand, while perusing through the subsequent amendment, it can be clearly seen that no such appropriate justification has been provided by the government. No appropriate reason for the enactment of the amendment, nor the considerations of the affected party have been discussed. In my opinion, a mere claim of change of policy is not sufficient to discharge the burden of proof vested in the government. The government must precisely show what the change of policy is, and why such a change of law is in furtherance of public policy, and the public good. In light of the factual matrix herein and the abovementioned discussions, it can be clearly seen that a legitimate expectation was created by the public authority, and such an expectation, accrued in the favour of the appellants herein, was rescinded by the said authority without any demonstration of public interest. No appropriate explanation has been provided as to why a shift was made in Law, and why such a shift, in spite of the loss which would occur to the appellants and similarly situated persons, was necessary to advance public interest. In such a

circumstance, the legitimate expectation created in the minds of the appellants, must be protected, and the benefits given originally must be made applicable to the appellants herein for the period promised by the respondent authority.

22. Transaction between manufacturer & dealer while acting pursuant to a warranty is Sale: SC

Case Name : Tata Motors Ltd. Vs Deputy Commissioner Of Commercial Taxes (SPL) & Anr. (Supreme Court of India)
Appeal Number : Civil Appeal No.1822/2007
Date of Judgement/Order : 15/05/2023
Courts : Supreme Court of India (2119)

Tata Motors Ltd. Vs Deputy Commissioner of Commercial Taxes (SPL) & Anr. (Supreme Court of India) In Assistant Collector of Central Excise vs. Madras Rubber Factory Ltd., 1986 Supp SCC 751, the question arose under the Central Excises and Salt Act, 1944 with regard to the method of computation of assessable value in a cum-duty price at the factory gate and the permissible deductions to be made from the cum-duty paid selling price to arrive at the assessable value and then tariff rate being applicable to the assessable value. One of the contentions regarding deduction was with regard to TAC-warranty discount to be made for determining the assessable value. It was observed that a warranty is not a discount on the tyre already sold, but relates to the goods which are being subsequently sold to the same customers. It cannot be strictly called as discount on the tyre being sold. It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale. The said view was reiterated in Government of India vs. Madras Rubber Factory Ltd., (1995) 4 SCC 349 where the question was whether the claim put forward as TAC - warranty discount is a trade discount within the meaning of Section 4 of Central Excises and Salt Act, 1944. It was observed that the claim is only a claim for refund by the buyer for the manufacturing defect in the tyre sold by the assessee therein, which is being honoured by the assessee in a manner acceptable to both the parties. It was reiterated that it is a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale owing to a defective tyre. It is a compensation in the nature of a warranty allowance on a defective tyre. Thus, the manufacturer gives the warranty to the consumer by making a representation with regard to the automobile. It is in the nature of a promise which the dealer assessee carries out on behalf of the manufacturer. There is transfer of property in the spare part from the stock of the dealer to the customer for which the manufacturer pays by

way of a credit note. The said promise is carried out and a valuable consideration is received by the dealer through credit notes. In substance, when the dealer receives a credit note, it is a sale within the meaning of the definition under the respective sales tax legislation under consideration, pursuant to the warranty for which the manufacturer compensates the dealer by issuance of a credit note. The value of the credit note is a valuable consideration received which is in the nature of a benefit from the manufacturer which is exigible to tax. If the dealer had sold a spare part of the automobile from his stock to any other consumer across the counter, he would have collected the requisite sales tax along with the price from that consumer but in the instant case, the consideration is received in the form of a credit note from the manufacturer which is subject to sales tax. The person who pays the valuable consideration in a sale transaction is irrelevant so long as it is paid. In this context, it would be relevant to refer to the provisions of the Indian Contract Act, 1872. Section 2 (d) of the said Act states that when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise; Section 2 (c) states that the person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”; Section 2 (a) states that when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal; Section 2 (b) states that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise; Further, promises which form the consideration or part of the consideration for each other, are called reciprocal promises vide Section 2 (f) of the said Act. Applying the aforesaid definitions of the Indian Contract Act, 1872 to the facts of the present case, it would mean that as between the manufacturer of the automobile, the dealer and the customer, the manufacturer is the promisor who makes the proposal to recompensate the dealer when pursuant to a warranty clause, the dealer replaces a spare part from out of his own stock or by buying the same from the open market or from the manufacturer of the spare part. Thus, the dealer is the promisee. The occasion to replace the spare part is when the customer brings to the notice of the dealer a defect in a part of the automobile, pursuant to a warranty which has been given by the manufacturer to the customer. Section 2(d) of the said Act in fact enables the promisee (the dealer) to provide consideration by conferring a benefit on a third party (customer) at the promisor’s (the manufacturer’s) request pursuant to a warranty between the manufacturer and customer. Thus, a contract could arise even though the promise is for doing or abstaining from doing something for the benefit of

a third party. In other words, if the promisee (the dealer) replaces a defective part of an automobile sold to a third party, i.e., the customer, he would receive a credit note from the manufacturer. This is because the manufacturer would have proposed to the dealer to recompensate the dealer for the above act which proposal would have been accepted by the dealer and, thus, the manufacturer who has made the proposal is the promisor and the dealer who has accepted the proposal is the promisee. Further, when at the desire of the promisor (the manufacturer), the promise (the dealer) does some act or promises to do an act, such act or promise is called consideration for the promise. Therefore, the dealer (promisee) agrees to replace a defective part which is a consideration for the promise and in turn, receives a recompense in the form of a credit note from the manufacturer. Thus, there is an agreement between the manufacturer and the dealer, and it would be in an instance of there being reciprocal promises. In view of the above, the transaction between the manufacturer and dealer while acting pursuant to a warranty in the circumstances explained above has to be construed as sale within the meaning and definition of sale under the Sales Tax Acts under consideration.

23. Providing documents to Claim fraudulent ITC – HC allows bail to accused

Case Name : Nidhan Singh Kushwaha Vs State Of Chhattisgarh (Chhattisgarh High Court)
Appeal Number : MCRCA No. 244 of 2023
Date of Judgement/Order : 02/05/2023
Courts : All High Courts (10629) Chhattisgarh High Court (229)

Ravinder Kumar Vs State of Haryana (Punjab And Haryana High Court) The role of the petitioner is that he provided documents like PAN Card, Aadhar card and photographs of his known persons thereby enabled the co-accused to open the account in the bank in the name of the firms which got input tax credit on the basis of forged documents. Without commenting anything on merits of the case, considering the fact that the case is triable by the Magistrate; Co-accused have already been enlarged on bail; the petitioner is already on bail in other three cases; but pending of said cases is no ground to refuse concession of bail in this case; challan has already been presented; the petitioner is in custody since 09.11.2022 and the completion of trial will also take a long time, no useful purpose would be served by keeping the petitioner behind bars for a long period.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned

24. Non-Deposit of GST: HC grants anticipatory Bail to Assistant Director of Horticulture

Case Name : Nidhan Singh Kushwaha Vs State Of Chhattisgarh (Chhattisgarh High Court)
Appeal Number : MCRCA No. 244 of 2023
Date of Judgement/Order : 02/05/2023
Courts : All High Courts (10629) Chhattisgarh High Court (229)

Nidhan Singh Kushwaha Vs State Of Chhattisgarh (Chhattisgarh High Court)

1. Heard.

2. These are the two applications filed under Section 438 of the Code of Criminal Procedure for grant ofanticipatory to the applicants, who are apprehending their arrest in connection with Crime No.39/2023 registered at Police Station Mahasamund, District Mahasamund (CG) for the offence under Sections 409, 420, 120B, 34 of the IPC.

3. Prosecution case, in brief, is that RS Verma, Incharge Assistant Director (Horticulture), District Mahasamundlodged an FIR on the basis of an enquiry report submitted by the concerned Department on the complaint of Parliament Secretary namely Mr. Vinod Sevan Lal Chandrakar against applicant – Nidhan Singh Kuchwaha, the then Assistant Director (Horticulture), Jignesh Patel, Proprietor of M/s. Kishan Agrotech and Mr. Satish Jindal (applicant), Proprietor of M/s. Jai Gurudev, alleging that for construction of 17 Shed Net House/Green House and 66 Pack House/Poly House, under the National Agriculture Development Scheme sponsored by the NABARD, a subsidy amount to the tune of Rs.107.178 lakhs was withdrawn in an irregular manner. The concerned farmers produced vouchers regarding grant of payment in respect of firm – M/s. Kishan Agrotech and the same was also taken on record for entry of the stockholder. However, it is alleged that though the bill with regard to above payment was passed by applicant – Nidhan Singh Kushwaha, but the payment was made to the Proprietor (Satish Jindal – applicant) of another firm i.e. M/s. Jai Gurudev. On enquiry, it was found that for a single farmer, only one net house was constructed and that too by two firms and thereby, the applicants' in a fraudulent manner, committed irregularity by not depositing GST in the account(s) of the Central and State Governments. Based upon which, the offence has been registered.

4. Learned counsel for the respective applicants submit that the applicants have not caused any loss to theGovernment and its beneficiaries. They would further submit that for construction of only one shed, subsidy was given, which was directly deposited in the beneficiaries' accounts and thereafter, the beneficiaries placed the order to the concerned firms.

5. Learned counsel for the applicant in MCRC No. 244 of 2023 would submit that the firm of applicant – SatishJindal namely M/s. Jai Gurudev has paid the GST for the year 2020 and the said fact is reflected from the letter issued by the Director (Horticulture) dated 17.11.2022 and further, the relevant GST return has also been filed by the said firm. He would also submit that in the entire complaint and FIR, there is no allegation as to how much loss has been caused and in what manner, the present accused has defrauded the State or its beneficiaries. Hence, considering all these aspects, the applicants may be granted anticipatory bail.

6. Per contra, learned counsel for the State and learned counsel for the Objector oppose the submissions.However, on being asked, learned counsel for the objector failed to demonstrate as to how much loss has been caused to the State from the amount released in the subsidy. He also failed to submit any letter sent to the concerned GST Department for necessary recovery against the defaulter. Learned counsel for the State would submit that the fact with regard to any information collected from the GST authorities, is not available in the case diary and even in the Departmental Enquiry Report, no such input was gathered.

7. Having considered the submission, the nature of accusation and the quality of evidence, I am inclined toextend the benefit of Section 438 of the Cr.PC to the applicants.

8. Accordingly, the bail applications are allowed and it is directed that in the event of arrest of the applicants,they shall be released on bail on each of them furnishing a personal bond in the sum of Rs.50,000/- with one surety each in the like sum to the satisfaction of the arresting officer on the following conditions:-

    (a) they shall make themselves available for interrogation by the concerned police officer as and when sorequired,
    (b) they shall not directly or indirectly make any in document, threat or promise to any person acquaintedwith the facts of the case so as to dissuade him from disclosing such fact to the Court or to any police officer,
    (c) they shall not act in any manner which will be prejudicial to fair and expeditious trial,
    (d) after filing of the charge sheet, he shall appear before the trial Court on each and every date given tohim by the said Court till disposal of the trial,
    (e) they shall not involve themselves in any offence of similar nature in future.

Certified copy as per rules.

25. HC dismisses Writ against SCN which was based on GST Audit observation

Case Name : Shalimar Chemical Works (P) Ltd. Vs Commissioner of Commercial Taxes and Goods and Service Tax (Orissa High Court)
Appeal Number : W.P.(C) No. 13540 of 2023
Date of Judgement/Order : 04/05/2023
Courts : All High Courts (10629) Orissa High Court (202)

Shalimar Chemical Works (P) Ltd. Vs Commissioner of Commercial Taxes and Goods and Service Tax (Orissa High Court)

In this case petitioner has challenged GST audit report under Annexure-4 contending that certain observations have been made in the audit report to which the petitioner is not liable to pay the amount. On the basis of such audit report, the notice under Section 65 (6) of the Act (Annexure-5) has been issued, where the petitioner has been directed to discharge its statutory liabilities as per the provisions of the Act and the Rules made thereunder, failing which proceedings as deemed fit may be initiated against it under the provisions of the Act. The petitioner has not come against any order passed by the authority concerned. In any case, if the petitioner shall have any grievance with regard to the audit report and the subsequent order in connection with notice under Annexure-5, then he may raise the objection before the assessing authority. The petitioner shall get a chance to have its say in the assessment proceeding. Thus, this writ petition at this stage is premature one, for which this Court is not inclined to entertain the same.