# DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT,

# PUNJAB, PATIALA

## GST UPDATE

## (November 2023)

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# GIST of GST Notifications

| Centre's Notification No. | Subject |
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| Notification No. 54/2023-Central Tax | Seeks to amend Notification No. 27/2022 dated 26.12.2022 to notify biometric-based Aadhaar authentication for GST registration in the State of Andhra Pradesh. |
| Notification No. 53/2023-Central Tax | Seeks to notify a special procedure for condonation of delay in filing of appeals against demand orders passed until 31st March, 2023. |

# (I) CENTRE GST NOTIFICATIONS

## 1. Notification No. 54/2023-Central Tax

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

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

NOTIFICATION
No. 54/2023- Central Tax

New Delhi, dated the 17th November, 2023

G.S.R…(E).- In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue) No. 27/2022-Central Tax, dated the 26th December, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022, namely:-

In the said notification, for the words, “State of Gujarat and the State of Puducherry”, the words “States of Andhra Pradesh, Gujarat and Puducherry” shall be substituted.

[F. No. CBIC-20006/23/2023-GST]

(Raghavendra pal Singh)

Director

Note: The principal Notification No. 27/2022-Central Tax, dated the 26th December, 2022, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022 and was last amended, vide notification number 31/2023 –Central Tax, dated the 31st July, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 574(E), dated the 31st July, 2023.

## 2. Notification No. 54/2023-Central Tax

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

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

NOTIFICATION

**No. 53/2023– CENTRAL TAX**

New Delhi, dated the 2nd November, 2023

S.O....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the

said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under subsection (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

[F. No.CBIC-20001/10/2023-GST]

(Raghavendra Pal Singh) Director

## (II) ADVANCE RULING

### 1. No GST Exemption if Monthly Society Maintenance Charges exceeds INR 7500

**Case Name : In re Prinsep Association Of Apartment Owners (GST AAR West Bengal)**

**Appeal Number : Order Number 22/WBAAR/2023-24**

**Date of Judgement/Order : 29/11/2023**

**Related Assessment Year :**

**Courts : AAR West Bangal (225) Advance Rulings (3367)**

**In re Prinsep Association Of Apartment Owners (GST AAR West Bengal)**

The order of the Authority for Advance Ruling (AAR) in the case of Prinsep Association of Apartment Owners in West Bengal addresses three key questions related to Goods and Services Tax (GST) implications on the maintenance charges and other collections by an Association of Persons (AOP) registered under the West Bengal Act XVI of 1972:

**Question 1:** *Where monthly contribution charged to a member exceeds INR 7500 per month, whether the applicant can avail the benefit of* **Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017** *(Sl. No. 77) read with* ***Notification No. 02/2018 dated 25.01.2018****, which provides for exempting from tax, the value of supply up to an amount of Rs. 7,500/- per month per member? In other words, whether tax would be charged over and above INR 7500 or the total amount collected from members.*

**Answer:** The AAR ruled that the exemption is not available when the maintenance charges exceed Rs. 7,500/per month per member. In such cases, where the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.

**Question 2**: *Whether the applicant is liable to pay CGST/SGST on amounts which it collects from its members for setting up a corpus fund for future contingencies/ major CAPEX. Whether such fund from members will come under the definition of supply and liable to be taxed?*

**Answer:** The AAR ruled that the amount collected by the applicant from its members for setting up a sinking fund is considered an advance payment towards future supply of services, and therefore, the applicant is liable to pay tax on such supply.

**Question 3:** *Whether the applicant is liable to pay CGST/SGST on collection of common area electricity charges paid by the members and the same is recovered on the actual electricity charges?*

**Answer:** The AAR ruled that the amount collected on account of common area electricity charges, being a part of composite supply, is taxable in cases where the supply of common area maintenance services fails to qualify for exemption under serial number 77 of the **Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017**, as amended.

In summary, the ruling clarifies the GST implications on various charges collected by the Association of Apartment Owners, emphasizing that the exemption is subject to the condition that maintenance charges do not exceed Rs. 7,500/- per month per member. The ruling also addresses the taxability of amounts collected for corpus funds and common area electricity charges under specific circumstances.

## 2. AAR cannot give ruling on how to rectify mistake in GSTR -1

**Case Name : In Rey Cabcon India Limited (GST AAR West Bengal)**

**Appeal Number : 23/WBAAR/2023-24**

**Date of Judgement/Order : 29.11.2023**

**Related Assessment Year :**

**Courts : AAR West Bangal (225) Advance Rulings (3367)**

In Rey Cabcon India Limited (GST AAR West Bengal)

The ruling in the case of Rey Cabcon India Limited clarifies that the Authority for Advance Ruling (AAR) cannot give guidance on how to rectify mistakes in GSTR-1. The applicant in this case had made mistakes while filing GSTR-1 on the common portal for the financial year 2017-18, resulting in incorrect discharge of output tax liability. The applicant sought guidance on how to rectify these mistakes. The AAR stated that the question raised by the applicant did not fall under the specified categories for which advance rulings can be sought, as per sub-section (2) of section 97 of the GST Act. The specified categories include issues related to the classification of goods or services, applicability of notifications, determination of time and value of supply, admissibility of input tax credit, determination of tax liability, registration requirement, and whether certain activities amount to a supply under the GST Act. Since the question regarding the rectification of mistakes in GSTR-1 did not fit into any of these categories, the AAR rejected the application, stating that there may not be any reason to accept the application for the pronouncement of a ruling. The ruling emphasizes that the AAR's jurisdiction is limited to specific matters outlined in the GST Act.

## 3. Coaching Service with Goods is Composite Supply & not mixed supply: AAAR

**Case Name : In re Resonance Edventures Limited (GST AAAR Rajasthan)**

**Appeal Number : Order No. RAJ/AAAR/03/2023-24**

**Date of Judgement/Order : 23/11/2023**

**Related Assessment Year :**

**Courts : AAAR (493) AAR Rajasthan (167) Advance Rulings (3367)**

**In re Resonance Edventures Limited (GST AAAR Rajasthan)**

**Introduction:** In a recent decision, the Authority for Advance Ruling (AAAR) in Rajasthan addressed the classification of services provided by Resonance Edventures Limited (REL). The issue revolved around whether the supply of coaching services, bundled with goods such as printed material, uniforms, bags, etc., should be considered a "mixed supply" or a "composite supply." The ruling has far-reaching implications for service providers in the education and coaching sector.

**Background**: Resonance Edventures Limited, a company engaged in coaching students for various engineering and medical entrance exams, sought an advance ruling on the tax classification of its services. The company provided coaching services through a network of partners, including study materials, uniforms, and bags, all included in a lump-sum fee. The question was whether this constituted a mixed supply or a composite supply under the Goods and Services Tax (GST) laws.

**Advance Ruling**: The Rajasthan Authority for Advance Ruling, in its order dated 28th December 2021, ruled that REL's services were a mixed supply attracting the highest GST rate of 18%. It concluded that the goods provided (printed material, uniforms, bags, etc.) could be supplied separately and were not dependent on each other, meeting the criteria for a mixed supply.

**Appeal and Grounds**: Disagreeing with the ruling, REL filed an appeal before the AAAR Rajasthan, contending that the supply should be treated as a composite supply rather than a mixed supply. The appellant argued that the coaching services and the goods provided were

inherently bundled, forming a composite supply, and cited a previous ruling by the AAR Rajasthan in a similar case (Symmetric Infrastructure Private Limited) that favored their interpretation.

**AAAR Decision:** After a thorough examination of the facts and legal provisions, the AAAR Rajasthan, in its order dated [date], overturned the AAR's decision. The AAAR held that the supply made by REL is a composite supply, emphasizing that the coaching services were the principal supply. It also noted the inconsistency in the AAR's decisions on similar cases and stressed the importance of considering business practices in the relevant industry.

**Key Findings:**

i. **Nature of Supply:** The AAAR clarified that the supply of coaching services by REL, along with goods like printed material, uniforms, bags, etc., is a composite supply. The coaching services constitute the principal supply, and the other goods are ancillary to and integral for the effective provision of coaching.

ii. **Business Practices:** The AAAR considered the prevalent business practices in the coaching industry, highlighting that it is customary to offer coaching services along with a student kit, including study materials and related items. This industry norm supported the contention that the supply was a naturally bundled composite supply.

iii. **Inconsistency in AAR Decisions:** The AAAR noted the inconsistency in the AAR's decisions on similar cases and emphasized the need for a consistent interpretation of the law to avoid confusion among taxpayers.

**Conclusion:** The AAAR Rajasthan's decision in the appeal filed by Resonance Edventures Limited provides clarity on the tax treatment of coaching services bundled with goods. By categorizing the supply as a composite supply, with coaching services as the principal supply, the ruling aligns with industry practices and aims to bring consistency to the interpretation of GST laws in the education and coaching sector. This decision has implications beyond this specific case, offering guidance to businesses providing bundled services in various industries.

**Read AAR Order Also: Supply of coaching services with Books, Uniforms etc attracts 18% GST**

## 4. GST payable under FCM on Residential Dwellings Leased for Commercial Use

**Case Name : In re Deepak Jain (GST AAR Rajasthan)**

**Appeal Number : Advance Ruling No. RAJ/AAR/2023-24/14**

**Date of Judgement/Order : 29/11/2023**

**Related Assessment Year :**

**Courts : AAR Rajasthan (167) Advance Rulings (3367)**

**In re Deepak Jain (GST AAR Rajasthan)**

In a recent ruling by the Authority for Advance Ruling (AAR) in the case of Deepak Jain, a Chartered Accountant based in Jaipur, the question of whether the lease of a property for commercial use qualifies as a supply of service under the Goods and Services Tax (GST) Act was addressed. The ruling sheds light on the implications of the recent changes in the taxability of residential dwellings under the GST framework.

**Background**

Deepak Jain, the applicant, is the owner of a property located at J-10, Lal Kothi Scheme, Sahakar Marg, Jaipur, Rajasthan. The property, referred to as the "Demised Premises," was leased to Back Office IT Solutions Private Limited for commercial purposes. The applicant sought clarification on the GST implications of leasing the property for commercial use.

**The Legal Framework**

Before July 18, 2022, the leasing of residential dwellings for use as a residence was exempt from GST, while the leasing of residential dwellings for commercial use was taxable at 18%. However, with changes introduced on July 18, 2022, the leasing of residential dwellings for use as a residence by a registered person became subject to GST under the reverse charge mechanism.

**Applicant's Submissions**

The applicant, Deepak Jain, argued that the Demised Premises, though designated as residential by the Jaipur Development Authority (JDA), was intended and used for commercial purposes. The lease agreement explicitly stated that the property would be used solely for commercial activities, and the electricity connection was categorized as "medium industry."

**AAR Findings and Analysis**

1. **Commercial Use of Property:** The AAR found that the property in question had been leased for commercial use based on the terms of the lease agreement and the electricity connection's commercial categorization.

2. **Changes in Taxability:** The AAR clarified that the recent changes in taxability, effective from July 18, 2022, brought leasing of residential dwellings for commercial use under the forward charge mechanism (FCM). The lessor (owner) is now liable to pay GST on such transactions.

3. **Definition of Residential Dwelling:** The ruling emphasized that the definition of a residential dwelling was not explicitly provided in the GST law. However, factors such as the purpose for which the dwelling is used and the length of stay intended by the users were deemed crucial.

4. **Relevant Precedents:** The AAR referred to precedents from Andhra Pradesh, where it was held that premises not built or used for residence but for the furtherance of a business, such as running hostel accommodations, do not qualify as residential dwellings.

**Conclusion**

In conclusion, the ruling clarified that the Demised Premises, even though designated as residential by local authorities, was used for commercial purposes as per the lease

agreement. Therefore, the **lease of the property for commercial use falls under the forward charge mechanism, making the lessor liable to pay GST.** This ruling provides insights into the evolving landscape of GST implications on property leases and emphasizes the importance of the property's actual use over its designated category.

It is crucial for property owners and lessees to be aware of the GST implications and seek professional advice to ensure compliance with the evolving tax regulations. The ruling sets a precedent for similar cases and highlights the need for clarity in defining residential dwellings under the GST framework.

## 5. GST payable under FCM on Residential Dwellings Leased for Commercial Use

**Case Name : In re Deepak Jain (GST AAR Rajasthan)**

**Appeal Number : Advance Ruling No. RAJ/AAR/2023-24/14**

**Date of Judgement/Order : 29/11/2023**

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**Applicant's Submissions**

The applicant, Deepak Jain, argued that the Demised Premises, though designated as residential by the Jaipur Development Authority (JDA), was intended and used for commercial purposes. The lease agreement explicitly stated that the property would be used solely for commercial activities, and the electricity connection was categorized as "medium industry."

**AAR Findings and Analysis**

1. **Commercial Use of Property:** The AAR found that the property in question had been leased for commercial use based on the terms of the lease agreement and the electricity connection's commercial categorization.

2. **Changes in Taxability:** The AAR clarified that the recent changes in taxability, effective from July 18, 2022, brought leasing of residential dwellings for commercial use under the forward charge mechanism (FCM). The lessor (owner) is now liable to pay GST on such transactions.

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**Conclusion**

In conclusion, the ruling clarified that the Demised Premises, even though designated as residential by local authorities, was used for commercial purposes as per the lease

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It is crucial for property owners and lessees to be aware of the GST implications and seek professional advice to ensure compliance with the evolving tax regulations. The ruling sets a precedent for similar cases and highlights the need for clarity in defining residential dwellings under the GST framework.

## (III) JUDGEMENTS

### 1. Revenue Department can release confiscated vehicle against bond & surety

**Case Name : Biju V. T. Vs Senior Enforcement Officer (Kerala High Court)**

**Appeal Number : WP(C) No. 37521 of 2023**

**Date of Judgement/Order : 16/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Kerala High Court (669)**

Biju V. T. Vs Senior Enforcement Officer (Kerala High Court)

The Hon'ble Kerala High Court in the case of BIJU V.T v. The Senior Enforcement Officer, Ernakulam and Ors. [WP (C) No. 37521 of 2023 dated November 16, 2023] directed the Revenue Department to release the confiscated vehicle as per its own discretion after bond and surety are furnished by the Assessee.

Facts:

Biju V. T ("the Petitioner") has filed a writ petition for quashing of order dated November 2, 2023 ("the Impugned Order") wherein the Petitioner vehicle was seized by the Revenue Department ("the Respondent") and direct the Respondent to grant interim custody of the vehicle seized by the Revenue Department. Also, the Petitioner is willing to furnish the surety and bond for releasing of vehicle.

Issue

Whether the Petitioner is entitled to the custody of the vehicle to be released by Revenue Department after furnishing of bond and security by the Assessee?

Held:

The Hon'ble Kerala High Court in WP(C) NO. 37521 of 2023, held that as the Petitioner is willing to furnish bond and security for release of the vehicle confiscated by the Respondent, the Court directed the Respondent authority to release the vehicle confiscated as per its own discretion after the bond and security are furnished by the Petitioner, in accordance with law.

Conclusion:

The Kerala High Court's decision in the Biju V.T. case underscores the importance of an Assessee's cooperation in securing the release of a confiscated vehicle. The court's emphasis on discretionary powers of the Revenue Department, coupled with the Assessee's willingness to comply with bond and surety requirements, sets a precedent for future cases. This ruling adds clarity to the process and highlights the significance of legal compliance in resolving such matters.

## 2. GST registration cannot be cancelled ab initio for non-filing of return for six months

**Case Name : Balajee Plastomers Private Limited Vs Commissioner Of Delhi Gst & Anr. (Delhi High Court)**

**Appeal Number : W.P.(C) 14610/2023 & CM APPL. 58115/2023**

**Date of Judgement/Order : 08/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Delhi High Court (2801)**

**Balajee Plastomers Private Limited Vs Commissioner Of Delhi Gst & Anr. (Delhi High Court)**

**Introduction:** The Delhi High Court recently ruled on a significant case, Balajee Plastomers Private Limited vs Commissioner Of Delhi GST & Anr. The court examined the validity of canceling GST registration retrospectively from the date of grant due to non-filing of returns for six months.

**Detailed Analysis:** The petitioner's GST registration, granted from 01.07.2017, faced cancellation in an order dated 29.01.2021. The petitioner, having ceased business in 2019, applied for voluntary cancellation on 28.11.2019. Despite filing returns for the prior period and discharging GST liabilities, the initial application was rejected on 08.07.2020.

Respondent no.2's subsequent notice on 16.09.2020 and the petitioner's perception of cancellation led to a reapplication on 08.07.2020. However, rejection followed on 05.11.2020. The Show Cause Notice (SCN) on 13.01.2021 highlighted the non-filing of returns for six months as the basis for cancellation, leading to the suspension of GST registration from 13.01.2021.

The court noted procedural irregularities in the SCN, lacking a specified date for the personal hearing and not proposing retrospective cancellation. The impugned order, without providing reasons, retroactively canceled the registration from 01.07.2017.

In its analysis, the court found the grounds for cancellation insufficient. The mere non-filing of returns for six months, when the petitioner had complied during its operational period, was deemed inadequate. The court directed the cancellation to take effect from the date of the petitioner's application, i.e., 28.11.2019.

The judgment clarified that this decision doesn't hinder further actions under the CGST Act or relevant statutes, allowing the respondents to pursue legal steps as per the law.

**Conclusion:** The Delhi High Court's ruling in Balajee Plastomers Private Limited vs Commissioner of Delhi GST & Anr. establishes that the retrospective cancellation of GST registration must be justified by valid grounds. Non-filing of returns for a specific period, without considering prior compliance, was deemed insufficient. The court, ensuring fairness, directed the cancellation to take effect from the date of the petitioner's application, offering clarity on the legal aspects while allowing room for appropriate legal actions by the respondents.

## 3. No E-way bill required for period February 2018 to March 2018 under UPGST Act

**Case Name : Sunil Traders Vs State Of U.P. And 2 Others (Allahabad High Court)**

**Appeal Number : Writ Tax No. 678 of 2023**

**Date of Judgement/Order : 16/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Allahabad High Court (627)**

Sunil Traders Vs State of U.P. And 2 Others (Allahabad High Court)

The Hon'ble Allahabad High Court in the case of ***M/s. Sunil Traders v. State of UP and Others [Writ Tax No. 678 of 2023 dated November 16, 2023]*** allowed the writ petition and held that, the petitioner is entitled to the benefit of the judgment in *M/s. Varun Beverages Limited vs. State of U.P. and 2 Others in Writ Tax No. 1670 of 2018*, rendered in the requirement of the e-way bill under the Uttar Pradesh Goods and Services Tax Act, 2017 **("the UPGST Act")** along with rules are unenforceable for the period of February 2018 to March 2018.

**Facts:**

M/s. Sunil Traders **("the Petitioner")** filed a writ petition for setting aside of order dated December 12, 2020, and February 12, 2018 **("the Impugned Orders")** wherein penalty has been imposed alleging that goods have been transported without e-way bill under the UPGST Act**.** The issue arising is w.r.t. period from February 1, 2018, to March 31, 2018.

**Issue:**

Whether goods can be transported without the E-way bill under the UPGST Act for the period February 2018 to March 2018?

**Held:**

The Hon'ble Allahabad High Court in ***Writ Tax No. 678 of 2023*** held as under:

- Relying upon the judgment of ***M/s. Varun Beverages Limited v. State of U.P [Writ Tax No. Writ Tax No 958 of 2019 dated February 2, 2023]*** and ***M/s. Godrej and Boyce Manufacturing Co. Ltd. v. State of U.P [Writ Tax No. 587 of 2018 dated September 18, 2018]*** the Court opined that the Petitioner is entitled to the benefit of aforementioned judgment wherein it was held that the requirement of the e-way bill under the UP GST Act along with rules are unenforceable for the period of February 1, 2018 to March 31, 2018. • Held that, Impugned orders are set aside and any amount deposited by the Petitioner with the Respondent be refunded in accordance with law within a period of one month. Hence, the writ petition is allowed.

## 4. SCN without specifying grounds of GST registration cancellation: Delhi HC directs reconsideration

**Case Name : Sai Aluminium Exim Vs Pr Commissioner Of Goods And Service Tax (Delhi High Court)**

**Appeal Number : W.P.(C) 14814/2023 & CM APPL. 58919/2023**

**Date of Judgement/Order : 10/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Delhi High Court (2801)**

**Sai Aluminium Exim Vs Pr Commissioner Of Goods And Service Tax (Delhi High Court)**

**Introduction:** The Delhi High Court recently addressed a crucial matter in the case of Sai Aluminium Exim vs PR Commissioner of Goods and Service Tax. The petitioner sought relief against the cancellation of its GST registration, emphasizing the lack of a specific reason and due process in the cancellation procedure.

**Detailed Analysis:** The petitioner's GST registration, initiated on July 1, 2017, faced challenges when it applied for an amendment in 2022 to reflect a change in its principal place of business. Despite submitting the necessary documents, the application was rejected on May 9, 2023, citing the non-submission of required information.

Subsequently, on September 1, 2023, a Show Cause Notice (SCN) was issued, proposing the cancellation of GST registration under Section 29(2)(e), alleging registration obtained through fraud or wilful misstatement. The petitioner's GST registration was suspended, but the SCN lacked specific details on the alleged wrongdoing.

The petitioner contended that the impugned order, dated September 14, 2023, which cancelled its GST registration with retrospective effect from July 1, 2017, lacked proper reasoning. The order merely referenced the SCN without specifying grounds for cancellation.

The petitioner argued that no prior notice of inspection was provided, and it had already shifted its principal place of business. The lack of specific reasons in the impugned order was challenged, and the petitioner filed an application for revocation of the cancellation, which is still pending.

The court, considering the merit in the petitioner's contentions, set aside the order dated May 9, 2023, rejecting the application for amendment. The petitioner was granted the opportunity to submit all necessary documents and information to support its application for revocation of the cancellation of GST registration. The concerned officer would then assess whether the business was indeed operating at the claimed principal place.

**Conclusion:** In conclusion, the Delhi High Court's decision underscores the importance of due process in GST registration matters. The judgment provides relief to the petitioner, emphasizing the need for specific reasons in cancellation orders and allowing the petitioner to reapply for registration revocation with proper documentation. This case sets a precedent for reconsideration in similar circumstances, promoting fairness and transparency in GST proceedings.

## 5. Kerala HC directed to prefer appeal before appellate authority against revenue's recovery notice

**Case Name : N.K Jeeju Vs Deputy Commissioner State Goods & Service Tax Department (Kerala High Court)**

**Appeal Number : WP(C) No. 21145 of 2023**

**Date of Judgement/Order : 03/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Kerala High Court (669)**

**N.K Jeeju Vs Deputy Commissioner State Goods & Service Tax Department (Kerala High Court)**

Kerala High Court directed to prefer an appeal before the appellate authority against the recovery notices issued by the revenue to petitioner who is claiming to have retired from the firm.

**Facts-**

The present writ petition has been filed by the petitioners impugning revenue recovery notices in respect of arrears of Value Added Tax.

Notably, the arrears of tax are in respect of the financial years 2012-13 to 2018-19. The firm Sree Krishna International was incorporated by the partnership deed dated 28.07.2001. According to the petitioners, they retired from the firm with effect from 31.03.2009. The other brother and sister of the petitioners claimed exclusive right over the property covered under document No.2528/1996 of SRO Vadakara. Since the petitioners retired from the partnership firm, they never received any notice nor the assessment order. It has also been stated that there has been litigation between the petitioners and respondents in respect of the property of the firm and so the matter got ultimate decision by judgment of this Court.

**Conclusion-**

Held that the present writ petition is disposed of with a direction to the petitioners to approach the assessing authority within a period of ten days from today for obtaining the certified copy of the assessment order and after obtaining the certified copy of the assessment order file an appeal before the appellate authority in accordance with the provisions of law. If the petitioners file the appeal against the assessment order before the appellate authority, the same shall be considered and decided in accordance with law expeditiously, without going into the question of limitation. For a period of one month, no coercive measures shall be taken against the petitioners.

## 6. Revenue Department Lacks Power to Seize Cash under CGST Act Section 67: Delhi HC

**Case Name : Gunjan Bindal And Anr. Vs Commissioner of CGST (Delhi High Court)**

**Appeal Number : W.P.(C) 8713/2023**

**Date of Judgement/Order : 17/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Delhi High Court (2801)**

**Gunjan Bindal And Anr. Vs Commissioner of CGST (Delhi High Court)**

The Hon'ble Delhi High Court in the case of ***Gunjan Bindal and Anr. vs. Commissioner of CGST, Delhi West and Ors. [W.P. (C) 8713 of 2023 dated November 17, 2023]*** disposed of the writ petition and directed the Revenue Department to remit the amount of cash seized along with interest thereby holding that, the Revenue Department has no power to seize cash under Section 67 of the **Central Goods and Services Tax Act, 2017 (CGST Act)**.

**Facts:**

The Revenue Department **("the Respondent")** searched the residential premises of Gunjan Bindal and Anr. **(Petitioners)** under Section 67 of the CGST Act. The panchnama drawn by the Respondent indicate that the total cash amounting to Rs.1,15,00,000/- along with the other articles were found in the bedroom of the Petitioners. The panchnama further record that the Petitioner was unable to provide any satisfactory explanation or any documentary evidence to support the source of the cash. Therefore, the officers seized the cash based on the presumption that the cash had resulted from unlawful activity or sale proceeds of goods without proper accounting. Thereafter, the Petitioner repeatedly requested the Respondent to release the amount but the cash has not been released by the Respondent.

Aggrieved, the Petitioner filed a writ petition, inter alia, praying for release of the aggregate amount, on the ground that, the Respondent does not have the power to seize cash under Section 67 of the CGST Act.

**Issue:**

Whether the Revenue Department has the power to seize cash under Section 67 of the CGST Act?

**Held:**

The Hon'ble Delhi High Court in the case of ***W.P.(C) 8713/2023*** held as under:

- Opined that, the aforementioned issue is already covered by the earlier decisions of the Court in the case of *Deepak Khandelwal, Proprietor, M/s Shri Shyam Metal v. Commissioner of CGST, Delhi West and Anr. W.P.(C) 6739/2021 dated August 17, 2023, and Rajeev Chhatwal v. Commissioner of Goods and Services Tax (East) W.P.(C) 5880/2021 dated August 24, 2023,* wherein it was held that the Revenue Department does not have the power to seize cash under Section 67 of the CGST Act.
- Held that, the petition is disposed and the Respondent is empowered to take any other
- steps or measure available in accordance with law.

Directed that, the Respondent is directed to remit the amount seized to the Petitioner bank account within two days from the date of order along with accrued interest.

**Relevant Provision:**

**Section 67 of the CGST Act:**

***"Power of inspection, search and seizure***

*(1) ……*

*(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspectioncarried out under sub-section (1) or otherwise, has reasons to believe that any goods*

*liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:*

*Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

*Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act."*

## 7. CCI directs DGAP to verify claim of Ireo Grace Realtech of passing ITC benefit

**Case Name : Sandeep Bansal & Ors. vs. Ireo Grace Realtech Pvt. Ltd. (Competition Commission of India)**

**Appeal Number : I. O. No.12/2023**

**Date of Judgement/Order : 24/11/2023**

**Related Assessment Year :**

**Courts : Competition Commission of India (159) National Anti-Profiteering Authority (392)**

Sandeep Bansal & Ors. vs. Ireo Grace Realtech Pvt. Ltd. (Competition Commission of India) One of the contention of the Respondent is that he has passed on benefit of ITC amounting to Rs. 1,94,67,655/- to his customers/home-buyers in compliance of Section 171 of the CGST Act, 2017 by way of reduction in price via issuance of the Credit Note and the same has been duly intimated to the customers vide e-mails. He has also submitted Chartered Accountant's (CA) Certificate stating thereby that Credit Notes have been issued to the customers/home-buyers by the Respondent for passing the benefit of ITC in compliance of Section 171 of the CGST Act, 2017. With respect to the above submissions of the Respondent. the DGAP has submitted that the claim of the Respondent that he has passed on benefit of ITC amounting to Rs. 1,94,67,655/- to his customers is not correct as he has provided the documentary evidence on sample basis and hence, the claim of the Respondent cannot be verified unless the complete documentary evidence along with e-mail IDs of all the customers is provided. With respect to the above contention of the Respondent and without going into the merits of the case, the Commission observes that the claim of the Respondent regarding passing on the benefit of additional ITC needs to be verified. The Respondent is directed to provide all the documentary evidence i.e. "Names of the home-buyers, their E-mail ids/Mobile Nos./Addresses, Amount of ITC benefit passed on to each home-buyer, Copies of Tax invoice, Credit Notes and Cheques issued to each home-buyer, Copies of Bank Statements highlighting the amount of ITC benefit

passed on to the home-buyers and Acknowledgement Receipts from all the home-buyers stating that they have received the additional benefit of ITC" to the DGAP to prove his above claim duly certified by the Authorised person of the Respondent. The claim of the Respondent regarding passing on the benefit of ITC to the customers/home-buyers shall be verified by the DGAP by contacting the customers/home buyers by seeking their replies regarding receipt of benefit of ITC. Hence, the Commission under Rule 133(4) of the CGST Rules, 2017 directs the DGAP to further investigate the claim of the Respondent regarding passing on the benefit of ITC and thus, recalculate the profiteered amount in respect of the project The Corridors", if required. The Respondent is also directed to extend all necessary assistance to the DGAP and furnish him with necessary documents or information as required during the course of the investigation.

## 8. Subway franchisee guilty of denying benefit of tax reduction to customers: CCI

**Case Name : DGAP Vs. Smookey Kitchen Foods OPC Pvt. Ltd. (NAA)**

**Appeal Number : Case No. 24/2023**

**Date of Judgement/Order : 30/11/2023**

**Related Assessment Year :**

**Courts : Competition Commission of India (159) National Anti-Profiteering Authority (392)**

DGAP Vs. Smookey Kitchen Foods OPC Pvt. Ltd. (CCI)

Introduction:

The recent case of DGAP Vs. Smookey Kitchen Foods OPC Pvt. Ltd., a franchisee of Subway India Private Limited in Ghaziabad (Uttar Pradesh), has brought to light allegations of denying customers the benefit of tax reduction. The Competition Commission of India (CCI) carefully considered reports, submissions, and case records to assess the franchisee's compliance with Section 171(1) of the CGST Act, 2017. Detailed Analysis: The case revolves around the franchisee, M/s. Smookey Kitchen Foods OPC Pvt. Ltd., supplying various food products as part of the Subway brand. The investigation period spanned from 15.11.2017 to 30.06.2019, during which a reduction in the tax rate from 18% to 5% was implemented on restaurant services without Input Tax Credit (ITC) benefits. DGAP's findings revealed that the Respondent increased base prices of certain products more than necessary, despite the reduction in the GST rate. The denial of ITC post-GST rate reduction prompted the franchisee to offset the impact by raising base prices, resulting in a failure to pass on the commensurate benefit to consumers. The methodology employed by DGAP in computing the profiteered amount was deemed correct by the CCI, justifying the comparison of discounted average base prices before and after tax rate reduction. The Respondent's contention on exclusion of discretionary discounts was rejected, as transaction price under Section 15 of CGST Act, 2017 was considered for both base price determination and profiteering calculation.

The Respondent's request to calculate the profiteered amount up to the next price revision post-GST rate reduction was dismissed by the CCI, emphasizing the absence of a prescribed investigation period under the CGST Act, 2017.

Regarding the Respondent's claim to reduce the additional 5% GST on the profiteered amount, the CCI maintained that as it was part of the excess price collected, it could not be reduced. The Respondent was, however, granted the option to claim any excess tax paid separately. Challenges to the calculation of base prices, including increased royalty expenses and delivery expenses, were assessed and rejected by the CCI. The Commission found that the profiteered amount determined by DGAP, Rs. 6,58,523/-, was appropriate and directed the Respondent to reduce prices accordingly.

Conclusion: The CCI concluded that the franchisee, Smookey Kitchen Foods OPC Pvt. Ltd., violated Section 171(1) of the CGST Act, 2017, by denying customers the benefit of tax reduction. A penalty under Section 171(3A) could not be imposed retrospectively, and the Respondent was directed to deposit the profiteered amount in consumer welfare funds. The CCI further instructed monitoring authorities to ensure compliance and directed the concerned Commissioners to submit a report within four months.

## 9. Issue of GST on Preferential Location Charges (PLC) not fall under CCI purview

**Case Name : Sudhir Kumar Jain Vs DLF Limited (Competition Commission of India)**

**Appeal Number : Case No. 23/2023**

**Date of Judgement/Order : 19/11/2023**

**Related Assessment Year :**

**Courts : Competition Commission of India (159) National Anti-Profiteering Authority (392)**

Sudhir Kumar Jain Vs DLF Limited (Competition Commission of India)

Introduction:

The Competition Commission of India (CCI) recently addressed the GST implications on Preferential Location Charges (PLC) in the Sudhir Kumar Jain Vs DLF Limited case. The report, dated 01.03.2021, received from the Director General of Anti-Profiteering (DGAP), highlights the investigation into allegations of profiteering by DLF Limited in the sale of a specific flat. This detailed analysis delves into the findings and subsequent decisions made by the CCI.

Detailed Analysis: The Applicant No. 1 had filed a complaint, alleging profiteering by DLF Limited in the sale of Flat No. J-062, Tower-J, 6th Floor in the project "The Sky Court." The DGAP's report, dated 31.08.2020, outlined key details, including the investigation period from 01.07.2017 to 31.07.2019 and the reconciliation of Input Tax Credit (ITC) with turnover. The DGAP concluded that post-GST implementation, DLF Limited did not benefit from additional ITC. The investigation also considered the issuance of the Occupancy Certificate, determining that no profiteering could be established in the case of Applicant No. 1. However, the matter was referred back for reinvestigation by the NAA, citing discrepancies related to the investigation period and ITC calculations. The subsequent report, dated 01.03.2021, reaffirmed the correctness of the initial findings, emphasizing the importance of considering ITC for the entire post-GST period.

The CCI meeting on 04.03.2021 allowed both parties to submit consolidated written submissions. The Respondent opted not to contest the DGAP's report, while the Applicant No. 1 raised concerns about GST charged on ready-to-move-in flats.

A hearing on 21.09.2023 provided an opportunity for the Respondent to explain the GST charged on Preferential Location Charges (PLC). The Respondent clarified and submitted a Chartered Accountant's Certificate indicating the GST was levied at 18% on PLC.

Conclusion: The CCI, after careful consideration of the reports, submissions, and evidence, concluded that the case did not fall under the Anti-Profiteering provisions of Section 171 of the CGST Act, 2017. The Respondent had neither benefited from additional ITC nor was there a tax rate reduction post-GST. Consequently, the application requesting action against the Respondent for charging GST on PLC was dismissed.

## 10. Once demand is reduced, original order cannot sustain: Sikkim HC

**Case Name : Lupin Limited Anr. Vs Union of India & Anr (Sikkim High Court)**

**Appeal Number : W.P. (C) No. 46 of 2022**

**Date of Judgement/Order : 20/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Sikkim High Court (8)**

**Lupin Limited Anr. Vs Union of India & Anr (Sikkim High Court)**

**Introduction:** In this case Lupin Limited, a prominent pharmaceutical company, challenged a recovery order issued by the Assistant Commissioner of Central Goods & Service Tax and Central Excise, Gangtok Division. The dispute arose from the alleged excess cash refund under the Budgetary Support Scheme due to the petitioner's purported non-utilization of the entire input tax credit available in Form 2A. This article delves into the details of the case, highlighting the court's directive for reconsideration and the implications of reduced demand on the original order.

**Background of the Case:** Lupin Limited, engaged in the manufacturing and sale of drugs, availed the benefits of the Budgetary Support Scheme, resulting in a sanctioned refund. Subsequently, an audit revealed discrepancies, asserting that Lupin had not fully utilized the available input tax credit in Form 2A, leading to an alleged excess cash refund.

**Contentions Raised:** Lupin's defense rested on two key contentions: First, it argued that Form 2A serves as a facilitator, and the entire credit reflected in it cannot be utilized as such. Second, Lupin asserted that the documents it produced in its defense were not duly considered during the proceedings.

**Court's Directive and Subsequent Developments:** The Hon'ble High Court of Sikkim, in response to Lupin's contentions, directed the Revenue to examine the additional information

furnished by the petitioner. Following this directive, a report was submitted, resulting in a reduction of the demand from the original amount. Recognizing the reduced demand, the court emphasized that the original order could not sustain.

**Reconsideration and Agreement by Deputy Solicitor General:** Acknowledging the revised recovery amount and the need for reconsideration, the Deputy Solicitor General of India concurred with the court's stance. Consequently, the court disposed of the petition, directing the Revenue to proceed in accordance with the law.

**Conclusion:** The Lupin Limited vs Union of India case before the Sikkim High Court underscores the significance of thorough examination and reconsideration in matters of taxation disputes. The court's directive to revisit the recovery demand, coupled with the Deputy Solicitor General's agreement, reflects a commitment to justice and fair proceedings. This legal development serves as a reminder of the dynamic nature of tax litigation and the judiciary's role in ensuring a just and equitable resolution.

The matter was argued by our Partner Bharat Raichandani

## 11. Gujarat HC to examine validity of Notification extending period for proceedings

**Case Name : SRSS Agro Pvt. Ltd. Vs Union of India (Gujarat High Court)**

**Appeal Number : R/Special Civil Application No. 19720 of 2023**

**Date of Judgement/Order : 10/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Gujarat High Court (1081)**

SRSS Agro Pvt. Ltd. Vs Union of India (Gujarat High Court)

Gujarat High Court to examine validity of Notification extending period for proceedings initiated by Revenue Department

Introduction: The Gujarat High Court recently adjudicated on the matter of SRSS Agro Pvt. Ltd. vs Union of India, questioning the validity of Notification No. 09/2023-Central Tax, which extended the time limit specified under Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act).

M/s. SRSS Agro Pvt. Ltd. ("the Petitioner") filed a writ petition contending that, Notification No. 09/2023- Central Tax dated March 31, 2023, wherein the time limit specified under Section 73 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") has been extended is unjustified as the extension of time limit can be made under special circumstances only. Also, once the period has been extended vide Notification No. 13/2022-Central Tax dated July 5, 2022, no subsequent extension can be made. The Court directed that the Petitioner shall be granted time if the Petitioner asks time for filing reply to the Show Cause Notice.

The Court issued a Notice to the Respondent which is returnable on November 30, 2023. Further, the next date granted by the Court in the aforementioned matter is January 12, 2024.

Conclusion: The case of SRSS Agro Pvt. Ltd. vs Union of India before the Gujarat High Court brings attention to the nuanced legal aspects of extending time limits under the CGST Act. The court's decision to examine the validity of the extension and grant the petitioner an opportunity to respond to the show-cause notice adds complexity to the matter. As the case progresses, it will be crucial to monitor how the court interprets the legal framework governing such extensions and whether subsequent extensions are indeed permissible under the law.

## 12. KVAT: Shipping Document Required for Concessional Rate to Lakshadweep Supplies

**Case Name : AL-Mahamood Vs Commercial Tax Officer (Kerala High Court)**

**Appeal Number : WP(C) No. 27489 of 2023**

**Date of Judgement/Order : 22/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Kerala High Court (669)**

AL-Mahamood Vs Commercial Tax Officer (Kerala High Court)

Kerala High Court dismissed the writ petition holding that furnishing of shipping document or best evidence is must in respect of supplies made to the Union Territory of Lakshadweep for the purpose of availing concessional rate of tax @4% under proviso to section 6(1) of the KVAT Act.

Facts- The petitioner has approached this Court in this writ petition for a direction to the 3rd respondent to furnish the shipping document or best evidence in respect of the supplies made by the petitioner to the Union Territory of Lakshadweep Administration for the purpose of availing concessional rate of tax @ 4% under proviso to Section 6(1) of the KVAT Act. In the alternative, the petitioner had prayed for a direction to the 3rd respondent to pay the amount of tax concession availed by the 3rd respondent along with interest by virtue of declaration in Form 41 and the provisions in Section 6 (1) read with 12C of the KVAT Act and the Rules made thereunder. According to the petitioner, the petitioner had sold various items to the Union Territory of Lakshadweep Administration and therefore, he is entitled to reduction in levying of tax @ 4% under KVAT Act on condition of filing necessary declaration from the Administrator, Union Territory of Lakshadweep as per Section 6(1) read with Rule 12C (1) of the KVAT Rules.

The petitioner's claim for concession of 4% availed on the strength of Form 42 was rejected for want of copies of the shipping documents. The period involved is from 2005 to 2011. Being aggrieved, the present petition is filed.

Conclusion- In the counter affidavit filed on behalf of the 3rd respondent, the Administrator, Union Territory of Lakshadweep it is stated that the petitioner is seeking shipping documents from the Administrator after lapse of several years. the petitioner never claimed or insisted for shipping documents at the time of delivery/supply of goods. The purchases were made during 2005 to 2010 and once the petitioner's claim for concessional rate of tax @ 4% was rejected, the petitioner started litigation. Considering the fact that at the earlier round of litigation before this Court, this Court has not granted similar reliefs as sought for in this writ petition, I am of the considered view that the present writ petition is not maintainable. The Union Territory of Lakshadweep Administration may be correct in saying that for supplies made during 2005 to 2010, at this point of time documents may not be available. In view thereof, I find no ground to issue direction as sought in this writ petition. Therefore, the present writ petition is hereby dismissed, however, devoid of any cost.

## 13. Advance Ruling disallowing Exemption for Loading, Unloading Services in Wheat Import Unsustainable

**Case Name : Naga Ltd. Vs Puducherry Authority for Advance Ruling (Madras High Court)**

**Appeal Number : W.P. No. 2851 of 2021 and W.M.P. Nos. 3185 and 3187 of 2021**

**Date of Judgement/Order : 10/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Madras High Court (1346)**

Naga Ltd. Vs Puducherry Authority for Advance Ruling (Madras High Court)

Madras High Court held that Advance Ruling holding that services of loading, unloading, packing etc., rendered in relation to the wheat imported is not entitled to exemption in terms of S.No.54(e) of Notification No.12/2017 is unsustainable.

Facts- The petitioner sought for an Advance Ruling u/s. 97 of CGST Act, seeking clarification on whether the services relating to loading, unloading, packing, storage or warehousing rendered by 2nd respondent in respect of wheat imported by the petitioner is exempted under S.No.54(e) of the Notification No.12/2017-CT dated 28.06.2017. The application filed by the petitioner was rejected by the Tamil Nadu Authority for Advance Ruling on the ground of lack of jurisdiction as only a supplier on whom incidence of tax lies can seek an Advance Ruling as per Section 95(a) of the CGST Act and the petitioner being a recipient of services cannot maintain the application u/s. 97 of CGST Act. Thereafter, the 2nd respondent i.e., supplier in the contract with the petitioner filed an application for Advance Ruling dated 02.01.2019 in relation to the applicability of the above Exemption Notification with regard to the services rendered to the petitioner. The 1st respondent passed the impugned order ruling that the services are not entitled to exemption on the ground that the imported wheat with regard to which the services were rendered was not meant for the primary market but instead meant / intended to be used by the petitioner at its factory for further processing of the wheat imported into atta, maida and sooji. Aggrieved by the impugned order, the petitioner has filed the present writ petition.

Conclusion- Held that the impugned order holding that services of loading, unloading, packing etc., rendered in relation to the wheat imported is not entitled to exemption in terms of S.No.54(e) of Notification No.12/2017 on the premise that the imported wheat is not meant for primary market as such but it is intended to be converted into maida, atta, sooji etc., in the hands of the recipient i.e., the petitioner herein is unsustainable.

## 14. Adjustment of entry tax paid on damaged cement against VAT liability not admissible

**Case Name : ACC Limited Vs State of Bihar (Patna High Court)**

**Appeal Number : Miscellaneous Appeal No. 149 of 2015**

**Date of Judgement/Order : 30/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Patna High Court (109)**

ACC Limited Vs State of Bihar (Patna High Court) Patna High Court held that adjustment of entry tax paid on damaged cement is not admissible under the provisions of Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993.

Facts- The appellant manufactures and sells cement across the country through its various sales units, one of which is located in Patna and the appellant was also a registered dealer under the Bihar Value Added Tax Act, 2005. The appellant imports cement into the State from outside the State of Bihar by way of stock transfer to its depot at Patna and the cement is sold within the capital city as also in other districts in the State. There are eight C&F agents appointed in Bihar for the fifteen Warehouses situated in different towns within the State, for storage of cement. In A.Y. 2010-11, appellant imported 10,12,535.90 MT of cement into the State from their own manufacturing units situated in Orissa, Chhattisgarh & Jharkhand. In addition to the freight paid to the Railways and commission paid to the C&F agents, entry tax was also paid. The audit team of the Commercial Taxes Department found that the assessee had shown stock transfer from outside the State worth Rs.45,12,63,567.00 in the annual return as well as TAR and the total import value shown in ET-V (Entry Tax Payment) was Rs.527,56,05,041.00, thus concealing value worth Rs.76,29,71,474.00. It was also found that the adjustment of entry tax paid on damaged cement was not admissible under the provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993.

Conclusion- Held that there the question was raised of an exemption which does not efface the liability to tax and next that the words: 'by virtue of sale of imported scheduled goods or sale of goods manufactured by consuming such imported scheduled goods' was added to the provision granting set-off by way of an amendment, later to the ACC case. It was categorically held that set-off is a concession which none can claim as a matter of right unless the specific conditions under which it is granted are satisfied. The matter was remanded only for consideration of the ground raised of no liability of entry tax since the OMCs to which the appellant had sold petroleum products had sold it outside Patna and thus the goods were not consumed, used or sold within the local limits of Patna.

## 15. Unsigned order is no order in the eyes of law

**Case Name : SRK Enterprises Vs Assistant Commissioner (ST) (Andhra Pradesh High Court) Appeal Number : Writ Petition No. 29397 of 2023**

**Date of Judgement/Order : 10/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Andhra Pradesh HC (188)**

SRK Enterprises Vs Assistant Commissioner (ST) (Andhra Pradesh High Court) Andhra Pradesh High Court held that an unsigned order cannot be covered under —any mistake, defect or omission therein as used in Section 160. Concluded that unsigned order is no order in the eyes of law. Facts- The petitioner has preferred the present appeal mainly on the ground that impugned order is unsigned and is no order in the eyes of law which cannot be enforced. Further, it is also alleged that the show cause notice is on one ground and the order has been passed on different ground.

Conclusion- Held that an unsigned order cannot be covered under —any mistake, defect or omission therein" as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, re-assessment etc is in conformity with the requirements of the Act or any existing law. These would not cover omission to sign the order. Unsigned order is no order in the eyes of law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in our view, not cure the defect which goes to the very root of the matter i.e. validity of the order.

## 16. Inverted duty structure refund admissible u/s 54(3)(ii) even when supplier has charged higher rate

**Case Name : Commercial Tax Officer-GD-III Vs Suzlon Energy Limited (Madras High Court)**

**Appeal Number : W. P. Nos. 10852 & 10855 of 2021**

**Date of Judgement/Order : 16/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Madras High Court (1346)**

Commercial Tax Officer-GD-III Vs Suzlon Energy Limited (Madras High Court)

Madras High Court held that refund of inverted duty structure available u/s 54(3)(ii) of the GST Act even when the supplier has inadvertently charged higher rate i.e. 18% instead of applicable rate i.e. 5%. Facts- According to the petitioner, the first respondent had procured the materials from the supplier, where the supplier paid IGST at the rate of 18% and made the supply. However, for the final product, the first respondent is liable to pay IGST only at the rate of 5%. Further he would contend that the supplier of the first respondent is also supposed to have paid only 5% IGST on the input product, but he had wrongly paid 18% IGST and since there is no inverted duty structure in this case, the refund application can be rejected on this ground. Hence, he would contend that since the second respondent had passed the impugned order without considering the above aspect, the said impugned order is liable to be set aside. The another stand taken by the petitioner is that since the supplier of the first respondent had paid IGST for the input products at the rate of 18%, the first respondent also should have paid IGST for the final products at the rate of 18%. However, this aspect was also not considered by the second respondent while passing the impugned order and hence, the same is liable to be set aside.

Conclusion- Held that in terms of Section 54(3)(ii) of the GST Act, if the rate of tax on input is higher than the rate of tax on output, certainly, the person can claim the refund. Accordingly, in the present case, the duty paid on input is 18% though it is chargeable at 5%. Therefore, this

Court is of the considered view that the petitioner is entitled for refund in terms of the provision of the Section 54(3)(ii) of the GST Act and the said view was also held by the second respondent in the impugned order. Hence, this Court does not find any error or illegality in the order passed by the second respondent on this aspect.

## 17. Roots of contract cannot be challenged merely due to change of taxation

**Case Name : Kayal Construction Vs. State of West Bengal & Ors (Calcutta High Court)**

**Appeal Number : W.P.A. No. 17231 of 2023**

**Date of Judgement/Order : 17/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11877) Calcutta High Court (722)**

Kayal Construction Vs. State of West Bengal & Ors (Calcutta High Court)

Calcutta High Court held that all commercial contracts includes an element of calculated business risk, thus, merely due to change of taxation statues, the root of the contracts cannot be challenged.

Facts- The petitioner participated in tender processes for similar works in all the four writ petitions and turned out to be the successful bidder. As per the relevant Clause of the general terms and conditions for e-tenders, which was treated to be a part of the tender document, the contractor/bidder was to bear Income Tax, VAT, Sales Tax, Royalty, Construction Workers Welfare Cess and similar other statutory levy/cess. The petitioner contends that the said rates were included in the schedule of the contract. It was argued that the rates were quoted by the petitioner and the other bidders as per the rates of taxes/cess payable on the date of the said contract. The schedules of rates were also given accordingly. Subsequently, with the introduction of the Central Goods and Services Tax Act, 2017, the entire tax regime changed. Hence, the petitioner was compelled to bear huge additional taxes which was beyond the contemplation of the contract between the parties and/or the tender. The writ petitions have been filed for refund of the payments made by way of Goods and Services Tax (GST) by the petitioners in respect of the different work orders. The petitioner argued that the contract is a commercial document between the parties and must be interpreted in a manner to give efficacy to it rather than to invalidate it. The courts, it is contended, have to adopt a pragmatic, and not a technical, approach while interpreting or construing clauses of the contract.

Conclusion- Held the petitioner having entered into the contract with open eyes took calculated business risks and cannot subsequently, merely due to change of taxation statutes, seek to challenge the very root of the contract, which has already been acted upon substantially by the parties. All commercial contracts obviously include an element of calculated business risk which includes the enhancement or reduction in taxes. Even if the petitioner argues that the taxes have been enhanced, the same was factored into the original clauses of the contract. Mere replacement of Sales Tax, Excise Duty, VAT and other similar taxes by the GST regime does not change such parameters in any manner. In fact, even Sales Tax, VAT, Excise Duty and other levies specifically enumerated by way of example in the contract can very well be enhanced from time to time by the revenue authorities. If the petitioner argues that mere replacement of GST entitles the petitioner being absolved from such payments, by the same logic it could also claim to be relieved of the liability to pay all taxes just because the same has been enhanced. Price escalation, being not provided for in the contract, cannot be read into the contract just because a new taxation regime has replaced the earlier one

## 18. MICL Realty LLP Guilty of GST Profiteering: CCI Ruling & Full Order

**Case Name : Director General of Anti-Profiteering Vs MICL Realty LLP (Competition Commission of India)**

**Appeal Number : Case No. 22/2023**

**Date of Judgement/Order : 29/11/2023**

**Related Assessment Year :**

**Courts : Competition Commission of India (159) National Anti-Profiteering Authority (392)**

Director General of Anti-Profiteering Vs MICL Realty LLP (Competition Commission of India)

Introduction: The Competition Commission of India (CCI) recently issued a ruling against MICL Realty LLP for alleged Goods and Services Tax (GST) profiteering. The case, initiated by a complaint filed under Rule 128 of the CGST Rules, 2017, accused MICL Realty LLP of not passing on the Input Tax Credit (ITC) benefits to a homebuyer. In this article, we provide a comprehensive overview of the case, examining the details of the investigation, responses from both parties, and the CCI's findings. Detailed Analysis: The investigation, triggered by a complaint from a homebuyer, focused on MICL Realty LLP's project "Aaradhya Nine-Ghatkopar Avenue" in Mumbai. The complainant alleged that despite assurances of ITC benefits, MICL Realty LLP did not reduce the property price accordingly. The Director General of Anti-Profiteering (DGAP) conducted a thorough examination, considering the period from 01.07.2017 to 03.12.2019. MICL Realty LLP, in response to the DGAP's notices, submitted details and explanations. The company argued that it had passed on the benefit of ITC amounting to Rs. 94,83,735/- to 48 homebuyers, as confirmed by bank statements and customer acknowledgments. However, the DGAP's analysis identified discrepancies and revealed that while some homebuyers received excess benefits, others did not receive the full benefit. The DGAP's key findings included:

- The Respondent (MICL Realty LLP) had benefited from additional ITC of 0.07% of turnover post-GST implementation.

- The excess benefit of ITC amounted to Rs. 6,43,756/-, and the Respondent had not passed on Rs. 35,114/- to 4 eligible homebuyers.

The CCI, after careful consideration of the DGAP's report, confirmed that the Respondent had committed a violation under Section 171 of the CGST Act, 2017. The Commission ordered MICL Realty LLP to pass on the benefit of Rs. 35,114/- to the identified homebuyers with 18% interest.

Conclusion: This case underscores the importance of complying with anti-profiteering provisions under GST laws. MICL Realty LLP's failure to ensure uniform distribution of ITC benefits resulted in regulatory action. The CCI's ruling serves as a reminder to businesses to diligently assess and pass on GST-related benefits to consumers as mandated by law. In summary, this article provides an insightful analysis of the MICL Realty LLP case, outlining the investigation process, key findings, and the CCI's directives. It emphasizes the significance of adhering to GST regulations to avoid legal repercussions and maintain transparency in business practices.

## 19. CCI Holds Srinivasa Cine Enterprises Guilty of GST Profiteering

**Case Name : Principal Commissioner Vs Srinivasa Cine Enterprises (Competition Commission of India)**

**Appeal Number : Case No. 21/2023**

**Date of Judgement/Order : 24/11/2023**

**Related Assessment Year :**

**Courts : Competition Commission of India (159) National Anti-Profiteering Authority (392)**

Principal Commissioner Vs Srinivasa Cine Enterprises (Competition Commission of India)

Introduction: The Competition Commission of India (CCI) recently ruled on a case involving Srinivasa Cine Enterprises, finding them guilty of not passing on the benefits of a reduction in the Goods and Services Tax (GST) rate. This article delves into the details of the case, exploring the investigation, the arguments presented, and the CCI's conclusions.

Detailed Analysis: The investigation, initiated under Rule 129(6) of the Central Goods & Service Tax (CGST) Rules, 2017, stemmed from an application alleging profiteering in the supply of "Services by way of admission to exhibition of cinematography films." The applicant claimed that Srinivasa Cine Enterprises did not pass on the benefit of the GST rate reduction from 18% to 12% starting January 1, 2019. The Standing Committee on Anti-profiteering forwarded the application to the Director-General of Anti-Profiteering (DGAP) for a detailed investigation. The DGAP issued notices, collected evidence, and examined the Respondent's submissions. The Respondent argued that they had not increased prices due to GST, claiming to have passed on the benefits to customers. However, the DGAP's analysis revealed an increase in base ticket prices despite the GST rate reduction. The DGAP calculated the profiteered amount to be Rs. 14,62,604 during the period from January 1, 2019, to July 31, 2019. The Respondent was found to have violated Section 171 of the CGST Act, 2017, which mandates passing on the benefit of tax reductions to consumers.

Conclusion: The CCI, after considering the DGAP's report, concluded that Srinivasa Cine Enterprises had indeed profiteered by not reducing ticket prices in line with the GST rate reduction. The Respondent was directed to deposit the profiteered amount of Rs. 14,62,604, along with interest, in the Central and Telangana State Consumer Welfare Funds. This case serves as a reminder of the importance of complying with anti-profiteering provisions and ensuring that consumers benefit from tax rate reductions.

## 20. Anti-Profiteering Section 171(3A) Penalty Before 01.10.2010 not imposable: CCI

**Case Name : Principal Commissioner Vs Krishna Enterprises (Competition Commission of India)**

**Appeal Number : case No. 20/2023**

**Date of Judgement/Order : 24/11/2023**

**Related Assessment Year :**

**Courts : Competition Commission of India (159) National Anti-Profiteering Authority (392)**

Principal Commissioner Vs Krishna Enterprises (Competition Commission of India)

Introduction: The Competition Commission of India recently addressed an anti-profiteering case involving Principal Commissioner Vs Krishna Enterprises. The case revolves around the imposition of penalties under Section 171(3A) of the Central Goods & Service Tax (CGST) Rules, 2017, specifically pertaining to the period before 01.10.2010.

Detailed Analysis: The investigation, initiated by the Director-General of Anti-Profiteering (DGAP), stemmed from an application filed by a concerned party. Allegations were made against Krishna Enterprises, stating that they did not pass on the benefit of a GST rate reduction on admission tickets to cinematography films. The reduction occurred from 18% to 12% starting on 01.01.2019, as per Notification No. 27/2018-Central tax (Rate) dated 31.12.2018. The Applicant argued that Krishna Enterprises increased base prices to maintain the same cum-tax selling price, resulting in alleged profiteering. The investigation covered the period from 01.01.2019 to 30.09.2019. Despite repeated notices, the Respondent did not fully cooperate, leading to summons and partial document submissions. The DGAP's analysis focused on the discrepancy between pre and post-GST rate reduction ticket prices, concluding that the benefit was not passed on. The DGAP presented tables illustrating alleged profiteering per ticket in different categories. The Respondent's submissions, including information on special permissions for ticket price adjustments, were considered.

Conclusion: The DGAP determined that Krishna Enterprises failed to reduce ticket prices in line with the GST rate reduction. The Respondent increased base prices, denying consumers the benefit of the reduced tax rate. The profiteering amount was calculated at Rs. 7,19,187. The Competition Commission of India, after careful consideration, directed Krishna Enterprises to reduce ticket prices in compliance with Rule 133(3)(a) of the CGST Rules, 2017. Additionally, the Respondent must deposit the profiteered amount of Rs. 7,19,187 with 18% interest in the Central Consumer Welfare Fund and Telangana State Consumer Welfare Fund, respectively, within three months.

## 21. No profiteering if Pre GST tax rate was Lower than Post GST Era: CCI

**Case Name : Daanish Electricals & Sales Pvt. Ltd. Vs Eros Elevators & Escalators Pvt. Ltd. (Competition Commission of India)**

**Appeal Number : Case No. 19/2023**

**Date of Judgement/Order : 16/11/2023**

**Related Assessment Year :**

**Courts : Competition Commission of India (159) National Anti-Profiteering Authority (392)**

**Daanish Electricals & Sales Pvt. Ltd. Vs Eros Elevators & Escalators Pvt. Ltd. (Competition Commission of India)**

The Applicant No. 1 has raised several contentions in the matter on which findings of the Commission are as under:-

i. The Applicant No. 1 has claimed that the Respondent's scope of activities was Design, Manufacturer,Supply & Installation of Elevators & Escalators as per his ISO 9001: 2015 Certificate No.: UQ2019110909. Perusal of the above Certificate shows that the Respondent has been issued a Certificate of Registration by a United Kingdom based agency in which he has been shown as manufacture of the lifts. However, during the course of the investigation it has been found by the DGAP that the Respondent had not manufactured the lifts which he has supplied to the Applicant No. 1. He had procured the material from the other manufacturers locally and had supplied the same and installed the lifts. Hence the above claim of the Applicant is not correct.

ii. The above Applicant has also claimed that the Respondent had increased the base price in the post GSTperiod and had profiteered an amount of Rs. 2,93,502/-. However, perusal of the initial agreement dated 04.07.2015 executed in the pre GST period and the Quotation Nos. QT41092_R4 dated 04.07.2015, QT52365_R1 dated 3.05.2015 and QT52268_R2 dated 30.05.2015, shows that the base price for the installation of both the lifts was Rs. 23,06,499/-

and the total tax applicable was Rs. 2,93,502/- and hence the total price was Rs. 26,00,000/-. Therefore, the total pre-GST tax was 12.72%. However, as per the subsequent agreement dated 18.05.2018 which was executed in the post GST period the base price of both the lifts was Rs. 22,03,390/- which shows that the Respondent had reduced his base price in the post GST period inspite of the fact the rate of tax in the post GST period had been increased to 18%. Therefore, there is no question of the Respondent having profiteered and hence both the above allegations of the Applicant No. 1 are incorrect and untenable.

iii. The Applicant No. 1 has also stated that the Respondent had claimed credit of Excise Duty on themanufactured components of lifts, the benefit of which he was required to pass on to him. In this regard, the Commission finds that the Respondent had not manufactured the lifts, hence he was not required to pay any Central Excise Duty on the same. The Respondent had procured the material from other manufactures locally who were liable to pay the Central Excise Duty on which no ITC was available in the pre GST period. Accordingly, the Respondent has neither paid Central Excise Duty nor got any ITC on the same at the time of purchasing the material for the lifts in the pre GST period .It is also revealed from the documents submitted by the Respondent that he has also not availed any Transitional Credit of Excise Duty on the material lying in his stock as on 30.06.2017 at the time of closure of the earlier tax regime. It is also apparent from the Respondent's letter dated 09.06.2017 addressed to the Applicant No. 1 that the material was ready with him and since the GST was going to be implemented w.e.f. 01.07.2017 due to which the rate of tax may increase he should lift the material immediately and hand over the site. However, the above Applicant had neither made balance payment nor handed over the site for installation of lifts and therefore the Respondent could not complete the installation before the implementation of GST. Accordingly, the above claim of the Applicant is wrong and frivolous.

iv. One of the Contentions raised by the Applicant No. 1 was that the Respondent had not passed on thebenefit of ITC on the Octroi which he had paid while transporting the material from his godown to the site. In this regard, the Commission finds from the report of DGAP, that during the pre-GST period, the rate of Octroi on the product being supplied by the Respondent

was around 1.4% to 1.6% of the base price. Further, the Respondent has claimed to have purchased the supplied material locally and no Octroi was levied on such locally purchased material. In support, the Respondent has submitted financial details of pre-GST era. On perusal of the documents submitted by the Respondent the DGAP has observed that the Respondent has not got benefit of 5.5% of Octroi after implementation of GST as calculated by the above Applicant. Moreover, since the material had been purchased in the pre-GST period no ITC was available on Octroi in the above period. Therefore, the contention raised by the Applicant No. 1 is wrong and is not tenable.

v. Another contention raised by the Applicant No. 1 is that the Respondent had failed to execute thecontract within the time limit. He has also stated that as the price was constant, and overall there was a reduction in taxes from 30.72% to 18% it should reflect in the overall pricing. In this context, perusal of the record shows that the above Applicant had executed an agreement in the pre-GST period with the Respondent for installation of two lifts on 04.07.2015 which was valid for a period of 18 months till 04.01.2017. However, he had not followed the terms of the above agreement as he had neither made payment of the agreed price nor handed over the site to the Respondent and hence the above agreement could not be executed by the Respondent. It is also apparent from the record that the above Applicant had entered in to a fresh agreement dated 18.05.2018 with the Respondent. In case the above agreements were not executed by the Respondent as per their terms the above Applicant is at liberty to take appropriate legal action against the Respondent, however, the same does not fall under the purview of Section 171 of the above Act and hence no action can be taken by the Commission in respect of this claim.

It has also been found from the material placed before the Commission that during the pre-GST era the rate of tax (VAT + Service Tax) was 12.72% whereas in post-GST period it was 18%. Therefore, it is clear that the pre GST rate of tax was not reduced from 30.72% to 18% in the post GST era. Rather the rate of tax in the pre GST era was 12.72% which was increased to 18% and hence there was no reduction in the rate of tax. Therefore, the Respondent was not required to reduce his prices in the post GST period. However, the Respondent had infact

reduced the base price of the lifts from Rs. 23,06,499/- in the pre GST period to Rs. 22,03,390/- in the post GST period. Therefore, both the above contentions of the Respondent are incorrect and are non-maintainable.

vi. The Respondent has also contended that the present case did not fall under the ambit of anti-profiteering provisions as it pertained to the post GST period and the process prescribed under Rule 128 of the **CGST Rules, 2017** had not been followed. In this connection perusal of Rule 128 (1) shows that the Standing Committee on Anti-profiteering is only required to examine the accuracy and adequacy of the evidence submitted by the Complainant and if it is prima facie satisfied that the benefit of ITC or tax reduction has not been passed then it has to forward the complaint to the DGAP for detailed investigation as per Rule 129(1) of the above Rules. Since the evidence produced by the Applicant No. 1 was found to be adequate and accurate by the Standing Committee it had correctly recommended investigation in the complaint. The Respondent has been given due opportunity to present his case by the DGAP during the investigation and has also been allowed to defend himself as per the provisions of the principles of natural justice by the Authority, on the basis of which no allegation has been established against him. Therefore, he should have no grievance on this account.

For the reasons recorded above, the Commission finds that the instant case does not fall under the ambit of AntiProfiteering provisions of Section 171 of the CGST Act, 2017. Accordingly, the proceedings initiated against the Respondent under Rule 133 of the CGST Rules, 2017, are hereby dropped.

## 22. Transaction Authenticity Unquestionable if E-Way Bill Not Cancelled in Time: Allahabad HC

**Case Name : Sun Flag Iron And Steel Company Limited Vs State of U.P. (Allahabad High Court)**

**Appeal Number : Writ Tax No. 837 of 2023**

**Date of Judgement/Order : 09/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11878) Allahabad High Court (627)**

Sun Flag Iron And Steel Company Limited Vs State Of U.P. (Allahabad High Court)

Introduction: The Allahabad High Court's recent judgment in the case of Sun Flag Iron and Steel Company Limited vs. State of U.P. underscores the significance of E-Way Bill validity. The court's decision reinforces the authenticity of transactions when the E-Way Bill is not canceled within the prescribed time.

Detailed Analysis: In response to the petitioner's challenge against the orders dated 9.6.2023 and 17.6.2023, the court delved into the facts of the case. Sun Flag Iron and Steel, a registered company, dispatched a consignment of non-alloy steel to M/s Hi-Tech Gears Limited, Bhiwadi, Rajasthan. The accompanying E-Way Bill, generated on 26.5.2023, was valid until 1.6.2023. However, during the journey through Uttar Pradesh, the vehicle faced difficulties, leading to a breakdown.

The petitioner contended that despite efforts to resume the journey, the vehicle was intercepted on the night of 2/3.6.2023. A show cause notice was issued, and despite the petitioner's response, an order imposing a penalty of Rs. 8,43,456/- was passed. The petitioner's appeal was rejected on the grounds of not submitting certain documents before the lower authority. The court considered the petitioner's argument that the breakdown was genuine, supported by the driver's affidavit. It emphasized that the authorities below did not dispute the breakdown but imposed a penalty based on technical grounds, primarily the expired E-Way Bill. Referencing recent decisions, including one involving M/s Shyam Sel &

Power Limited, the court highlighted the necessity of proving an intent to evade tax for penalty imposition under Section 129 of the GST Act. The court concluded that since the movement of goods was recorded through the E-Way Bill, and there was no dispute or intention to evade tax, the penalty was not justified.

Conclusion: In light of the legal precedents and the specific circumstances of the case, the Allahabad High Court allowed the writ petition, quashing the orders dated 9.6.2023 and 17.6.2023. The court directed the authorities to refund any deposited amount within one month, emphasizing the absence of intent to evade tax and the genuine reasons for the delay in goods reaching their destination. This judgment serves as a reminder of the critical role E-Way Bills play in documenting and validating the movement of goods, and how timely actions, or lack thereof, can impact the dispute resolution process.

## 23. GST Interest/Penalty Waived for Delayed GSTR-3B After GSTN Cancellation

**Case Name : Hilton Garden Inn Vs Commissioner of Kerala Goods And Service Tax Department (Kerala High Court)**

**Appeal Number : WP(C) No. 25069 of 2023**

**Date of Judgement/Order : 23/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11878) Kerala High Court (669)**

Hilton Garden Inn Vs Commissioner of Kerala Goods And Service Tax Department (Kerala High Court)

Introduction: In a recent judgment, the Kerala High Court has ruled in favor of a petitioner, Hilton Garden Inn, against the Commissioner of Kerala Goods and Service Tax Department. The dispute revolved around the imposition of interest under Section 50(1) of the CGST/SGST Act, 2017, for delayed remission of taxes. The court's decision sheds light on the challenges faced by businesses when dealing with GSTN cancellations and emphasizes the need for a fair and just application of tax regulations.

Background: The petitioner, Hilton Garden Inn, was initially registered under the Kerala Value Added Tax Act, 2003, and the Kerala Tax on Luxuries Act. Subsequently, they transitioned to the CGST Act in July 2017. The petitioner held multiple vertical businesses, each with a separate GSTIN registration. However, due to a technical glitch in the GST network, their GSTIN was canceled on 24.08.2017, without proper notice. Legal Proceedings: The petitioner promptly notified the authorities about the cancellation, seeking assistance to resolve the issue. Despite filing applications to reactivate the GSTIN, the petitioner only received a response on 15.11.2017, following an interim order by the Kerala High Court on 21.12.2017. This order directed the authorities to restore the registration within a week. The petitioner faced challenges in filing returns and remitting taxes due to the unavailability of the GSTIN. It was

only after the restoration on 26.12.2017 that the petitioner could resume their compliance activities. The court acknowledged the petitioner's efforts in promptly addressing the cancellation and pursuing legal avenues for resolution. Court's Decision: The court, taking into account the circumstances, held that the petitioner could not be held responsible for the cancellation of the GSTIN. The judgment highlighted the inequity of imposing interest under Section 50 for the period from July 2017 to December 2017. The court stated that it would be unjust to penalize the petitioner for a delay caused by factors beyond their control. The court ruled that the petitioner would be liable for interest only if there was a delay in remitting the tax after 26.12.2017, the date of restoration of the GSTIN. The judgment emphasizes the principle of fairness in tax administration and ensures that businesses are not penalized for circumstances beyond their control.

Conclusion: The Kerala High Court's decision in the Hilton Garden Inn case sets a precedent for cases involving GSTN cancellations and subsequent challenges faced by businesses in meeting their tax obligations. The ruling underscores the importance of a reasonable and just approach in applying tax regulations, taking into account the practical difficulties faced by businesses. It serves as a reminder that tax authorities should consider the unique circumstances of each case before imposing penalties or interest, promoting a fair and equitable tax environment.

## 24. Denial of refund for non-submission of supportive documents unjustified as refund application u/s 54(1) done on time

**Case Name : Lenovo (India) Pvt. Ltd. Vs Joint Commissioner of GST (Madras High Court)**

**Appeal Number : W.P. Nos. 23604, 23605 and 23607 of 2022**

**Date of Judgement/Order : 06/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11878) Madras High Court (1346)**

Lenovo (India) Pvt. Ltd. Vs Joint Commissioner of GST (Madras High Court)

Madras High Court held that refund cannot be denied as refund application under section 54(1) of CGST Act was made within a period of limitation, however, supportive documents were submitted at the time of personal hearing. Notably, the time limit fixed u/s. 54 (1) is directory in nature and it is not mandatory.

Facts- The petitioner is engaged in manufacture/import of Computers (Desktops/Laptops etc.) and supplying the said goods and related services to units in Special Economic Zones (in short, SEZ Unit).

The petitioner filed applications u/s. 16 of IGST Act read with Section 54 of Central Goods and Services Tax Act, 2017 (CGST Act) read with Rule 89 of CGST Rules, 2017, claiming refund of IGST paid by them for the months of December, 2019, January 2020 and February 2020. However, the petitioner's applications have been rejected in part by the second respondent by means of the Order-in-Original and when the petitioner went on appeal before the first respondent/Appellate Authority, the Appellate Authority also confirmed the order passed by the second respondent by way of Order-in Appeal. Challenging the Order-in-Appeal, the present Writ Petitions are filed.

Conclusion- Held that when the petitioner has filed application, which is within a period of limitation, viz. 2 years as stipulated under Section 54(1) of the CGST Act, the delay in filing the supporting document at the time of filing of reply/personal herein would only extend the time

limit to pass an order under Section 54 (7) of the CGST Act and non-submission of documents at the time of filing application for refund cannot be deemed to have filed with a delay, since there had been a delay in obtaining the endorsement owing to Covid-19, the petitioner could not produce the same at the time of filing application, however, produced the same at the time of personal hearing. Further, when the respondent-Department has accepted the supportive documents produced by the petitioner at the time of filing of personal hearing, in respect of the claim made for the month of December, 2019 and processed the application, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by stating that the documents were filed belatedly, and hence, refund claim cannot be allowed. A reading of the Section 54 (1) of CGST Act would make it clear that the assessee can make the application within two years. The terms used in said Section “may make application before two years from the relevant date in such form and manner as may be prescribed”, which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time limit fixed u/s. 54 (1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

## 25. GST Interest/Penalty Waived for Delayed GSTR-3B After GSTN Cancellation

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**Date of Judgement/Order : 23/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Kerala High Court (671)**

Hilton Garden Inn Vs Commissioner of Kerala Goods And Service Tax Department (Kerala High Court)

Introduction: In a recent judgment, the Kerala High Court has ruled in favor of a petitioner, Hilton Garden Inn, against the Commissioner of Kerala Goods and Service Tax Department. The dispute revolved around the imposition of interest under Section 50(1) of the CGST/SGST Act, 2017, for delayed remission of taxes. The court's decision sheds light on the challenges faced by businesses when dealing with GSTN cancellations and emphasizes the need for a fair and just application of tax regulations.

Background: The petitioner, Hilton Garden Inn, was initially registered under the Kerala Value Added Tax Act, 2003, and the Kerala Tax on Luxuries Act. Subsequently, they transitioned to the CGST Act in July 2017. The petitioner held multiple vertical businesses, each with a separate GSTIN registration. However, due to a technical glitch in the GST network, their GSTIN was canceled on 24.08.2017, without proper notice. Legal Proceedings: The petitioner promptly notified the authorities about the cancellation, seeking assistance to resolve the issue. Despite filing applications to reactivate the GSTIN, the petitioner only received a response on 15.11.2017, following an interim order by the Kerala High Court on 21.12.2017. This order directed the authorities to restore the registration within a week. The petitioner faced challenges in filing returns and remitting taxes due to the unavailability of the GSTIN. It was

only after the restoration on 26.12.2017 that the petitioner could resume their compliance activities. The court acknowledged the petitioner's efforts in promptly addressing the cancellation and pursuing legal avenues for resolution.

Court's Decision: The court, taking into account the circumstances, held that the petitioner could not be held responsible for the cancellation of the GSTIN. The judgment highlighted the inequity of imposing interest under Section 50 for the period from July 2017 to December 2017. The court stated that it would be unjust to penalize the petitioner for a delay caused by factors beyond their control. The court ruled that the petitioner would be liable for interest only if there was a delay in remitting the tax after 26.12.2017, the date of restoration of the GSTIN. The judgment emphasizes the principle of fairness in tax administration and ensures that businesses are not penalized for circumstances beyond their control.

Conclusion: The Kerala High Court's decision in the Hilton Garden Inn case sets a precedent for cases involving GSTN cancellations and subsequent challenges faced by businesses in meeting their tax obligations. The ruling underscores the importance of a reasonable and just approach in applying tax regulations, taking into account the practical difficulties faced by businesses. It serves as a reminder that tax authorities should consider the unique circumstances of each case before imposing penalties or interest, promoting a fair and equitable tax environment.

## 26. Denial of refund for non-submission of supportive documents unjustified as refund application u/s 54(1) done on time

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Madras High Court held that refund cannot be denied as refund application under section 54(1) of CGST Act was made within a period of limitation, however, supportive documents were submitted at the time of personal hearing. Notably, the time limit fixed u/s. 54 (1) is directory in nature and it is not mandatory.

Facts- The petitioner is engaged in manufacture/import of Computers (Desktops/Laptops etc.) and supplying the said goods and related services to units in Special Economic Zones (in short, SEZ Unit). The petitioner filed applications u/s. 16 of IGST Act read with Section 54 of Central Goods and Services Tax Act, 2017 (CGST Act) read with Rule 89 of CGST Rules, 2017, claiming refund of IGST paid by them for the months of December, 2019, January 2020 and February 2020. However, the petitioner's applications have been rejected in part by the second respondent by means of the Order-in-Original and when the petitioner went on appeal before the first respondent/Appellate Authority, the Appellate Authority also confirmed the order passed by the second respondent by way of Order-in Appeal. Challenging the Order-in-Appeal, the present Writ Petitions are filed.

Conclusion- Held that when the petitioner has filed application, which is within a period of limitation, viz. 2 years as stipulated under Section 54(1) of the CGST Act, the delay in filing the supporting document at the time of filing of reply/personal herein would only extend the time limit to pass an order under Section 54 (7) of the CGST Act and non-submission of documents at

the time of filing application for refund cannot be deemed to have filed with a delay, since there had been a delay in obtaining the endorsement owing to Covid-19, the petitioner could not produce the same at the time of filing application, however, produced the same at the time of personal hearing. Further, when the respondent-Department has accepted the supportive documents produced by the petitioner at the time of filing of personal hearing, in respect of the claim made for the month of December, 2019 and processed the application, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by stating that the documents were filed belatedly, and hence, refund claim cannot be allowed. A reading of the Section 54 (1) of CGST Act would make it clear that the assessee can make the application within two years. The terms used in said Section “may make application before two years from the relevant date in such form and manner as may be prescribed”, which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time limit fixed u/s. 54 (1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

## 27. Patna HC Restores GST Appeal: Conditions Apply as per Notification No. 53 of 2023-Central Tax

**Case Name : Micro Zone Vs Union of India (Patna High Court)**

**Appeal Number : Civil Writ Jurisdiction Case No.15687 of 2023**

**Date of Judgement/Order : 09/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Patna High Court (109)**

**Micro Zone Vs Union of India (Patna High Court)**

**Introduction:** In a recent judgment/order, the Patna High Court addressed a writ petition challenging the dismissal of an appeal under the Bihar Goods and Services Taxes Act, 2017 (BGST Act). The dismissal was based on the ground of delay, as specified in Section 107 of the BGST Act. However, the High Court has set aside the dismissal and restored the appeal, subject to the satisfaction of conditions outlined in **Notification No. 53 of 2023- Central Tax.**

**Background**: The appeal in question was rejected due to being filed beyond the one-month period provided under Section 107 of the BGST Act. The court, in line with previous decisions, emphasized the importance of adhering to the specific time frames outlined in the statute for filing appeals.

**Notification No. 53 of 2023:** The Central Board of Indirect Taxes and Customs, through Notification No. 53 of
2023- Central Tax, dated 02.11.2023, extended the time for filing appeals against orders passed by the Proper Officer on or before 31.03.2023 under Sections 73 and 74 of the BGST Act. This extension, however, comes with certain conditions and a special procedure.

**Conditions for Filing Appeal:** The High Court highlighted the key conditions outlined in the Notification for filing an appeal:

1. **Filing Deadline:** Appeals must be filed on or before 31st January 2024.

2. **Admission of Liability:** The appellant must admit and pay in full the admitted amount of tax, interest, fine, fee, and penalty arising from the impugned order.

3. **Additional Payment:** A sum equal to 12.5% of the remaining amount of tax in dispute must be paid, subject to a maximum of twenty-five crore rupees. At least twenty percent of this amount should be paid by debiting from the Electronic Cash Ledger.

4. **Refund Restriction:** No refund will be granted until the appeal is disposed of.

5. **Inadmissibility:** Appeals under this notification are not admissible for demands not involving tax.

6. **Application of Rules:** The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017, apply mutatis mutandis to appeals filed under this notification.

**Court's Decision:** The High Court ruled in favor of the petitioner, setting aside the dismissal order and directing the assessee to satisfy the conditions specified in paragraph no. 3 of the Notification before the stipulated time of 31.01.2024. If the conditions are met, the appeal will be considered on merits; otherwise, it will stand rejected.

**Implications and Future Considerations:** The judgment has wider implications for cases where writ petitions challenging delayed appeals have been rejected solely on the grounds of delay. The court explicitly stated that such assessee would be entitled to invoke the remedy provided by Notification No. 53 of 2023, subject to compliance with the specified conditions.

**Conclusion**: The Patna High Court's decision in this case demonstrates a nuanced approach, considering the provisions of both the BGST Act and the recent Central Tax notification. It emphasizes the importance of adhering to statutory timelines while recognizing the opportunities provided by relevant notifications for restoring dismissed appeals under certain conditions.

## 28. Writ against notice not entertained as authority who issued notice should be approached

**Case Name : Tikona Infinet Private Limited Vs State of Andhra Pradesh (Andhra Pradesh High Court)**

**Appeal Number : Writ Petition No. 28743 of 2023**

**Date of Judgement/Order : 09/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Andhra Pradesh HC (188)**

Tikona Infinet Private Limited Vs State of Andhra Pradesh (Andhra Pradesh High Court)

Andra Pradesh High Court dismissed the writ petition preferred against show cause notice in Form GST DRC-01 as the petitioner is required to approach the authority which has issued the notice and file the necessary objections with evidence.

Facts- The petitioner/TIPL entered into a Business Transfer Agreement (BTA), dated 17.08.2017 with Tikona Digital Networks (TDN), vide which the business of TDN was transferred to the petitioner, as a going concern. It is submitted that the TDN filed letter dated 13.09.2017 to the Commercial Tax Officer intimating that as per Rule 41 (1) of CGST Rules, a registered person intending to transfer the input tax credit is required to file GST-ITC 02 on the common portal to the transferee and TDN intended to transfer unutilized credit in the electronic credit ledger of TDN on the date of slump sale to TIPL, but Form ITC-02 was not available on GSTN portal, and consequently, TDN was not able to transfer on GSTN portal and TIPL was unable to utilize the credit balance appearing in the electronic credit ledger of TDN. Consequently, it was requested to let TDN know the procedure to be followed for transfer of credit from TDN to TIPL under the circumstances. It is further submitted that the petitioner/TIPL also submitted letter dated 12.02.2018 to the jurisdictional authority duly intimating about the transfer of ITC to TDN manually. The Assistant Commissioner issued notice GST ASMT-10 intimating the discrepancy in the return after scrutiny (scrutiny notice) and calling for the explanation for such discrepancy. On consideration of the petitioner's reply, the impugned show cause notice dated 29.09.2023

has been issued. Writ petition for a writ of Mandamus under article 226 of the Constitution of India was filed by the petitioner against the said show cause notice.

Conclusion- In the present case, the petitioner has not been deprived from availing the input tax credit as of now, but the show cause notice has been issued granting opportunity. So, at this stage, it cannot be said that as a consequence of not submitting Form GST ITC-02 electronically, the petitioner has been deprived of the claim of input tax credit. The petitioner has the opportunity and on such opportunity on verification of such fact, the authority has yet to consider the petitioner's claim of input tax credit. Held that the petitioner should approach the authority which has issued the show cause notice and file the objections with evidence, and if so desire, to avail the opportunity of personal hearing with due intimation to the authority concerned. At the stage of show cause notice, we are not inclined to entertain the challenge to the said notice, in the absence of any ground of want of jurisdiction of the authority in issue of notice.

## 29. HC Directs GST Department to Grant Registration for Lessor & Lessee Operating in Same Premises

**Case Name : Bio Med Ingredients Pvt. Ltd. Vs Assistant Commissioner (ST) (Madras High Court)**

**Appeal Number : W.P.No.28811 of 2023**

**Date of Judgement/Order : 01/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Madras High Court (1346)**

Bio Med Ingredients Pvt. Ltd. Vs Assistant Commissioner (ST) (Madras High Court)

In a recent verdict, the Madras High Court issued a directive in the case of Bio Med Ingredients Pvt. Ltd. against the Assistant Commissioner (ST) regarding the denial of GST registration. The court has mandated the GST Department to grant registration to the petitioner-company, emphasizing the need for property demarcation in case both the lessor and lessee operate in the same premises.

Background of the Case: Bio Med Ingredients Pvt. Ltd. filed an application for GST registration on two occasions, both of which were rejected. The rejection was based on the ground that both the lessor and lessee were running businesses in the same premises, which was deemed unacceptable.

Court's Intervention: The petitioner contended that they operated on a three-acre land with a clear demarcation, and the rejection was erroneous. On a previous hearing, the court directed officials to conduct a physical verification to ascertain the nature of business operations and demarcation.

Verification Outcome: After the visit, the officials reported that two entities were indeed operating in the same premises, with separate GST numbers. The court, however, awaits the petitioner's demarcation report to resolve the matter conclusively.

Court’s Directive: The Madras High Court has directed the GST Department to issue the GST registration number to Bio Med Ingredients Pvt. Ltd. within one week from the date of receipt of the court order. If the property is not demarcated, the petitioner is instructed to demarcate it within one week from the issuance of the GST number.

Conclusion: This legal development underscores the importance of proper documentation and demarcation in cases where both lessor and lessee share business premises. The Madras High Court’s directive seeks to ensure fairness in GST registration, requiring a clear separation of properties in cases of joint business operations. The court has set a follow-up date for reporting compliance and expects a demarcation report from Bio Med Ingredients Pvt. Ltd. by November 27, 2023. Stay tuned for further updates on this regulatory resolution.

## 30. Supreme Court Dismisses Bharat International's Entry Tax Appeal

**Case Name : Bharat International Vs Assistant Commissioner of Commercial Tax & Ors. (Supreme Court of India)**

**Appeal Number : Civil Appeal No. 8871/2010**

**Date of Judgement/Order : 09/11/2023**

**Related Assessment Year :**

**Courts : Supreme Court of India (2252)**

Bharat International Vs Assistant Commissioner of Commercial Tax & Ors. (Supreme Court of India)

Introduction: The Supreme Court of India recently rendered a significant decision by dismissing an appeal filed by M/s Bharat International against the Assistant Commissioner of Commercial Tax & Ors. This case centered around the imposition of entry tax and is closely tied to a precedent set by the Supreme Court in the matter of Jindal Stainless Limited and Anr. vs. State of Haryana and Ors. in 2017.

Detailed Analysis: The crux of the matter lies in the constitutional validity of state government legislations imposing entry tax on goods entering their territories. The nine-judge Bench, led by the then Chief Justice of India, upheld the constitutional validity of such legislations, emphasizing that entry tax does not violate the constitutionally recognized right to free trade and commerce under Article 301 of the Constitution of India. The bench clarified that taxes, in general, are not within the contemplation of Part XIII of the Constitution, and the word 'Free' in Article 301 does not imply freedom from taxation. Only discriminatory taxes are prohibited under Article 304(a). Therefore, the imposition of a non-discriminatory tax, such as entry tax, does not infringe upon Article 301. The present appeal by Bharat International contested an order dated 12.10.2009 from the High Court of Madhya Pradesh (Indore Bench). The appellant's counsel argued that the issues in the appeal align with the judgment in Jindal Stainless Limited. The Supreme Court, having limited the consideration to the question of entry tax, acknowledged the alignment and dismissed the appeal. The Deputy Advocate General

representing the respondent department concurred, asserting that nothing further would survive in this appeal in light of the earlier judgment in Jindal Stainless Limited. The dismissal was explicitly based on the restricted scope of the notice, limiting consideration to the levy of entry tax, and no other issues were entertained.

Conclusion: In conclusion, the Supreme Court's decision to dismiss Bharat International's appeal reinforces the precedent set in Jindal Stainless Limited. The ruling clarifies that the imposition of entry tax, when non-discriminatory, does not contravene constitutional provisions on the right to free trade and commerce. This development holds implications for similar cases and underscores the importance of aligning legal arguments with established precedents for a favorable outcome. The order, dated November 09, 2023, by Justice B.V. Nagarathna and Justice Prashant Kumar Mishra, signifies the finality of the matter, with pending applications also disposed of in line with the judgment.

## 31. Gauhati HC to decide on validity of CGST Section 73 SCN when order u/s 65(6) already been passed

**Case Name : Surya Businees Private Limited Vs State of Assam (Gauhati High Court)**

**Appeal Number : WP(C)/6322/2023**

**Date of Judgement/Order : 06/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Guwahati High Court (102)**

Surya Businees Private Limited Vs State of Assam (Gauhati High Court)

Introduction: The Gauhati High Court is set to adjudicate a critical case involving Surya Business Private Limited versus the State of Assam. The focal point of contention is the validity of a Show Cause Notice (SCN) issued under Section 73 of the Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017. The petitioner challenges the SCN, arguing that it lacks tenability due to the prior issuance of an order under Section 65(6) on 17.06.2023.

Detailed Analysis: The petitioner, represented by Mr. A. Kanodia, contends that the SCN, issued concerning the annual returns of GSTR – 09, holds no jurisdictional standing. According to Mr. Kanodia, an order under Section 65(6) of the Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017, had already been passed and communicated through Form GST ADT-02. Consequently, the issuance of a fresh SCN under Section 73(1) is deemed without jurisdiction. In response, Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department, has sought additional time to delve into the legal intricacies raised by the writ petition. Mr. Gogoi also expresses the intention to ascertain whether any subsequent orders have been issued, potentially proceeding ex parte against the noticee. The Gauhati High Court, taking cognizance of the complexity of the case, has listed it for further hearing on 15.11.2023. Pending a thorough examination of the legal issues, the court emphasizes maintaining the status quo concerning the proceedings initiated by the SCN dated 28.09.2023.

Conclusion: As the case unfolds, the verdict of the Gauhati High Court will significantly impact the jurisdictional nuances of tax-related disputes, particularly regarding the interplay between Section 65(6) and Section 73(1). Stay tuned for updates on this crucial legal battle between Surya Business Private Limited and the State of Assam, shaping the landscape of tax law in the region.

## 32. Notice set aside as reasonable opportunity of reply not granted

**Case Name : Raymond Limited Vs Union of India (Madhya Pradesh High Court)**

**Appeal Number : Writ Petition No. 26693 of 2022**

**Date of Judgement/Order : 20/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Madhya Pradesh HC (163)**

Raymond Limited Vs Union Of India (Madhya Pradesh High Court)

Madhya Pradesh High Court held that time gap of 8 days between show cause notice and impugned order reveals that reasonable opportunity of reply to show cause notice not granted. Accordingly, the show cause notice and order thereof set aside.

Facts- The present petition is filed invoking writ jurisdiction of this Court under Article 226 of Constitution of India assails the show cause notice dated 03.09.2022 and the subsequent order of demand dated 12.09.2022 both issued u/S.73 of the Central Goods and Services Tax Act, 2017.

Conclusion- Held that it is evident that the time gap provided between show cause notice dated 03.09.2022 and impugned order dated 12.09.2022 was only 8 clear days which in the considered opinion of this Court falls desperately short of satisfying the concept of reasonable opportunity of being heard. Consequently, the impugned show cause notice dated 03.09.2022 and impugned order of demand dated 12.09.2022 (Annexure P/3) both passed u/S.73 of CGST Act are set aside with liberty to the Revenue to issue fresh legal and valid show cause notice and thereafter proceed in the matter if so advised after affording reasonable and sufficient opportunity of being heard to petitioner.

## 33. Appeal filing limit not extended as petitioner failed to exercise right of appeal within prescribed time limit

**Case Name : Mithlaj. P Vs Commissioner Of Central Tax & Central Excise (Kerala High Court)**

**Appeal Number : WP(C) No. 4079 of 2023**

**Date of Judgement/Order : 08/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Kerala High Court (671)**

Mithlaj. P Vs Commissioner Of Central Tax & Central Excise (Kerala High Court)

Kerala High Court held that as petitioner has failed to exercise the right of appeal within the prescribed time limit under section 85(3A) of the Finance Act 1994 and time limit for filing of an appeal cannot be extended by Court.

Facts- On the basis of the inquiry, the petitioner was issued a show cause notice dated 12.04.2021 to show cause as to why the services rendered by the petitioner in respect of which the petitioner had received consideration from April 2016 to June 2017 should not be classified as 'Other taxable services – Other than the 119 listed' in terms of Sections 65B(44) and 65B(51) of Chapter V of the Finance Act 1994 and in turn why services rendered by the petitioner were not liable to service tax under Section 66B of the Act read with Section 174(2) of CGST Act 2017. The petitioner was also asked to show cause as to why the service tax, along with Cess amounting to Rs.36,19,736/-, should not be demanded and recovered from the petitioner under the provisions of Section 73(1) of Chapter V of the Finance Act 1994 read with Section 174(2) of the CGST Act 2017, along with interest, penalty etc. The demand of service tax amounting to Rs.33,96,785/- together with Swachh Bharat Cess and Krishi Kalyan Cess totaling Rs.36,19,736/- has been confirmed. The petitioner neither filed an appeal nor paid the tax and penalty as determined, and therefore, notice u/s. 87(b) of Chapter V of the Finance Act 1994 came to be issued for freezing the bank account of the petitioner. It was also said that the total amount outstanding was Rs.1,05,73,062/-. The petitioner neither made use of the statutory

remedy of appeal within the time prescribed as per Section 85(3A) of the Finance Act 1994 nor did he reply to the notice and after the expiry of the maximum period of appeal of three months, the petitioner approached this Court by filing this writ petition.

Conclusion- Held that this Court does not exercise the appellate jurisdiction against the Order-in-Original. It also cannot be said that the Order-in-Original is without jurisdiction or that there has been a violation of the principle of natural justice. Considering the fact that the petitioner failed to exercise the right of appeal within the limitation period prescribed under the Statute, this Court is not in a position to extend the limitation period for filing the appeal.

## 34. Delhi HC Set-Aside Order with Unspecified GST Registration Cancellation Reasons

**Case Name : VAB Apparel LLP Vs Commissioner (Delhi High Court) Appeal Number : W.P.(C) 13642/2023**

**Date of Judgement/Order : 10/11/2023**

**Related Assessment Year :**

**Courts : All High Courts (11881) Delhi High Court (2802)**

**15. VAB Apparel LLP Vs Commissioner Delhi GST and Ors (Delhi High Court)**

The Hon'ble Delhi High Court in the case of ***M/s. VAB Apparel LLP v. Commissioner, Delhi GST and Ors [W.P.(C) 13642/2023 dated November 10, 2023]*** held that without specifying any particular reason and explanation for the cancellation of GST Registration by means of fraud, wilful misstatement or suppression, also there is no explanation as to why the buyers and suppliers have been found to be suspicious. Merely because the Petitioner's shop was found closed, absent anything more, is not a ground for cancellation of the Petitioner's GST registration. Thus, the impugned order is set aside, the Respondents have been directed to restore the GST Registration and the writ petition stands disposed of.

**Facts:**

M/s. VAB Apparel LLP **("the Petitioner")** received a Show Cause Notice **("the SCN")** dated May 19, 2022, for cancellation of the GST Registration, with effect from March 03, 2018, for the reason that the Petitioner obtained registration by fraud, wilful misstatement, or suppression of facts. And GST Registration was suspended with effect from the date of issuance of the SCN. Thereafter, the Revenue Department **("the Respondent")** without waiting for a reply against the SCN from the Petitioner, issued the Order dated May 23, 2022 **("the Impugned Order").**

The reasons stated in the Impugned Order are that the Petitioner's response to the query was not proper; no documentary evidence had been produced by the taxpayer; and none had appeared for a personal hearing. The Impugned Order neither refers to any fraud that was

found to have been committed by the petitioner nor mentions any misstatement allegedly made by the Petitioner.

Hence, aggrieved by the Impugned Order, the Petitioner filed a writ petition before the Hon'ble Delhi High Court for quashing and setting aside the impugned order.

**Issue:**

Whether the GST registration be cancelled, without specifying the reason and explanation in the SCN?

**Held:**

The Hon'ble Delhi High Court in the case of ***W.P.(C) 13642/2023*** held as under:

- Observed that, the Impugned Order neither refers to any fraud that was found to have
- been committed by the petitioner nor mentions any misstatement allegedly made by the

Petitioner.

Opined that, there is no explanation as to why the buyers and suppliers have been found to be suspicious. Merely because the Petitioner's shop was found closed, absent anything more, is not a ground for cancellation of Petitioner's GST registration.

- Directed that, the Respondent to restore the GST Registration forthwith.
-

Held that, the Impugned Order is to be set aside and the writ petition is allowed.

**Conclusion:**

In a significant decision, the Delhi High Court set aside the Impugned Order, directing the immediate restoration of the petitioner's GST registration. The ruling emphasizes the necessity of providing specific reasons for cancellation, preventing arbitrary actions by tax authorities. While the judgment protects the petitioner's rights, it also underscores the authority's ability to take lawful action if statutory violations are established.

## 35. GST Offences: Accused Granted Bail as Judicial Custody Exceeds 60 Days

**Case Name : Divyeshkumar Prafullachandra Kanani Vs Central CGST ( Court Of Chief Judicial Magistrate And Additional Senior Civil Judge, Jamnagar, District)**

**Appeal Number : Criminal Miscellaneous Application No. 2410 of 2023**

**Date of Judgement/Order : 24/11/2023**

**Related Assessment Year :**

**Courts : District Court (66)**

Divyeshkumar Prafullachandra Kanani Vs Central CGST (Court Of Chief Judicial Magistrate and Additional Senior Civil Judge, Jamnagar, District)

Introduction: In a recent legal development, the Court of Chief Judicial Magistrate and Additional Senior Civil Judge, Jamnagar, District, granted bail to the accused, Divyesh kumar Prafullachandra Kanani, in a case filed by the Central CGST, Rajkot. The basis for this decision was the exceeding of the statutory 60-day limit for judicial custody without the prosecution filing a complaint.

Detailed Analysis: The accused faced charges under Section 132(1)(a), (b), and (l) of the Central Goods and Services Tax Act, 2017. The maximum punishment for these offenses is imprisonment for up to five years with a fine. As per Section 167(2) of the Code of Criminal Procedure, the accused, in this case, was entitled to default bail since they had been in judicial custody for over 60 days, and no complaint had been filed by the prosecution. The defense argued for bail, citing relevant legal precedents, including judgments from the Hon'ble Supreme Court and the High Court of Gujarat. On the other hand, the Special Public Prosecutor opposed bail, stating that the delay in submitting the complaint was due to awaiting reports from the FSL, Junagadh, and contending that the provisions of Section 167(2) did not apply to GST investigations. The court's detailed analysis rejected the prosecution's arguments, relying on the decision of the Hon'ble Supreme Court in the case of Directorate Of Enforcement v. Deepak Mahajan. It clarified that Section 167 could be applied during investigations under special laws, including the GST Act.

Conclusion: After considering the submissions from both sides, the court concluded that the accused met the requirements for bail under Section 167(2) of the Code. The court granted bail with specific conditions, emphasizing the accused's responsibility during the period of release. This case adds to the jurisprudence surrounding default bail in GST offenses and reinforces the applicability of Section 167(2) during the investigation phase.

This legal outcome highlights the delicate balance between the accused's rights and the prosecution's obligations in cases involving statutory timelines for judicial custody. It also underscores the significance of timely legal action and the impact of established legal principles on such decisions.