DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT,

PUNJAB, PATIALA

GST UPDATE

(MARCH 2023)

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(I) CENTRE GST Notifications

1. Notification No. 09/2023–Central Tax [S.O.1564(E)]

GST: TIME LIMIT UNDER SECTION 73(10) FOR ISSUING ORDER INCREASED BY 3 MONTHS

CBIC extends time limit under section 73(10) of CGST Act, 2017 for issuance of order under section 73(9), for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised for financial 201718,2018-19 and 2019-20 as follows: vide Notification No. 09/2023–Central Tax Dated: 31st March, 2023 – (i) for the financial year 2017-18, up to the 31st day of December, 2023 (From existing 30th September 2023)

(ii) for the financial year 2018-19, up to the 31st day of March, 2024 (From existing 31st December 2023)

(iii) for the financial year 2019-20, up to the 30th day of June, 2024 (From existing 31st March 2023)

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

Notification No. 09/2023–Central Tax Dated: 31st March, 2023

S.O.1564(E).— In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under subsection (9) of section 73 of

the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:–

(i) for the financial year 2017-18, up to the 31st day of December, 2023;

(ii) for the financial year 2018-19, up to the 31st day of March,

2024;(iii) for the financial year 2019-20, up to the 30th day of June, 2024.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

2. Notification No. 08/2023–Central Tax [S.O.1563(E)]

FINAL RETURN GSTR-10 AMNESTY/LATE FEE REDUCTION

Final Return GSTR-10 Amnesty/Late Fee Reduction – Maximum late fees restricted to Rs. 1000 for Final Return in FORM GSTR-10 if GSTR-10 is furnished between 01.04.2023 to 30.06.2023 vide Notification No. 08/2023–Central Tax Dated: 31st March, 2023.

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

Notification No. 08/2023–Central Tax Dated: 31st March, 2023

S.O.1563(E).—In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the Act, which is in excess of five hundred rupees for the registered persons who fail to furnish the final return in **FORM GSTR-10** by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

3. Notification No. 07/2023–Central Tax [G.S.R. 250(E)]

AMNESTY CUM LATE FEES REDUCTION FOR ANNUAL GST RETURN

CBIC reduces Annual Return Late Fee as follows vide Notification No. 07/2023–Central Tax Dated: 31st
March, 2023 –

A. for the financial year 2022-23 onwards

Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year– Fifty rupees per day (25 CGST+25 SGT), subject to a maximum of an amount calculated at 0.04 (0.02+0.02) per cent. of turnover in the State or Union territory.

Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year – Hundred rupees per day (50+50), subject to a maximum of an amount calculated at 0.04 (0.02+0.02) per cent. of turnover in the State or Union territory.

For Registered Persons having an Aggregate Turnover of More than Rs.20 Crores **no reduction** in amount of Late Fees.

B. For financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22

IF annual return is furnished between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee is restricted to Rs.20000 (10000+10000).

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

Notification No. 07/2023–Central Tax Dated: 31st March, 2023

G.S.R. 250(E).—In exercise of the powers conferred by section 128 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 waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount as specified in Column (3) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (2) of the Table below, who fails to furnish the return by the due date, namely:—

TABLE

Serial Number	**Class of registered persons**	**Amount**
(1)	(2)	(3)
1	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.
2	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

4. Notification No. 06/2023–Central Tax [G.S.R. 249(E)]

GST AMNESTY SCHEME FOR REGISTERED PERSONS WHO FAILED TO FURNISH VALID RETURN – SECTION 62

CBIC notifies Amnesty scheme registered persons in whose cases assessment u/s 62 of CGST Act has been done on or before 28.02.2023 and who have failed to furnish a valid GST return within a period of 30 days from date of service of assessment order vide **Notification No. 06/2023 – Central Tax dated 31.03.2023.**

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

Notification No. 06/2023–Central Tax Dated: 31st March, 2023

G.S.R. 249(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 that the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,-

(i) the registered persons shall furnish the said return on or before the 30th day of June 2023;

(ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of thesaid Act and the late fee payable under section 47 of the said Act,

irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided. [F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

5. Notification No. 05/2023–Central Tax [G.S.R. 248(E)]

CBIC AMENDS NOTIFICATION NO. 27/2022-CENTRAL TAX, DATED 26.12.2022

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

Notification No. 05/2023–Central Tax Dated: 31st March, 2023

G.S.R. 248(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 amendment 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, “provisions of”, the words “proviso to” shall be substituted.

2. They shall be deemed to have come into force from the 26th day of December,2022.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, 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.

6. Notification No. 04/2023–Central Tax [G.S.R. 247(E)]

AADHAR AUTHENTICATION & BIOMETRIC VERIFICATION RULES UNDER GST AMENDED

CBIC notifies substitutes Rule 8(4A) & amended Rule 8(4B) pertaining to Aadhar authentication and biometric verification of those registered under GST with retrospective effect force from 26.12.2022 vide Notification No. 04/2023–Central Tax Dated: 31st March, 2023.

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

Notification No. 04/2023–Central Tax Dated: 31st March, 2023

G.S.R. 247(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement.— (1) These rules may be called the **Central Goods and Services Tax (Amendment) Rules, 2023.**

(2) They shall be deemed to have come into force from the 26th day of December, 2022.

2. In the Central Goods and Services Tax Rules, 2017 in rule 8,-

(i) for sub-rule (4A), the following sub-rule shall be substituted, namely:-

> "(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.
>
> Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk

parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso."

(ii) in sub-rule (4B), for and words, "provisions of", the words "proviso to", shall be substituted.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published, vide number G.S.R. 610(E), dated the 19thJune, 2017 and were last amended, vide notification No. 26/2022 -Central Tax, dated the 26th December 2022, vide number G.S.R. 902 (E), dated the 26th December 2022.

7. Notification No. 03/2023–Central Tax [G.S.R. 246(E)]

GST REGISTRATIONS CANCELLED FOR NON-FILING OF RETURN – AMNESTY SCHEME NOTIFIED

CBIC provides Amnesty scheme to registered persons whose GST registrations have been cancelled on or before 31.12.2022 due to non-filing of GST returns vide **Notification No. 03/2023 – Central Tax dated 31.03.2023.**

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

Notification No. 03/2023–Central Tax Dated: 31st March, 2023

G.S.R. 246(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 that the registered person, whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act on or before the 31st day of December, 2022, and who has failed to

apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely:–

(a) the registered person may apply for revocation of cancellation of such registration upto the 30th day of
June, 2023;

(b) the application for revocation shall be filed only after furnishing the returns due upto the effective dateof cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of the such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registrationshall be available in such

Explanation: For the purposes of this notification, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

8. Notification No. 02/2023–Central Tax [G.S.R. 245(E)]

LATE FEES OF FORM GSTR-4 WAIVED FOR RETURN OF JULY

2017 TO MARCH 2022

Late fees in case of FORM GSTR-4 for the periods from July-2017 till F.Y 2021-22 has been waived completely in case of NIL GST returns and reduced to Rs 500/- in other cases provided the said returns are filed between 01.04.2023 to 30.06.2023 vide Notification No. 02/2023–Central Tax Dated: 31st March, 2023.

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

Notification No. 02/2023–Central Tax Dated: 31st March, 2023

G.S.R. 245(E).—In exercise of the powers conferred by section 128 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 makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 73/2017– Central Tax, dated the 29th December, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1600(E), dated the 29th December, 2017, namely: —

In the said notification, after the sixth proviso, the following proviso shall be inserted, namely: —

> *"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023."*

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

Note : The principal notification No. 73/2017– Central Tax, dated the 29th December, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended, vide notification number 12/2022 – Central Tax, dated the 5th July, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 515(E), dated the 5th July, 2022.

(III) Advance Rulings

1. Order No. 03/AAAR/Bansa1 Industries/2023/ Dated: 20.0302023 (336-3K

PUNJAB APPELLATE AUTHORITY FOR ADVANCE RULING

Order No. 03/AAAR/Bansa1 Industries/2023/ Dated: 20.0302023 (336-3K

Present:

1. Sh. Rajesh Puri, Chief Commissioner, IRS (C&IT), CGST

Commissionerate, Chandigarh Zone, Chandigarh;

15. **Sh. Kamal Kishor Yadav, IAS, Commissioner of State Tax, Punjab**

Name and Address of appellant	M/S Bansal Industries, Old Fazilka Road, Abohar, Punjab,
GSTIN	03AADFB0920DIZF
Date of Application	12-12-2022
Jurisdictional Authority-Centre	(LUDHIANA),(FEROZEPUR),(ABOHAR)
Jurisdictional authority-State	(Punjab), (Ferozepur),(Fazilka),(FazilkaWard No.3)
Represented By	Sh. Rishab Singla, Advocate
Date of Personal Hearing	09-02-2023
Order of Authority of Advance Ruling	AAR/GST/PB/30 dated 10.11.2022 issued by the Punjab Authority for Advance Ruling, Punjab.

PROCEEDINGS

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Punjab Goods and Services Tax Act, 2017, (hereinafter referred to as, "CGST Act" and "PGST Act") are the same except for certain provisions.

Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the PGST Act.

A. Facts of the Case:

M/S Bansal Industries, as detailed in the table above and hereinafter referred to as 'appellant' is a partnership firm engaged in the business of ginning and pressing of cotton as well as crushing of oil seeds (Cotton Seeds obtained in the ginning of raw cotton (narma)). The appellant had requested an advance ruling seeking to know whether Purchase of raw cotton from Kacha Arhtiya, who is a registered taxpayer, constitutes a purchase from agriculturist so as to attract liability under Reverse Charge Mechanism in view of sub-section (3) of section 9 of CGST/PGST Act,2017,

B. Order of the Authority for Advance Ruling:

Relevant extract of the order No.AAR/GST/PB/30 dated 10th of November,2022 issued by the Punjab Authority for Advance Ruling (for brevity, "AAR")is reproduced hereunder:

" The applicant is liable to pay GST under reverse charge basis being a registeredperson in terms of Notification no, 13/2017-CentraI Tax(Rate) dated 28hJune,2017 as amended vide notification no. 43/2017-Centra1 Tax(Rate) dated 14th November,2017 and not the Kacha Arhtiya. f'

C. Submission of the appellant:

(i) The appellant herein purchases raw cotton from Kacha Arhtiyas, who issues Form-I (under Agricultural Produce Marketing Committee Act (APMC Act)) on behalf of the agriculturists. Form-I is issued in the name of the Kacha Arhtiya detailing wherein the quantity of raw cotton (Narma) and the incidental charges. The payment is also made to Kacha Arhtiya in his account through banking channels.

Kacha Arhtiya issues Form-J to the agriculturist and also transfers the amount to agriculturist after deducting its commission.

(ii) From above it is clear that Form J is issued to the agriculturist and Form I to the purchaser. Kacha Arhtiya does not purchase goods but is only acting as an agent of the farmer and does not engage in the purchase of raw cotton. Kacha Arhtiya is getting the raw cotton cleaned, packaging, weighing, sewing of bags etc. and the amounts are indicated in Form-I.

(iii) The appellant has contended that a Kacha Arhtiya is not an agriculturist within the meaning of section 2(7) of the CGST Act,2017 and therefore, is not covered under the notification no. 43/2017-Central Tax(Rate) dated 14th November,2017. It was contended that the Kacha Arhtiya is an agent of the agriculturist within the scope of circular No. 57/31/2018 dated 04th of

September, 2018 and is therefore, the recipient of goods from the agriculturist and liable to pay GST under reverse charge mechanism,

(iv) On the date of personal hearing i.e. 09th of February,2023, Mr Rishab Singla, Advocate, appeared on the behalf of the appellant and reiterated the facts as illustrated above. On being asked, whether Kacha Arhtiya or the farmer is raising any invoice on the appellant to which he replied that there is no separate invoice being raised by the Kacha Arhtiya or the farmer but the bill of Kacha Arhtiya is itself an invoice.

(v) The cotton is eventually purchased by the Kacha Arhtiya and payment is made to the farmer. The advocate submitted that Kacha Arhtiya is an agent of farmer. He pleaded that similar dispute had come up before the Appellate Authority for Advance Ruling, Haryana in the case of M/S Bhaktawar Mal Kamra and Sons and the said authority vide order dated 30th of August, 2018 had held that the commission agent is liable to be registered under the CGST Act, 2017.

(vi) The appellate authority desired to know as to whether farmer advices Kacha Arhtiya to sell the cotton not below a particular price, for which the advocate replied that the farmer is not present during the bidding process and Kacha
Arhtiya sells the goods as per the prevailing market prices.

D. Discussion and Findings:

1. The primary issue that emerges from the appeal filed by the appellant is regarding the interpretation and the applicability of the Notification no. 43/2017-Central Tax (Rate) dated 14th November,2017 where the raw cotton (narma) is being procured by the appellant from the Kacha Arhtiya. The question to be answered is who shall be liable to pay tax through Reverse Charge Mechanism (for brevity, "RCM") where the raw cotton is being supplied by the farmer through the Kacha Arhtiya to the appellant.

2. It is pertinent to mention here that the AAR in its order has given reference to the Notification No. 13/2017-Centra1 Tax(Rate) dated 28th June,2017 as amended vide notification no. 43/2017-Central Tax (Rate) dated 14th November,2017 which is not the correct notification for the purpose of issue under consideration. The Notification No, 13/2017-Central Tax(Rate) dated
28th June,2017 was issued for notifying the services that would be subject to RCM under sub-section (3) of section 9 of the CGST Act. The Notification No. 4/2017-Central Tax(Rate) dated 28th June,2017 was issued for notifying the goods that would be subject to RCM under sub-section (3) of section 9 of the CGST Act. The said notification was further amended by Notification no, 43/2017-Central Tax (Rate) dated 14th November, 2017 which is germane to the issue under consideration.
3. Before going into the legal aspects of the case, it would be useful if one goes into the basic work being carried out by the kaccha Arhtiya. The appellant themselves have accepted that kaccha Arhtiya acts as an agent of the agriculturist and the appellant

procures raw cotton from the kaccha Arhtiya. From the Form I and Form J issued by the Kacha Arhtiya, it is evident that he charges remuneration under various heads namely, commission, brokerage, dressing, cleaning, unloading, palledari, filling charges and other charges. From the heads of remuneration, it is clear that the Kacha Arhtiyais charging commission for the services rendered by him to the agriculturist, loading/ unloading, cleaning of goods, bag sewing charges etc. It is a commonly known fact that the Kaccha Arhtiya receives cotton from the agriculturist, stores it, cleans it, fills the produce in the bag and then sells it by way of auction. So, it is clear that Kacha Arhtiya is carrying out various activities for selling the goods by way of auctioning it.

4. In order to comprehend the issue under consideration it would be pertinent to reproduce the contentious entry of the said notification so that a clarity can be developed regarding the identification of the person liable to pay tax on RCM.

	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
	5201	Raw Cotton	Agriculturist	Any registered Person

5. Before delving into the discussion on the matter, it is noted that the said entry was inserted in the Notification No. 4/2017-Central Tax(Rate) dated 28th June,2017 only with effect from 15th of November, 2017 which implies that the transactions effected before the said date were not falling within the purview of the said entry.

6. Now, looking at the said entry there are certain points that are required to be considered in order to have a comprehensive view of the said entry as well as the issue under consideration. The amplitude of said entry is limited to the

"Raw Cotton" where the supplier of goods is the "Agriculturist" and the recipient of supply is "any registered person", So, a combined reading of the said entry implies that supply of raw cotton by an agriculturist to any registered person shall be subject to RCM with effect from 15 th of November,

2017,

7. The expression, "supplier", "Agriculturist" "recipient" and "registered person" have been defined in the CGST Act and it would be useful if the same are reproduced here for reference.

8. As per clause (105) of section 2 of the CGST Act, "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalfofsuch supplier in relation to the goods or services or both supplied The important point to be noted here is that an agent acting on behalf of the supplier in relation to goods or services or both supplied is also covered within the ambit of supplier. So, the ambit of supplier has been extended to bring the "Agent" within the cover of supplier provided he/she is acting on behalf of the supplier in relation to relation to goods or services or both supplied.

9. Further, as per Clause (7) of section 2 of the CGST Act "agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation ofland(a) by own labour, or

(b) by the labour offamily, or

(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision ofany member ofthefamily.

So, the definition of an agriculturist is a functional definition which is entirely focussed on the activity of undertaking of cultivation of land which may be carried out by the deployment of own labour or labour of the family or by hired labour.

10. As per Clause (93) of section 2 of the CGST Act, "recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply ofgoods, the person to whom the goods are delivered or made available, or to whom possession or use ofthe goods is given or made available; and

(c) where no consideration is payablefor the supply ofa service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient ofthe supply and shall include an agent acting as such on behalfofthe recipient in relation to the goods or services or both supplied

11. The point to be noted here is that the definition of recipient is primarily attributed to the payment of consideration and the person who is liable to pay such consideration. Where the element of consideration does not come into play, the definition ventures into the aspect of identification of the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, In the case of services, the same is effected by of identification of the person to whom the services have been rendered. Furthermore, the definition also brings the "agent" within the ambit of recipient where he/she is acting on the behalf of the recipient in relation to the goods or services supplied.

12. As per clause (94) of section 2 of the CGST Act, "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number. So any person who has obtained registration under section 25 of the CGST Act shall be covered by the said definition.

13. So, with the definition of various expressions delineated in the said entry being reproduced and comprehended, it is now opportune to look at the nature of transaction being effected by the appellant in order to determine whether the same falls within the ambit of the entry No. 4A of the Notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017.

14. As submitted by the appellant, the appellant purchases raw cotton from Kacha Arhtiyas and the payment is also made to Kacha Arhtiya in his account through banking channels. Thereafter, as per the submission of the appellant, the Kacha Arhtiya transfers the amount to agriculturist after deducting its commission. Since the element of commission has been identified by the appellant in the said transaction which flows from the farmer to the Kacha Arhtiya, the question of kacha arhtiya as an agent of the farmer or the agriculturist needs to be looked into. This is also important for determination of the supplier and recipient in the transaction as it has been detailed above that both the definitions of "supplier" and "recipient" include agent acting on their behalf in relation to the supply of goods or services.

15. As per clause (5) of section (2) of the CGST Act, "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another. The definition of agent includes an arhatia and further postulates that he/she should carry on business of supply or receipt of goods or services on behalf of another. So, in the issue under

consideration, the Kacha Arhtiya shall fall within the definition of an agent provided he/she carries on business on the behalf of another i.e. the principal, which in this case would be the agriculturist. This assertion is further supported by the fact that the Kacha arhtiya charges commission from the agriculturist for the goods supplied and the expression, "commission" in commercial parlance is attributed as an income of the agent for the services rendered.

16. As seen earlier in the definition of supplier and recipient as well as in the definition of agent as detailed in para above, the emphasis is on the aspect of

whether the person is carrying on business or supplying goods or receiving goods on behalf of the person. The aspect of "on behalf of" has been examined in the Circular No. 57/31/2018-GSTdated 04th September,2018. The said circular draws inspiration from the Indian Contract Act, 1872 which is the font and source of the principal-agent relationship and discusses the said relationship in the context of para no. 3 of the Schedule I of the CGST Act wherein the supply or receipt of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. The said circular lays down an important parameter for determination of said supply in para 7 which is reproduced hereunder:

"It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoiceforfurther supply is being issued by the

agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name ofthe agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title ofthe goods on behalfoftheprincipal.,,

17. The above para clearly brings out the fact that an important determinant of defining the nature of principal —agent relationship in context of supply under GST is whether the invoice to the customer consumer is being issued by the agent in his own name or otherwise. Where the invoice to the customer is being issued by the agent in his own name then there would be two supplies

i.e. one from the principal to the agent and another from the agent to the customer. However, where the invoice to the customer is being issued by the agent in the name of the principal then there would be only one supply i.e.
from the principal to the customer. This is an important aspect for the issue in hand as the nature of the entry in the notification hinges on identification of supplier and the recipient and the supply thereto.

18. Now, the question is concerned as to for the purpose of Notification No.4/2017-CT dated 28th June, 2017 who is supplier of goods as per the column No-4 to attract the provisions of RCMe Supplier has to be agriculturist and recipient has to be a registered person. Now issue arises whether the supplier of goods for the purpose RCM Notification includes its agent or not. As detailed earlier, the definition of supplier of

goods in section 2(105) of the CGST Act includes his agent and, therefore, KachaArhtiya becomes supplier of goods. If a view is taken that supplier of goods is only the agriculturist and not KachaArhtiya, then it goes against the very definition of supplier so also goes against the logic as an agent is working in the capacity of having authority to act on behalf of principal. In other words, an agent enters into the shoes of principal. Thus, for the purpose of the said notification, the expression "agriculturist" would include the agent who acts on the behalf of the said person.

19. The contention of the appellant is that the Kacha Arhtiya is an agent of the agriculturist within the scope of circular No. 57/31/2018 dated 04th of September, 2018 and is therefore, the recipient of goods from the agriculturist and liable to pay GST under reverse charge mechanism. It needs to be comprehended that the said Circular only clarifies as to whether agent is required to be registered or not under the CGST Act. The crucial factor has been clarified in the last line of para 7 is "whether the agent has authority to pass on or receive the title of goods on behalf of principal".In cases where agent issues the invoices on behalf of buyer, he gets a authority to pass on title on behalf of principal and therefore, he is covered under the definition of agent for the purpose of schedule 1 but in the cases where the agent does not get any authority to pass on title of goods and a title directly passes on from principal

to the buyer (without moving through agent) in such situation the agent transaction with the principal are not covered under schedule 1. Accordingly, in para 9 of the said circular, it has been clarified that agent will be required registered under section 24(vii) being a person the causes taxable supply of goods or services on behalf of principle in a situation where such agricultural produce is not exempted. This circular does not talk about RCM liability at all which is covered under Notification No.4/2017-Central Tax (rate) dated 28th June, 2017 (as amended) vide Entry No.4A provides that in case of supply of raw cotton supplier of goods being agriculturist the liability to pay GST will

arise on recipient of supply in case such recipient is a registered person. For interpretation of this notification it is necessary to see who is supplier of goods and in terms of Section 2(105) supplier includes it is an agent, therefore, KachaArhtiya, by virtue of being an agent of the agriculturist steps into the shoes of supplier of goods and registered person receiving such goods is liable for discharge of tax under RCM liability.

20. Schedule Il to the CGST Act, 2017 specifies the activities or transactions which are to be treated as supply of goods or services. This Schedule is aimed at enumerating as to which supplies under the Act will be treated as supplies of goods and which supplies will be treated as supply of services under the
CGST Act, 2017. In the said Schedule, the entry I(b) reads as under:

"SCHEDULE 11

[See Section 7 CGSTAcd

"Activities or Transactions " to be treated as Supply ofGoods or Supply ofServices
1) Transfer

(b) any transfer ofright in goods or ofundivided share in goods without the transfer oftitle thereof, is a supply ofservices;

From the above, it becomes clear that the any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services and not goods. It is anaccepted position that Kach Arhtiya does not

hold title to the raw cotton so supplied to him by the agriculturist. However, from the activities so enumerated in para 3 of this order, he gets the right in goods in respect of receiving, storing, cleaning, grading and finally auctioning of raw cotton which he receives from the agriculturist without getting any title over the raw cotton. Therefore, in terms of above entry of Schedule II, this transfer is deemed as supply of services for the purpose of CGST Act, 2017.

21. This brings us to the RCM Notification No.4/2017-CT dated 28th June, 2017 as reproduced in para 4 of the ordern As is abundantly clear from the notification, RCM liability is in respect of supply of goods and not in respect of services in connection with goods. Hence, as discussed above, the transaction between an agriculturist and that of Kaccha Arhtiya is a transaction involving supply of services and therefore, by no stretch of imagination, it could be covered under RCM Notification Noe4/2017-CT dated 28th June, 2017 as reproduced in para 4 of this order.

22. Even, for the sake of argument, if the contention of the appellant is given credence, then it would emerge that an agent who is acting on behalf of principal, would be liable for the GST liability which would perforce imply that the principal i.e. the agriculturist is responsible for discharge of GST liability, This will defeat the very purpose of reverse charge mechanism as provided under Section 9 of the GST Act, 2017. Any interpretation which leads to illogical conclusion has to be eschewed. Therefore, it is clear that by no canon of interpretation, Kacha Arhtiya can be made liable to pay GST in terms of Notification No. 4/2017-CT dated 28th June, 2017(as amended). Moreover, the ultimate objective of RCM is to fix the GST liability on the person who is better organized being engaged in the business of supply of goods and services. Pakka Arhtiya by its very nature of activity is much more organised in the business dealing as compared to Kacha Arhtiya as he is purchasing cotton primarily for trading and hence is

having much higher level of business volume and turn over. This also logically leads to fixing the liability of GST on Pakka Arhtiya in terms of sub-section (3) of Section 9 of CGST Act.

23. The submission of the appellant regarding the order of Appellate Authority for Advance Ruling, Haryana has conveniently overlooked the basic nature of the ruling given by the Authority for Advance Ruling. The said rulings are in the nature of "in personam" and not "in rem" and therefore their applicability as well as their protection cannot be sought by the others who were not party to the said proceedings.

246 In view of the foregoing discussions, we pass the following order:

ORDER

We uphold the order AAR/GST/PB/30 dated 10th of November, 2022 issued by the Authority for Advance Ruling, Punjab and the appeal filed by the appellant

M/S Bansal Industries stands dismissed on all counts.

Rajesh Puri
Chief Commissioner,
CGST and CX zone, Chandigarh,
Chandigarh

Kamal Kishor Yadav, IAS,
Commissioner of State Tax,
Punjab.
Place: Chandigarh

2. Order No. 02/AAAR/PSPCL/2023 333-35

PUNJAB APPELLATE AUTHORITY FOR ADVANCE RULING

Order No. 02/AAAR/PSPCL/2023 333-35 Dated: 20.03.2023

Present:

1. Sh. Rajesh Puri, Chief Commissioner, IRS (CUT), CGST Commissionerate, Chandigarh Zone, Chandigarh
2. Sh. Kamal Kishor Yadav, IAS, Commissioner of State Tax, Punjab

Name and Address of appellant	M/S Punjab State Corporation Power Limited, PSEB Head Office, The Mall Patiala, Punjab-147001
GSTIN	03AAFCP5120QIZC
Date of Application	31-10-2022
Represented By	Mr. Atul Gupta, Chartered Accountant
Date of Personal Hearing	9th ofFebruary, 2023
Order of Authority of Advance Ruling	AAR/GST/PB/07 dated 29.09.2022 issued by the Punjab Authority for Advance Ruling, Punjab

PROCEEDINGS

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Punjab Goods and Services Tax Act, 2017, (hereinafter referred to as, "CGST Act, 2017 and PGST Act, 2017") are the same except for certain provisions Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the PGST Act.

FACTS OF THE CASE:

M/S Punjab State Power Corporation Limited (PSPCL) (hereinafter referred to as, "the appellant") holding GSTN 03AAFCP5120QIZC is a Punjab Government undertaking engaged in generation and distribution of Electricity.

2. The transmission or distribution of electricity is exempt under GST Act, vide Notification No. 12/2017 dated 28th June, 2017 (Tariff heading 9969). For the generation of electricity, the appellant requires essential raw-material "Coal" which is being procured by them from Coal India Limited (CID. In order to comply with the guidelines laid down by the Ministry of Environment and Forest, they are mandatorily required to get the raw coal washed before captive consumption for meeting the stipulated percentage ash. To undertake this activity, the appellant have engaged some washeries in private sector on job work basis for the job of coal beneficiation who in turn supplies the washed coal to the applicant. During the process of washing of coal at the washery/job worker, certain low quality coal is also generated which is commonly referred to as -Coal rejects" which is disposed off/ sold directly by the washery/job worker in an environment friendly manner

3. The appellant filed an application before the Authority for Advance Ruling, Punjab (hereinafter referred to as, "AAR, Punjab"). The appellant sought Advance Ruling on the following questions before the AAR, Punjab:

1. Whether the coal rejects whose invoice is raised by the applicant upon washery/job worker is taxable under GST Act and Compensation cess Act in the hands of Applicant?
2. If the answer to above question is yes, whether Applicant is eligible to avail Input Tax Credit (ITC) of GST and Compensation Cess of raw coal brought from its supplier and transferred to washery/job worker for cleaning? and

3. If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

4. AAR Punjab disposed off the said application of the appellant vide Order No.AAR/GST/PB/07 dated 29th of September, 2022. The point-wise rulings of the AAR Punjab are enumerated as under:

1. Whether the coal rejects whose invoice is raised by the applicant upon washery/job worker is taxable under GST Act and Compensation cess Act in the hands of Applicant?

   Advance Ruling: Yes, Coal rejects are to be classified under I-ISN 2701 and are taxable at 5% GST Rate + Rs 400 PMT compensation Cess.

2. If the answer to above question is yes, whether Applicant is eligible to avail Input Tax Credit (for brevity, "ITC") of GST and Compensation Cess of raw coal brought from its supplier and transferred to washery/job worker for cleaning?

   Advance Ruling: Where the goods are being received in lots or instalments, the registered person shall he entitled to take credit upon receipt of the last lot or instalment. Thus, if the applicant fulfils the eligibility conditions as prescribed under Section 16 of CGST Act, 2017 and PGST Act, 2017 and if the type of ITC does not fall under the categories prescribed under Section 17 of CGST Act, 2017 and PGST Act, 2017, the applicant is eligible to avail Input Tax Credit of GST and Compensation Cess of raw coal brought from its supplier and transferred to washery/job worker for cleaning. Further, the "principal" shall he entitled to avail ITC in relation to goods sent directly to the premises of job-worker.

3. If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

Advance Ruling: The formula prescribed under Rule 42 of CGST and PGST Rules,2017 for manner of determination of input tax credit in respect of inputs or input services and reversal thereof will be applicable in both cases i.e. GST and Compensation Cess. Therefore, the provisions prescribed under Rule 42 of CGST and PGST Rules, 2017 should he followed by the applicant and they have to make reversal in the proportion of exempt/taxable turnover.

5. Appeal before the Appellate Authority for Advance Ruling, Punjab: The appellant aggrieved by the said order passed by the AAR, Punjab, filed an appeal with the Appellate Authority for Advance Ruling, Punjab seeking further clarification to para 3 of their application. The appellant submitted that the impugned order lacks clarity insofar as Ruling on Question no. 3 of their Advance

Ruling application is concerned and AAR, Punjab, did not take cognizance of various factual and legal aspects. The appellant has also submitted that in order to answer the 3rd question of the Applicant concerning the 'admissible proportion of ITC available to the Applicant', AAR vide Para 8.6 of Impugned Order has simply pronounced a ruling that the same will be governed as per Rule 42 of CGST Rules, 2017 ("the Rules") and later ruled that ITC is admissible to the Appellant in proportion of taxable & exempt turnover, The appellant sought further clarity on Rule 42 of the CGST Rules as how to calculate the admissible ITC applicable to them as they are engaged in taxable as well as exempted supplies.

6. RECORD OF PERSONAL HEARING:

The appellant was accorded the opportunity of Personal Hearing and Sh. Atul Gupta, Chartered Accountant appeared for the Personal Hearing on 09th of February, 2023 and

submitted that the appellant is purchasing coal and after the washery operation, some part of coal is sold as such. They submitted that on the portion which is going into the exempted activity the ITC reversals should be based on the actual quantum of compensation cess paid on such coal instead of adoptmg value of such coal for the purpose of Rule 42 and Rule 43 of the CGST Rules, 2017 and equivalent SGST Rules. The reason for this request is that compensation cess is levied on specific basis and not on the basis of ad-valorem basis.

6.2 On being asked whether Rule 42 and 43 provides for adoption of quantity as the criteria for apportionment, the Authority observed this would mean that we intend to rewrite Rule 42 and Rule 43 of the CGST Rules, 2017. To this, the appellant replied that the compensation cess is out of purview of the said rules as it is not on ad-valorem but on specific basis.

6.3 Further, the Appellate Authority desired to know under which clause of subsection (2) of section 97 of the CGST Act, 2017 they are seeking Advance Ruling to which they replied that they are seeking Advance Ruling under clause (d) of the said sub-section which provides admissibility of ITC on tax paid or deemed to have been paid.

7. DISCUSSIONS AND FINDINGS:

We have carefully examined the appeal filed by the appellant and the additional submissions made by appellant and observed that the AAR, Punjab have covered the
application of the appellant under the ambit of clause 3 of sub-section (2) of Section 97 of the CGST Act 2017, whereas the appellant during the Personal Hearing submitted that they have sought Advance Ruling under clause (d) of sub-section (2) of Section 97 of the CGST Act,2017 which provides for admissibility of ITC on tax paid or deemed to have been paid.

7.2 In light of the aforementioned submissions of the appellant, the following questions require examination before going into the merits of the case;

(a) Whether the issue raised by the appellant before the Authority for Advance Ruling is maintainable as per the provisions of:

i. Clause (c) of sub-section (2) of Section 97 of the CGST Act,2017, as stated in the para 4 of the Order passed by the AAR, Punjab; or

ii. Clause (d) of sub-section (2) of Section 97 of the CGST Act,2017, as submitted by the representative of the appellant during the Personal Hearing.

(b) Whether the AAAR is empowered to remand back the case on the issue of maintainability (Case laws)

7.3 On the issue raised in point (a) above we are of the opinion that the question of maintainability was not examined at the AAR stage and it would be in the fitness of the things that the issue be re-examined by AAR itself.

7.4 Further, on the issue raised in point (b) above, it is to state that as per subsection (1) of Section 101 of the CGST Act 2017, the appellate authority may pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to. The relevant portion of the Section is reproduced as under:

"The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.“

(emphasis supplied)

As the power of remand back is not clearly detailed in the provision, it would be in fitness of things to refer to other Acts wherein similar provisions have been provided to appellate authorities.

For this we refer to the powers so provided to Commissioner (Appeals) under the erstwhile Central Excise Act, 1944. The relevant section is reproduced as under:

"35A The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against.”

Further, reference is invited to sub-section (5) of Section 85 of Finance Act, 1994, which is reproduced as under:

"(5) Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (l Of1944). "

A bare perusal of the above sections shows that the language used in the section 35A (as applied to cases of Service tax vide Section 85(5)) is similar to that used in Section 101 of CGST Act, 2017. Therefore, the jurisprudence so developed over the years may be referred as para-materia while ascertaining the ambit and scope of the powers of the AAAR.

7.5 Therefore, we refer to the following cases for better understanding the scope and ambit of powers to Appellate Authority and whether the same includes power to remand back:

a) The Hon'ble Supreme Court in U01v. Umesh Dhaimode, 2002-TIOL-415-SCCUS, in the context of Section 128(2) of the Customs Act, the Court held that "As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemedfit confirming, modifying or annulling the decision appealed against. An order ofremand necessarily annuls the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both these portions of the aforesaid provision, read together, necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before it and to remand the matter to the authority belowforfresh decision.”

b) In the case of Commissioner of Central Excise vs Medico Labs and Anr.(2004) 192 CTR Guj 112, wherein the Hon'ble High Court of Gujarat has held that:

i. "We must also state that even after amendment, which has come into force w.e.f 11th May, 2001, powers of remand by allowing the appeal of the Commr.(A) have not been taken away specifically. In that view of the matter, we are of the considered opinion that the appellate authority, viz., Commr.(A) was vested with the power while deciding the appeal as he deemedfit by confirming, modifying or annulling the decision or order appealed against him. In our considered opinion, order ofremand necessarily annuls the decision, which is under appeal before the appellate authority. Therefore, we entirely agree with the view taken by the learned single Member of the Tribunal that even after amendment ofSection 3514 of the Central Excise Act, the appellate authority has the power to set aside the decision, which is under appeal before it and it has power to remand the matter to the authority belowfor itsfresh consideration.

c) In the case of A.S. BABU SAH DESIGNS Versus COMMISSIONER OF C. EX. (APPEALS), CHENNAI-I {2020 (38) G.S.T.L. 161 (Mad.) IN THE HIGH COURT OF JUDICATURE AT MADRAS}it was observed that Commissioner (Appeals) can pass orders as he thinks fit including an order of remand.

d) In the case of M/S ALD Automotive Pvt. Ltd. Vs, Asst. Commissioner of Commercial Taxes (Audit)-l Bengaluru in the Writ Petition Nos. 1331513316 of 2017 and WP Nos. 13752-13773 of 2017 (T-RES), decided on 26.06.2017 reported - 2017(7) GSTL 290 (Kar.) held as under in para 8 and 9:

"8 Needless to say, a reasoned order is an essential requirement of the principles of natural justice, In catena of cases, the Hon 'ble Supreme Court has observed that even a quasi-judicial body is required to give reasons in its order. For, such orders

are appealable in nature; for, such orders adversely affect the rights of the people, therefore, both the Appellate Authority and the adversely affected party have right to know the reasons for the quasi-judicial body while passing ofits order.

"Thus, the Assessing Officer is duty bound to give cogent reasons for rejecting the specific plea raised by the petitioner. However, the Assessing officer hasfailed to do so.

9. Thus, for the reasons stated above, this court has no other option but to set aside the assessment order dated 21.022017 and the assessment order dated 01.03.2017, and to remand the case back to the Assessing officer. This court directs the Assessing officer to give an opportunity of personal "hearing to the petitioner, and to deal with each and every plea raised by the petitioner".

(d) In the case of Commissioner of Service Tax Vs. Associated Hotels Ltd. [2015 (37) STR 723 (Guj.)], the Hon^{t}ble High Court of Gujarat has given its verdict as to whether the Commissioner (Appeals) exercising powers under Section 85 of the Finance Act, 1994 has the power to remand the proceedings back to the adjudicating authority, the relevant portion of para-4 is reproduced as under:

"Ifproper inquiry is not conducted or the proceedings is decided ex parte, it would not be necessary in every case that the Commissioner (Appeals) converts himself to the adjudicating authority and conducts the entire inquiry necessary for proper adjudication of the issues. In such a case, the Commissioner (Appeals) may as well

„ decide to remand the proceedings, and we see no limitation on his powers to do SO.

(e) Further, in this regard we would also like to rely upon the order of the Principal Bench of CESTAT, New Delhi in the case of Commissioner of Central Excise, Meerut-ll Vs. Honda Seil Power Products Ltd.

[2013(287) ELT 353 (Tri.-De1.)1.

The tribunal in the above referred case had held that "There may be circumstances where only just and proper order could be remand of the matter for fresh adjudication. For example, if the order-in-original is passed without giving opportunity of being heard to the assessee or without permitting him to adduce evidence in support of his case then only order-in-appeal by the Commissioner (Appeals) could be to set aside the impugned order on the ground offailure ofjustice. This would create an anomaly and cause prejudice to the Revenue as it would bring an end to the litigation without adjudicating on the demand raised by the show cause notice. Therefore, only just and proper order in such a case would be the order of remand to adjudicate the matter de novo after giving due hearing to the assessee.

Thus, we are ofthe view that power to remand the matter back in appropriate cases is inbuilt in Section 35A(3) ofthe Central Excise Act, 1944. "

7.6 We, also observe that the direction for remand has also been resorted to by other AAARs in the following cases:

a) M/S D.M Net Technologies-Gujarat AAAR Order dated 22.08.2022

b) M/S Myntra Designs Pvt. Ltd. —Karnataka AAAR Order dated 21.1162022

Hence, from the above, it is apparent that the appellate authority can remand back the appeal of the appellant to the AAR, Punjab to re-examine the maintainability of the application filed by the appellant as per sub-section (2) of Section 98 of the CGST

Act, 2017and accordingly pass the order on merit.

ORDER

Without going into the merit of the case, we remand the appeal of the appellant to the AAR, Punjab to re-examine whether the application of the appellant is covered under sub-section (2) of Section 97 of the CGST Act,2017 or otherwise and pass an order on its maintainability.

The appeal stands disposed off accordingly.

Rajesh
Chief Commissioner,
CGST and CX zone, Chandigarh,
Chandigarh

Place: Chandigarh
Kamal Kish r Yadav, IAS, Commissioner of State Tax, Punjab.

3. GST on supply of domestically procured goods to customers outside India

Case Name : In re Marubeni India Pvt. Ltd. (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 14/2023

Date of Judgement/Order : 20/03/2023

Courts : AAR Karnataka (432) Advance Rulings (3141)

In re Marubeni India Pvt. Ltd. (GST AAR Karnataka) Whether the supply of goods from the Applicant to the overseas customer is taxable under GST as a zero rated supply or not? The applicant stated that they are a Private Limited Company registered under the provisions of

CGST/KGST Act 2017; they are engaged in trading of finished goods and also in providing support services to customers located outside India; they intend to enter into a new business transaction wherein the applicant would be engaged in supplying domestically procured goods to customers outside India. In view of the foregoing, the applicant sought advance ruling as to **"Whether the supply of goods from the Applicant to the overseas customer is taxable under GST as a zero rated supply or not"**

There are two transactions involving the applicant. The first transaction is of supply of goods by the manufacturer to the applicant and the second transaction is of supply of the same goods by the applicant to an overseas customer.

As per the agreement with the applicant, the Indian manufacturer undertakes to supply the goods and complete all the export compliances including filing of Shipping Bill as an exporter and also receives Bill of Lading from shipper.

It is seen that the person claiming 'exporter' is the owner of the goods, and also the bill of lading is proof of title of goods when the goods are handed over to the shipper. Since the manufacturer files the shipping bill as exporter and also gets the bill of lading issued to him, he is the owner of the goods and holds the title of goods till they cross the customs frontiers of India. In effect the manufacturer takes the goods out of India to a place outside India while he is holding ownership and title of the goods, i.e., he exports the goods in terms of Section 2(5) of the IGST Act, 2017. Thus the manufacturer is the exporter of goods. Therefore in the first transaction of supply of goods by the manufacturer to the applicant, the place of supply of goods shall be the location outside India in terms of Section 11(b) of the IGST Act, 2017.

In respect of the second transaction involving the supply of the same goods by the applicant to overseas customer, it is observed that the goods are supplied from a location outside India to a location outside India, i.e., the supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. The said transaction is covered under Entry 7 of Schedule III of CGST Act, 2017 as a transaction or supply which shall be treated neither as a supply of goods nor a supply of services.

4. GST on supply of aircraft type rating training services to commercial pilots

Name : In re CAE Flight Training (India) Private Limited (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 13/2023

Date of Judgement/Order : 20/03/2023

Courts : AAR Karnataka (432) Advance Rulings (3141)

In re CAE Flight Training (India) Private Limited (GST AAR Karnataka) Whether the supply of the aircraft type rating training services to commercial pilots in accordance with the training curriculum approved by the Directorate General of Civil Aviation for obtaining the extension of aircraft type ratings on their existing licenses would be covered under Sl.No.66(a) of the Notification No.12/2017-Central Tax (Rate) dated 28-06-2017 and Sl.No.66(a) of the Notification No.A.NI.-2-843/XI-9(47)/17-U.P.Act-1-2017-Order-(10)-2017 dated 30-06-2017, and thereby, exempted from levy of Central Goods and Service Tax and Karnataka Goods and Service Tax?

The supply of the aircraft type rating training services to commercial pilots, in accordance with the training curriculum approved by the Directorate General of Civil Aviation for obtaining the extension of aircraft type ratings on their existing licenses, do not result into a qualification as the applicant imparts training and issues only course completion certificate and thus the impugned services are not covered under SI. No. 66 (a) of the Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017 and thus are exigible to GST under the CGST/ KGST Act 2017.

5. GST on transfer/sale of one of independent running business divisions

Case Name : In re Pico2femto Semiconductor Services Private Limited (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 12/2023

Date of Judgement/Order : 20/03/2023

Courts : AAR Karnataka (432) Advance Rulings (3141)

In re Pico2femto Semiconductor Services Private Limited (GST AAR Karnataka)

a. Whether the transaction of transfer/sale of one of the independent running business divisions of the Applicant, namely, "business of providing / supplying of engineering services primarily relating to semi-conductor services" as a whole, along with all the assets and liabilities of the independent business division on a going concern basis, in terms of business transfer agreement dated 27.06.2022, entered into by the Applicant with M/s. Tessolve Semiconductor Private Limited, located at No.31/2, Phase-II, Electronic City, Bengaluru-560100, constitutes a transaction of "supply" under Section 7 of the CGST/SGST Acts?

The transaction of transfer/sale of one of the independent running business divisions of the Applicant, namely, "business of providing/supplying of engineering services primarily relating to semi-conductor services" as a whole, along with all the assets and liabilities of the independent business division on a going concern basis, in terms of business transfer agreement dated 27.06.2022, entered into by the Applicant with M/s Tessolve Semiconductor Private Limited, located at No. 31/2, Phase-II, Electronic City, Bengaluru-560100, constitutes a transaction of "supply" under Section 7 of the CGST/KGST Acts..

b. If, the answer to the above question / point is in affirmative, whether the transaction constitutes supply of taxable goods or taxable services or both? And would be the time of supply, value of supply and rate of tax applicable to such supply? The transaction constitutes supply of taxable services, the time of supply has to be determined in terms of Section 13 of the CGST Act 2017, the value of supply need to be determined in terms of Section 15(1) of the CGST Act 2017 and the rate of GST applicable on the transaction is 18% in terms of Entry No. 15(vii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended.

c. If, the answer to the First and Second questions are in affirmative, whether the recipient i.e., the purchaser/transferee of the business as a whole is entitle to claim the credit of the "input tax" paid on the said transaction? The question is about the entitlement of the input tax credit by the recipient of the service being provided by the applicant and hence can't be answered in terms of Section 95(a) of the CGST Act 2017. READ MORE

d. Whether the GST rate mentioned in Sl.No.2 of the notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 is applicable to the applicant? The benefit of entry at SI number 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017 is applicable to the applicant subject to fulfilment of the condition/s of a going concern.

6. GST applies on Voluntary Gratuitous Payment From Outgoing Member: AAAR

Case Name : In re Monalisa Co-Operative Housing Society Limited (AAAR Maharashtra)

Appeal Number : Advance Ruling No. MAH/AAAR/DS-RM/18/2022-23

Date of Judgement/Order : 23/03/2023

Courts : AAAR (470) AAR Maharashtra (479)

In re Monalisa Co-Operative Housing Society Limited (AAAR Maharashtra) In the instant case, outgoing member of the society, Mr Sanjay Prakash Sahjwani, has made payment of Rs 17,70,000/- to the society which appellant claims to be voluntary contribution on his own will and volition. On bare perusal of the affidavit submitted by the appellant in respect of an outgoing member by the name Mr. Sanjay Prakash Sahjwani mentions that the amount of Rs 17,70,000/- is being given towards 'Building Betterment Fund'. It is clearly stated in the affidavit that the said amount is inclusive of GST. Further, the appellant has also submitted a copy of the Affidavit of Shri Chandresh Thakker, Treasurer of the Appellants Society, before the MAAR. On bare perusal of the affidavit submitted by the Treasurer, it is clear that the amount given by the outgoing member Mr. Sanjay Prakash Sahjwani (towards `Building Betterment Fund') has been transferred by the Appellant Society towards 'Major Repair Fund'. Appellant accounted the said transaction of Rs 17,70,000/- in its books of accounts on 7-3-2020 under the accounting head "Major Repair Fund" and has reported Net amount of Rs 15,00,000, CGST 9% of Rs 1,35,000/- and SGST 9% of Rs 1,35,000/-. Appellant has also received transfer premium of Rs 29,500/- [25,000 Net+2250 CGST+2250 SGST]from the outgoing member Mr Sanjay Sahjwani which Appellant has accounted in its books of account on 7-3-2020.

MAAR has observed that considering the Model Bye Laws No. 7 (e) & 38 (e) (ix) of the Cooperative Housing Societies, appellant cannot recover additional amount towards donation or contribution to any other funds or under any other pretext from transferor or transferee by the housing society. Society cannot collect amounts as voluntary donations from Transferor or Transferee in excess of premium i.e. Rs. 25,000/- fixed by the society for transfer of flats. We concur with the views of MAAR that the society cannot at all accept voluntary donations from a Transferor or Transferee in transgression of the Model Bye Laws of Cooperative Housing Societies in Maharashtra.

MAAAR concur with the observations of MAAR that the appellant is trying to give a colour of `voluntary and gratuitous' payment for amount received from a Transferor/Outgoing member which is collected and will be used for carrying out Major Repairs in future as is evident from the Affidavits submitted by the outgoing member Mr Sanjay Sahjwani and Shri Chandresh Thakker, Treasurer of the Appellant Society. Accounting entries in the books of accounts also supports the view taken by MAAR.

Therefore, MAAAR concur with the observations of MAAR that the said contribution by the outgoing member is nothing but Advance amounts paid to the society for services carried out or to be carried out for the members of the Society and is therefore taxable as per the GST Laws.

7. GST on preferential location charges & Other charges levied by a builder

Case Name : In re Puranik Builders Limited (GST AAAR Maharashtra)
Appeal Number : Advance Rulings No. MAH/AAAR/DS-RM/19/2022-23
Date of Judgement/Order : 30/03/2023
Courts : AAAR (470) AAR Maharashtra (479) Advance Rulings (3141)

In re Puranik Builders Limited (GST AAAR Maharashtra) Insofar as the challenge to the levy of service tax on taxable services as defined under section 65(105) (zzzzu) is concerned, we do not find any merit in the contention that there is no element of service involved in the preferential location charges levied by a builder. We are unable to accept that such charges relate solely to the location of land. Thus, preferential location charges are charged by the builder based on the preferences of its customers. They are in one sense a measure of additional value that a customer derives from acquiring a particular unit. Such charges may be attributable to the preferences of the customer in relation to the directions in which a flat is constructed; the floor on which it is located; the views from the unit; accessibility to other facilities provided in the complex etc. As stated earlier, service tax is a tax on value addition and charges for preferential location in one sense embody the value of the satisfaction derived by a customer from certain additional attributes of the property developed. Such charges cannot be traced directly to the value of any goods or value of land but are as a result of the development of the complex as a whole and the position of a particular unit in the context of the complex. Thus, it is an attempt on part of the appellant to subsume various other charges collected on the guise of Construction Services provided by him. The other charges collected by the appellant is clearly distinguishable from the main services provided.

Hence, in view of the above facts and discussion, it is clear that charges in respect of some services are inextricably linked while other services are independently provided to the customer. The dominant intention test and principles for determination of naturally bundled services point out the independent nature of some of the services. Therefore, following services are clearly identifiable as bundled services:

(i) Water connection charges;
(ii) Electric meter installation and deposit for meter;
(iii) Development charges;(iv) Legal fees.

These aforesaid services are considered as naturally bundled services and taxable as per the rate of construction services. On the other hand, services of:

(i) Club House Maintenance;
(ii) Advance Maintenance;

(iii) Share of Municipal Taxes (pertaining to period after occupancy)
(iv) Formation and registration of the organization and legal charges in connection there with;
(v) Share money, Application & entrance fee of the organization;
(vi) Infrastructure charges

are determinable as independent supplies. The rate of tax thereon would be as per the respective service codes as mentioned in rate notification. The rate of tax on the inextricably linked services would be 12%

AAAR, hereby, partly set aside the MAAR Order No. GST-ARA-68/2019-20/B-52 dated 27.08.2021 by holding that, in the facts and circumstances of the case, the other charges which are inextricably linked to services by way of construction of residential apartment /dwelling are part of a bundled service with principle service of construction of residential apartment /dwelling. The rate of tax applicable on such services would be 12% as applicable to the construction service. The other charges that don't pass the muster of indicators of a bundled service are held as supply of independent services. They are to be taxed as per the respective SAC codes and rate of tax thereon. As per the submission of the appellant, he has collected 18% of GST on the supply of such services. In respect of services which are allowed as bundled services, the present decision implies an excess collection of tax. It is hereby directed that the Appellant to refund the excess tax collected to the customers. Thus, the appeal filed by the Appellant is, hereby, partly allowed.

Read AAR order : 'Other Services' not part of Composite supply with Main Construction Service, chargeable to GST @ 18%

8. 18% GST applicable on liquidated damages for non-performing of an act

Case Name : In re AP Power Development co. LTD. (GST AAR Andhra Pradesh)
Appeal Number : Advance Ruling No. AAR No. 04/AP/GST/2023
Date of Judgement/Order : 31/03/2023
Courts : AAR Andhra Pradesh (161) Advance Rulings (3146)
In re AP Power Development co. LTD. (GST AAR Andhra Pradesh)

1. Whether liquidated damages collected by the APPDCL from CHETTINAD LOGISTICS PRIVATE LIMITED for non-performing of an act constitute as supply as per Section 7 of GST act.

Answer : Affirmative Question

2 : What is the classification under GST for such liquidated damages collected by the Service receiver from such service provider for Non performing of an act

Answer: The activity stated supra would be covered within chapter head 9997-'Other Services'

Question 3: What is the Applicable rate of tax if the answer to the question number I is affirmative.

Answer: The activity stated supra is taxable at 18% (9% CGST and 9% SGST) liquidity rate of tax.

9. No GST on red gram dall supplied in secondary packing in 50 kg bag to AP State Civil Supplies Corporation

Case Name : In re Seetharamnjaneya Dal and Fried Gram Mill (GST AAR Andhra Pradesh)
Appeal Number : Advance Ruling No. AAR No. 03/AP/GST/2023
Date of Judgement/Order : 31/03/2023
Courts : AAR Andhra Pradesh Advance Rulings

In re Seetharamnjaneya Dal and Fried Gram Mill (GST AAR Andhra Pradesh) AAR held that GST not applicable on supply of 1 kg packing red gram dall secondary packing in 50 kg bag to the AP State Civil Supplies Corporation Limited, Vijayawada as per the design and label given by the corporation with a prior agreement.

In the instant case, the applicant is supplying red gram dall to the corporation in 1 kg packaging and secondary packaging in 50 kg bag. It is also contended by the applicant that AP State Civil Supplies Corporation Limited being an institution which supplies essential commodities under public distribution system, the above supply is not an 'Institutional supply' and is not exempted by rule 3(B).

The questions whether the primary pack of less than 25 Kgs, but are secondary packed in a pack above 25 kgs are covered by Legal Metlorgy Act or Not? Or whether the supply to AP Civil supplies is Institutional supply or Not are to be decided in the backdrop of the provision of Legal Metrology Act, but not under GST.

Be that it may, the first and foremost condition of taxability is that the commodity should have been a pre-packed commodity which means that the commodity is not packed for any specific known buyer. In the Instance case the applicant is packing the commodity at the behest and at the specific instructions of the buyer, ie., AP State Civil Supplies Corporation Limited. It is clearly evident from the package that the AP State civil have made very clear instruction as to the color, theme, transparency and the details to be printed on the package. Thus the commodity is packed for retail sale for any buyer who

may purchase at a later point, but it is packaged to a specific buyer. Thus the first and foremost condition of taxability is not satisfied. Hence there is no question of taxability of the commodity in the instant case. In view of this the discussion as primary / secondary packaging or Institutional supply is nothing but infructuous.

10. No GST on amount recovered from employees for canteen & Transport facility

Case Name : In re Brandix Apparel India Private Limited (GST AAR Andhra Pradesh)
Appeal Number : Advance Ruling No. AAR 02/AP/GST/2023
Date of Judgement/Order : 21/03/2023
Courts : AAR Andhra Pradesh (161) Advance Rulings (3146)

In re Brandix Apparel India Private Limited (GST AAR Andhra Pradesh)

AAR held that GST not applicable on the amount recovered from employees for canteen facility and on amount recovered from employees for transportation facilities provided to them.

The first issue is regarding provision of canteen services to the employees of the applicant by the third-party service provider. It is seen that the service provider, a third-party, is charging Rs 1538.25 per employee per month which is being paid by the applicant. Out of this amount, Rs 578 is being recovered from the employees from their salaries by the applicant. The applicant further submits that this is as per the requirements of Factories Act, 1948 which stipulates for a canteen facility with work force of more than 250. The applicant's work force is well over 11000 and therefore they are mandated to provide the canteen facility as per the Factories Act, 1948. It is clearly seen that the provision of service of canteen is by the third-party to the applicant and not by the applicant to their employees. As per Section 7 of the CGST ACT, supply includes all forms of supply of goods or services for a consideration by the person in the course or furtherance of business. The applicant is involved in the supply of manufacture of apparel and not in the activity of provision of canteen service. The canteen service is not an output service of the applicant as it is in the business of apparel manufacture. In fact, the canteen services are being received by the applicant from the third-party providers. Therefore, it can be concluded that the provision of canteen facility by the applicant to the employees is not a supply as it is not in the course or furtherance of business. Further, the applicant is merely collecting a part of the canteen expenses from the employee and this does not tantamount to supply as per Section 7 of the CGST and SGST Act.

Further, even if we analyse the transaction between the applicant and its employees, a reference to the GST Policy wing Circular 172/04/2022 dated 6th July 2022, para 2, serial

no 5, clarifies that any perquisites provided by the employer to its employee in are In lieu of the services provided by the employee to the employer in relation to the employment and therefore the perquisites provided by the employer to the employee will not be subjected to GST. As provision of canteen facility is a mandate as per Factories Act, 1940, we see that even considering the employee and employer transaction solely, GST is not applicable.

We therefore hold that the applicant is not liable to pay GST on the recoveries from the employees for the canteen services provided to them.

The second issue pertains to the provision of transportation services by a third-party to the employees of the applicant. The service provider is charging Rs 2,277 from the applicant per month per employee. The applicant is recovering Rs 350 per employee per month and bearing Rs 1927 on their account. As quoted in above para 7.1, the main business of the applicant is manufacture of apparel and they are not engaged in the business of bus transportation. The transportation services is not a supply for the applicant made in the course or furtherance of business and the recoveries made by the applicant from their employees does not fall under the definition of supply under Section 7. Further, the transportation services are being supplies by the third-party to the applicant and they are receiver and not supplier of the same. Therefore, it can be concluded that the GST is not applicable for the recoveries from the employees for the transportation services provided to them.

11. AAR refuses to admit application filed after initiation of Proceeding

Case Name : In re The Indian Hume Pipe Company Limited (GST AAR Andhra Pradesh)
Appeal Number : Advance Ruling No. AAR No. 01/AP/GST/2023
Date of Judgement/Order : 16/03/2023
Courts : AAR Andhra Pradesh (161) Advance Rulings (3146)

In re The Indian Hume Pipe Company Limited (GST AAR Andhra Pradesh)

It is observed by the members of the authority for advance ruling that, audit was initiated by the jurisdictional authority under section 65 of the CGST act, 2017 and APGST act 2017,to verify all the issues regarding the business activities of the applicant and also issued a notice to them in ADT-01 on 29-09--2021 and therefore their case falls under the first proviso to Sec 98(2) of the CGST Act, 2017 wherein their application is liable to be rejected as the question raised by them in the application is pending or decided in such proceedings before the audit officer.

The first proviso under Section 98(2) reads as follows: “Provided that the authority shall not admit the application where the question raised In the application is already pending or decided in any proceedings In the case of an applicant under any provisions of this Act”. Thus If the question raised Is pending or decided in any proceedings pertaining to the applicant the authority shall refuse to admit such application.

In the present case, the audit officer has Issued a notice in ADT-01 on 29-09-2021, while the application for advance ruling was filed on 06.09.2022. The application before the AAR was filed after the audit officer has initiated proceedings and this issue was not brought to the notice of the members while filing the application nor during the personal hearing. Thus as the proceedings are pending, when the application was flied before the advance ruling authority under chapter XIII of the CGST Act, 2017 regarding the question raised by the applicant, their application stands rejected.

(III) JUDGEMENTS

1. Delhi HC allows GST Registration cancellation from actual date of ceasing of business operations

Case Name : Parshant Timber Vs Commissioner of Delhi Goods And Services Tax and Another (Delhi High Court)
Appeal Number : W.P.(C) 1734/2023 & CM APPL. 6618/2023
Date of Judgement/Order : 10/03/2023
Courts : All High Courts (10160) Delhi High Court (2371)

Facts

1. The petitioner had made an application in the requisite form (Form GST REG-16) praying that his registration be cancelled with effect from 31.07.2021.
2. The reason for seeking cancellation of the registration was disclosed as 'Discontinuance of business/Closure of business'.
3. The concerned authority sent a notice dated 23.11.2021, stating that it was not satisfied with the petitioner's application for the following reasons: "Basic Details – Others (Please specify) – Please reply ASMT 10 and pay due tax with interest and penalty."
4. Subsequent to the said show cause notice, the respondents passed the impugned order dated 24.08.2022, cancelling the petitioner's registration with effect from 02.07.2017.

Held

1. It is apparent from the above that the said order has been passed without application of mind and without disclosing any reason.
2. there is no reason why the petitioner's cancellation was effected with retrospective effect. It is also clear that the order rejecting the petitioner's application for cancellation of registration, is unsustainable as it discloses no reason.
3. The respondents are directed to cancel the petitioner's registration with effect from 31.07.2021, as requested by the petitioner.
4. It is clarified that cancellation of the petitioner's GST registration with effect from 31.07.2021 as directed, will not preclude the respondents from taking any measure for recovery of tax, interest or penalty in accordance with law, if it is otherwise found due from the petitioner.

This judgement will be useful where these days, GST registration are being cancelled with retrospective effects July 2017.; thus even disallowing ITC to the purchasing parties from July 2017 till the actual date of operation.

The form 2A 2B are not showing ITC effective from July 2017 even, thus rendering jitters with the purchasing dealers and creating demands or SCNs for the above retrospective cancellations.

2. Petitioner-dealer has due right to cross-examine the selling dealer

Case Name : Jai Maa Kali Store Vs State of Odisha (Orissa High Court)
Appeal Number : STREV No.96 of 2018
Date of Judgement/Order : 02/03/2023
Courts : All High Courts (10160) Orissa High Court (164)

Orissa High Court held that petitioner-dealer has right to cross-examine the selling dealers, however, as more than two decades elapsed it might not be practical. Accordingly, assessment would stand completed at the figures disclosed in the return of petitioner-dealer.

Facts- The Petitioner-dealer is a wholesaler of grocery articles. The IST, Mobile Unit, Sambalpur submitted a fraud case report dated 29th November, 2002 on the allegation that the dealer had been involved in clandestine purchase of edible oil from two parties, one in Raipur (Chattisgarh) and the other from Andhra Pradesh. The three transactions were stated to be of a value of Rs.9,45,440/-.

The stand taken by the Petitioner-dealer was that of complete denial. He in fact advanced the plea inter alia that there was another establishment under the name and style 'M/s. Jai Maa Kali Store in Bargarh Town' and that the goods in question may have been purchased by that establishment. The Petitioner made a specific prayer before the STO that the alleged selling dealers should be summoned, so that he could have an opportunity of cross-examining them as regards the alleged purchase made by the Petitioner from them. However, the STO rejected this plea.

Conclusion- In the present case, considering that more than two decades have elapsed since those transactions, an opportunity being provided at this stage to the Petitioner to cross-examine the selling dealers might not even be practical. There was no requirement of the selling dealers to preserve any records or to produce such records even if summoned. The entire exercise would certainly at this stage be a pointless one.

For the aforementioned reasons, the Court is unable to sustain the impugned order of the Tribunal and the corresponding orders of the JCST and STO. The said orders are all, accordingly, set aside. The effect of this would be that the assessment would stand completed at the figure disclosed in the returns filed by the Assessee. The question framed is answered in favour of the Petitioner-dealer and against the Department.

3. Writ dismissed as in spite of various opportunity, non-appearance stating COVID as reason is unwarrantable

Case Name : Debabrata Das Vs Additional Commissioner (CGST & CE) (Calcutta High Court)

Appeal Number : WPA 485 of 2023

Date of Judgement/Order : 03/03/2023

Courts : All High Courts (10169) Calcutta High Court (533)

Calcutta High Court held that as submitted by assessee non-filing of reply and not appearing for hearing in spite of several opportunity simply stating reason of COVID-pandemic not justifiable. Accordingly, writ petition dismissed.

Facts- The petitioner is aggrieved by the Order-in-Original dated September 14, 2021 passed by the Additional Commissioner, Central Goods & Services Tax and Central Excise, Siliguri Commissionerate. The petitioner submits that the said order was passed without giving any reasonable opportunity of hearing to the petitioner. The proceeding arises from the show cause-cum-demand notice dated October 1, 2020 issued u/s. 73 of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017. The disputed period is 2015-16. The petitioner was asked to show cause within thirty days from the receipt of the notice as to why action would not be taken against him under the provisions of the aforesaid Acts. The petitioner submits that as the Corona Pandemic was at its peak at that point of time, it was absolutely impossible for the petitioner to collect all documents and submit the reply to the show cause within the time as specified in the show cause-cum-demand notice.

Conclusion- The initial show cause-cum-demand notice which was issued on October 1, 2020 ought to have been replied within the time specified in the said notice or immediately thereafter. The petitioner filed a reply to the show cause notice nearly ten months after the same was issued. Even at the adjudication stage, repeated opportunities were granted to the petitioner for production of necessary documents. The petitioner all along sought adjournments but never produced the necessary document before the authority either in person or in the virtual mode.

It does not appear that there was any bona fide intention on the part of the petitioner to produce the documents as sought for. The petitioner went on buying time by submitting repeated requests for adjournment. The Order-in-Original was passed on September 14, 2021. Even thereafter the petitioner chose not to file the appeal within the prescribed period.

4. Transportation of goods without a valid e-way bill mandatorily attracts penalty

Case Name : Pushpa Devi Jain Vs Assistant Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & Ors. (Calcutta High Court)
Appeal Number : WPA 178 of 2023
Date of Judgement/Order : 03/03/2023
Courts : All High Courts (10169) Calcutta High Court (533)

Calcutta High Court held that penalty under section 129 of the West Bengal Goods and Services Tax Act, 2017 duly imposed for transportation of goods without a valid e-way bill.

Facts- The petitioner challenges the order passed by the adjudicating authority under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017 and the order affirming the same by the appellate authority. The goods of the petitioner were found moving without a valid e-way bill. The vehicle was intercepted, inspected and thereafter detained as the person in charge of the goods failed to produce a valid e-way bill. The goods were later released upon payment of penalty.

Conclusion- Here, it does not appear that the authority acted in any manner contrary to law. Travelling without a proper e-way bill attracts penalty. The authority assessed the penalty amount and the petitioner deposited the same without a murmur. In view of the above, there is hardly any reason to interfere in the instant proceeding. The writ petition fails and is hereby dismissed.

5. Onus on buyer to establish genuineness of purchase to claim ITC under VAT: SC

Case Name : State of Karnataka Vs Ecom Gill Coffee Trading Private Limited (Supreme Court)
Appeal Number : Civil Appeal 230/2023
Date of Judgement/Order : 13/03/2023

The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per

section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act.

6. To invoke Section 67 of GST Act existence of 'reasons to believe' is mandatory

Case Name : Sandip Kumar Singhal Vs Deputy Commissioner (Calcutta High Court)
Appeal Number : WPA 321 of 2023
Date of Judgement/Order : 10/03/2023
Courts : All High Courts (10169) Calcutta High Court (533)

High Court held that that provision of Section 129(3) of the Act would not be invoked to subject a godown premises to search and seizure operation. For invoking Section 67 of the Act existence of reasons to believe to subject the premises to search and seize goods is mandated. Here, the authority is vacillating between Section 67 and 68; whether the goods are in transit or in the godown. In the case at hand it does not appear that the authority acted in accordance with the appropriate legal provisions and instead penalised the petitioner in a mechanical manner without proper application of mind. In view of the above, the impugned order of the adjudicating authority and the appellate forum are liable to be set aside and, are accordingly, set aside. The respondent authority is directed to refund the amount collected from the petitioner as penalty positively within four weeks from the date of communication of this order. It will, however, be open for the authority to assess the penalty, if any, payable by the petitioner for offloading goods and storing the same at a place not mentioned in the e-way bill.

7. 'Chokad' sold to NALCO not being an 'industrial input' doesn't attract 4% VAT

Case Name : Kamadhenu Cattle & Poultry Feed Unit Vs State of Odisha (Orissa High Court)
Appeal Number : STREV No. 33 of 2014
Date of Judgement/Order : 02/03/2023
Courts : All High Courts (10169) Orissa High Court (165)

Orissa High Court held that 'Chokad' sold to NALCO not being an 'industrial input'. Accordingly, Entry 74 of Part-II of Schedule 'B' of the OVAT Act attracting 4% VAT doesn't apply to the same.

Facts- This petition by the Assessee-dealer arises from an order dated 24th July, 2013 passed by the Odisha Sales Tax Tribunal, Cuttack allowing the appeal being S.A. No.28(V) of

2010-11. The aforementioned appeal arose from an order 26th February, 2010 passed by the Joint Commissioner of Sales Tax (JCST), Koraput Range, Jeypore confirming an assessment order passed by the Sales Tax Officer (STO), Koraput I Circle, Jeypore under Section 42(4) of the Odisha Value Added Tax Act, 2004 (OVAT Act) raising a demand of Rs.3,86,245.24 against the dealer for the period 1st April, 2005 to 30th September, 2006. In effect, the Tribunal concurred with the STO and the JCST that 'Chokad' sold by the dealer to NALCO, an Industry unit, would attract 4% tax in terms of Entry 74 of Schedule-B of Part-II of the OVAT Act for the aforementioned period.

Conclusion- Entry 74 of Part-II of Schedule 'B' of the OVAT Act applies only where an Industrial input is 'notified by the State Government', it would attract tax at 4%. It is not even the Department's case that any notification has been issued by the State Government stating that 'Chokad' is an Industrial input for the purposes of Entry 74 of Schedule 'B'. Without noticing this requirement in Entry 74, both the STO as well as the JCST fell into error in drawing an 'inference' that 'Chokad' sold to NALCO must 'naturally' have been used as an industrial input. This cannot be a matter of surmise or conjecture. If Entry 74 of Schedule 'B' had to be made applicable in order that the sale of 'Chokad' to NALCO is amenable to tax at 4%, then it was necessary for the Department to show that there was a notification issued by the State Government identifying 'Chokad' as an 'industrial input'. In the absence of such notification, no inference could have been drawn that 'Chokad' sold to NALCO was in fact an 'Industrial input'.

8. Penalty u/s 129 justified on transportation of goods without a valid e-way bill

Case Name : Abinash Kumar Singh Vs State of West Bengal & Ors. (Calcutta High Court)
Appeal Number : WPA 3374 of 2022
Date of Judgement/Order : 03/03/2023
Courts : All High Courts (10169) Calcutta High Court (533)

Calcutta High Court held that provisions of section 129 of the West Bengal Goods and Services Tax Act, 2017 opens with a non-obstante clause. Accordingly, imposition of penalty u/s 129 justifiable on transporting goods without a valid e-way bill.

Facts- The petitioner was transporting goods against an e-way bill which was generated on 23rd April, 2022. The vehicle of the petitioner was checked at the Cooch Behar check post on 28th April, 2022. The petitioner alleges that despite producing all necessary documents in connection with the consignment, the check post authority kept the vehicle waiting and deliberately did not issue gate pass permitting the vehicle to leave the check post. The vehicle was ultimately issued gate pass on 2nd May, 2022, by which time, the e-way bill expired on 30th April, 2022. After the vehicle was released from Cooch Behar and was on the way to the final destination, the same was intercepted and being found that there wasn't a valid e-way bill, Form GST MOV-01 and GST MOV 02 were issued with a prima facie opinion that the

consignment was not supported by any valid documents. A detention order was issued in Form GST MOV 06 and show cause notice issued in Form GST MOV 07 dated 5th May, 2022 in the name of the driver with a proposal for imposition of penalty u/s. 129 of the West Bengal Goods and Services Tax Act, 2017.

Conclusion- Transportation of goods with a proper e-way bill is one of the salient features of the Act. There is no scope to dilute the said provision of law for granting relief to an errant transporter. The Act cannot and ought not to be interpreted in such a manner that the very essence of the same is lost. Section 129 of the Act opens with a non obstante clause which lends a mandatory character to the same. The petitioner may or may not be directly responsible for the delay in issuance of the gate pass, but he is certainly at fault in transporting goods without a valid e-way bill.

9. Business Slips Seized from Third Parties in Search cannot be utilised for Assessment & Penalty: Kerala HC

Case Name : Yousaph C. Vs State of Kerala (Kerala High Court)
Appeal Number : O.T. REV. No. 81 of 2021
Date of Judgement/Order : 01/03/2023
Courts : All High Courts (10169) Kerala High Court (536)

The Hon'ble High Court of Kerala in Yousaph. C Vs. State of Kerala (O.T. Rev Nos. 81, 87 & 88 of 2021/dated: 01.03.2023) held that the data contained in the business slips recovered from a person who was present at the time of inspection at the premises and he had deposed that the seized slips are not connected with the assessee, has no evidentiary value for imposing penalty and making assessment under the provisions of the Kerala Value Added Tax Act,2003 (KVAT Act for short)

FACTS OF THE CASE

The petitioner/assessee is running a saw mill where he is engaged inter alia in the job work of sawing timber brought by third parties. There are also wood industry machines installed in the premises of the petitioner to cater to proximate customers and their requirements of wooden frames of doors, windows and for planing jobs etc. Pursuant to an inspection conducted at the saw mill of the petitioner on 4.9.2010, a shop inspection report was drawn up, and relying on the business slips seized from a third party present at the petitioner's premises on the said day, the Intelligence Officer, passed orders imposing penalties under the Kerala Value Added Tax Act,2003 for the assessment years 2008-09, 2009-10 & 2010-11. This was disputed in first and second appeals wherein matter was remanded. Again aggrieved by the fresh orders passed, the petitioner filed first appeals which were allowed, against which state preferred second appeals before the Tribunal. Meanwhile assessment orders had also been passed pertaining to the said years based on the penalty orders which were also come up before the Tribunal. The Tribunal decided the matter against the petitioner. The major dispute of the petitioner in appeals was about the legality of the penalty orders and assessment orders passed under the KVAT Act solely based on the business slips seized from a

third-party present at the time of inspection at the business premise of him. On tax revision being filed;

HELD BY THE COURT

The penalty orders were passed by placing reliance on the data contained in certain slips recovered from one Balachandran, who was present in the premises of the petitioner during the time of inspection. The said Balachandran, however, had deposed before the authorities that he was the employee of Sri. K.V. Abdul Rasheed and that he was at the petitioner's mill on that day only to supervise the sawing of material brought from Sri. K.V. Abdul Rasheed's premises. Sri. K.V. Abdul Rasheed and Sri. K.I. Sreenivasan, who were admittedly dealers in timber, had also admitted before the authorities that the details in the slips recovered from Sri. Balachandran pertained to their business and not that of the petitioner. Despite this admission by the dealers concerned, the Intelligence Officer, as also the Tribunal, felt that insofar as Sri. Balachandran had not objected to the recovery of the slips from him at the time of inspection or stated that he was the employee of Sri.K.V. Abdul Rasheed, his version could not be accepted. As rightly found by the First Appellate Authority, the fact that Sri. K.I. Sreenivasan and Sri. K.V. Abdul Rasheed were deposing against their own interests by admitting that the data in the slips pertained to their business, ought to have weighed with the Department to initiate an enquiry against the said persons to ascertain whether they had suppressed any turnover for the purposes of taxation. They could have done this simultaneously with a protective assessment against the petitioner assessee. On the contrary, the Intelligence Officer as also the Tribunal appears to have discarded this valuable evidence and mechanically presumed that the data contained in the slips recovered from the premises of the petitioner pertained to the business of the petitioner. Resultantly, these O.T. Revisions are allowed, by setting aside the impugned orders of the Appellate Tribunal and by answering the questions of law raised in favour of the assessee and against the Revenue. (Para 8).

10. Penalty u/s 129(3) leviable in absence of fresh e-way bill when goods are transferred to another vehicle during conveyance

Case Name : Asian Switchgear Private Limited Vs State Tax Officer (Calcutta High Court)
Appeal Number : WPA 340 of 2023
Date of Judgement/Order : 03/03/2023
Courts : All High Courts (10169) Calcutta High Court (533)

Calcutta High Court held that penalty under section 129(3) of the West Bengal Goods and Services Tax Act, 2017 imposable on failure to generate a fresh e-way bill when goods are transferred from one vehicle to another during conveyance.

Facts- The e-way bill was generated on 10th June, 2022 and the same was valid upto 21st June, 2022. The vehicle number against which the e-way bill was generated was specifically mentioned therein. The goods which were being transported against the aforesaid e-way bill were intercepted on 19th June, 2022, from a different conveyance, not mentioned in the e-way

bill. On demand, the person in charge of the goods and conveyance failed to produce any document in support of the said goods being transported by a different conveyance. As there was failure on the part of the person in charge to produce documents in support of the movement of the goods, the goods were seized and later released on payment of penalty under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017. Petitioner explained that as the vehicle in which the goods were originally loaded for transportation and e-way bill generated suffered a break down in the course of journey, accordingly, the person in charge had to arrange for a different conveyance for transporting the said goods.

Conclusion- Apart from the taxing purpose, the e-way bill is generated to identify the goods that are being transported, the place from where it is being transported, the final destination and the vehicle number by which the goods will be transported. The same implies that the goods cannot and ought not to be transferred from one vehicle to the other, far less, transported via a different vehicle, without obtaining a proper e-way bill. If the same is not followed, it will be practically impossible for the authority to keep track of the goods that are being transported and whether the statutory charges have been paid for such transportation. Though the petitioner insists that there was no other alternative but to transfer the goods to a different vehicle for transporting the same to the consignee, but the same ought to have been done only after generating a fresh e-way bill. Held that there is no requirement in law to verify the reason for transporting goods in a vehicle without a proper e-way bill. The petitioner admits that the vehicle in which the goods stood transferred for being transported allegedly to the pre-recorded destination, did not have an e-way bill. The Court is convinced that provision of Section 129 will be attracted in such a situation and has been rightly invoked by the authority.

11. Writ not entertained as option to file a statutory appeal to Appellate Tribunal available

Case Name : Rattan India Power Limited. Vs Union of India (Bombay High Court)
Appeal Number : Writ Petition No. 3201 of 2021
Date of Judgement/Order : 13/03/2023
Courts : All High Courts (10237) Bombay High Court (1566)

Rattan India Power Limited Vs Union of India (Bombay High Court) Bombay High Court dismissed the present petition as petitioner has the option to file a statutory appeal to the Appellate Tribunal and there is no reason why petitioner cannot avail of the statutory remedy of appeal.

Facts- By this writ petition filed under Article 226 of the Constitution of India, the Petitioner seeks to quash and set aside the order passed by Respondent No. 3 – the Principal Commissioner of Goods and Service Tax and Central Excise. This order levied service tax on the amount paid by the Petitioner to the State of Maharashtra for irrigation restoration charges. The Respondents have put forth a preliminary contention that the writ petition should not be entertained. They argue that the petitioner has an alternative and efficacious remedy of appeal

to the Customs Excise and Service Tax Appellate Tribunal and that no exceptional circumstances exist to justify interference in writ jurisdiction. The primary issue to be decided is whether the writ petition should be entertained, given the availability of the alternative remedy of appeal, as argued by the Respondents.

Conclusion- It was held that the Finance Act 1994 provided complete machinery to challenge the order of the assessment in appeals, the last one being before the Supreme Court. Further, even assuming that the first appeal would lie in this court and not the Supreme court, this is not a case where writ jurisdiction needs to be entertained when the petitioner has a remedy of a substantive appeal. The Adjudicating Officer had the jurisdiction to decide whether a particular activity attracts service tax or not, and the Petitioner has the option to file a statutory appeal to the Appellate Tribunal where the Petitioner can present all of its contentions. There is no reason why the Petitioner cannot avail of the statutory remedy of appeal. Considering all the circumstances, we find merit and uphold the preliminary objection raised by the Respondents that the writ petition should not be entertained.

12. Irregularity in service of order irrelevant when appellant had knowledge of order passed: SC

Case Name : Commercial Tax Officer Vs Neeraja Pipes Pvt. Ltd. (Supreme Court of India)

Appeal Number : Civil Appeal No. 760 of 2023

Date of Judgement/Order : 15/03/2023

Courts : Supreme Court of India (2033)

Commercial Tax Officer Vs Neeraja Pipes Pvt. Ltd. (Supreme Court of India) Supreme Court held that irregularity in manner of effecting the service of order irrelevant when appellants had the knowledge of order passed against them.

Facts- The appellant, Commercial Tax Officer (hereafter called "the revenue") is aggrieved by the judgment and order of the Telangana High Court, by which a writ petition filed by the respondent (hereafter "the assessee") was allowed. The assessee questioned the revenue, complaining that it did not provide copies of assessment order for the years 2005-06, 2008-09, 2009-10, and 2010- 11 under the Andhra Pradesh General Sales Tax Act, 1957 (hereafter "APGST Act") and Telangana State Value Added Tax Act, 2005 (hereafter "VAT Act") and for not lifting attachment order dated 03.02.20 12 and another, revised attachment order dated 20.02.2018 under Form V invoking the provisions of Revenue Recovery Act, 1864 (hereafter "the RR Act"), under Section 27 of the VAT Act. The revenue had issued assessment orders for the assessment years (AYs) 2005-06 to 2008-09, 2009-10 and 2010-11, under which ₹ 1,88,81,000/-, ₹ 2,38,84,000/- and ₹ 2,21,83,854/- was claimed respectively, as tax due and payable. The assessee argued, before the High Court that the revenue, despite several requests, did not furnish assessment orders, and that it was not aware of them. The High Court, in the present case, drew a distinction between two periods; for AY 2005-06 to 2008-09 it was held

that the assessments could not be called in question. So far as AY 2009-10 and 2010-11 were concerned, the court held that the attachment orders were invalid, since the assessment orders were not served.

Conclusion- This court in the case of Amina Bi Kaskar (D) by LRs. v. Union of India & Ors. held that if the appellants had the knowledge of the order passed against them, then in our opinion, so-called irregularity in the manner of effecting the service of the order on them, etc. was of no consequence and cannot be termed as illegal per se. In the present case, arguendo if the assessee was unaware, in the first instance regarding the issuance of assessment orders against it, at least when the revenue filed a writ petition (W.P. No. 25943/2011) complaining about Canara Bank's proposal to auction the assessee's properties, it had impleaded the assessee too. In the pleadings, there was a specific mention about the assessment orders, them having become final, and why those demands had to be given primacy as revenue dues, over and above the bank's dues. The assessee was served in those writ proceedings; however, it did not dispute the revenue's This, in the opinion of the court is a telling aspect, as it highlights the assessee's conduct in deliberately choosing to keep quiet, even when it could have raised a grievance.

13. Allahabad HC rejects Anticipatory Bail Plea of Ex Sales Tax Officer

Case Name : Munna Singh Ex Sales Tax Officer Vs. State of U.P. (Allahabad High Court)
Appeal Number : CR.P.C. No. 759 of 2023
Date of Judgement/Order : 02/03/2023
Courts : All High Courts (10237) Allahabad High Court (537)

Munna Singh Ex Sales Tax Officer Vs. State of U.P. (Allahabad High Court)

1. Heard Sri Pradeep Kumar Shukla, learned counsel for the accused-applicant as well as Sri Ratnendu Kumar Singh, learned AGA for the State and perused record.

2. The present bail application under Section 438 Cr.P.C. has been filed by the accused applicant seeking anticipatory bail in apprehension of his arrest in Case Crime No. 318 of 2007, under Sections 409, 420, 424, 467, 468, 471, 477, 218, 120-B I.P.C. and Section 13(2) of the Prevention of Corruption Act, Police Station Mandawali, District Bijnor.

3. Sri Ratnendu Kumar Singh, learned A.G.A. submits that the government has not granted sanction for prosecution of the accused applicant and there is no apprehension of arrest of the accused applicant immediately. He submits that unless the government grants sanction, charge sheet would not be filed. He submits that though the investigation is complete.

4. I find substance in the submission of the learned A.G.A. that there is no imminent for his arrest.

5. In view thereof, the present anticipatory bail is rejected.

6. However, it is kept open for the accused applicant to move a fresh application if there arises an apprehension of the arrest of the accused applicant.

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14. GST: Pre-arrest bail application rejected as apprehension of applicant of being arrested is baseless

Case Name : Kamlesh Majithia Vs Assistant Commissioner of Sale Tax And Anr (Bombay High Court)

Appeal Number : Anticipatory Bail Application No. 2321 of 2022

Date of Judgement/Order : 13/03/2023

Courts : All High Courts (10237) Bombay High Court (1566)

Kamlesh Majithia Vs Assistant Commissioner of Sale Tax And Anr (Bombay High Court) Bombay High Court rejected the pre-arrest bail as premature as the apprehension of the applicant that he will be arrested is without any basis.

Facts- This is an application for pre-arrest bail. The applicant apprehends arrest in respect of the offence punishable u/s. 132 of the Maharashtra Goods and Services Tax Act, 2017 investigated by the first respondent-Assistant Commissioner of Sale Tax. The applicant is a proprietor of 'Riddhi-Siddhi Enterprises' and has obtained GST registration. It is his case that the applicant is a service provider and his proprietary concern has never carried out trading of any goods. On 20/5/2022, the applicant was issued summons for his appearance before the respondent no.1. The investigation is alleged to have been initiated against 'Platinum Trading Company', a proprietary concern of Nitin Ramchandra Bansode. During the course of investigation, Nitin Bansode disowned the concern, stating that he is not aware of the same. The allegation is that the third party or operator obtained the registration with the intent to utilize the Input Tax Credit (ITC). It is alleged that the said concern has passed on ITC of Rs.567.28 lakhs without supplying of goods. The statement of Prakash Agarwal (proprietor of S. S. Scrap Traders) confirms that he had purchased the goods from the said 'Platinum Trading Company' through Salimullah Abdul Kuddus Khan and produced documents showing receipt of goods and payment of the value. Salimullah Khan was arrested by the first respondent on 10/5/2022. Kanak Jain was arrested on 12/5/2022 in connection with the aforesaid investigation. These accused have been released on bail.

The first respondent issued the summons to the applicant requiring his presence in its office. The applicant filed an application for anticipatory bail before the Sessions Court u/s. 438 of the Code of Criminal Procedure. The Sessions Court granted interim relief to the application by an order dated 13/6/2022.

Conclusion- From the record it appears that the applicant is not cooperating with the investigation and even not willing to attend pursuant to the issuance of the witness summons. In my opinion, the present application is premature and the apprehension that the applicant will be arrested without following due procedure of law is unfounded. The first respondent is bound to comply with the mandate of the law and upon adhering to the dictum laid down by the Hon'ble Supreme Court before effecting arrest.

15. Services provided by Ernst & Young India to overseas EY Entities is export of service

Case Name : Ernst And Young Limited Vs Additional Commissioner CGST (Delhi High Court)

Appeal Number : W.P.(C) 8600/2022

Date of Judgement/Order : 23/03/2023

Courts : All High Courts (10237) Delhi High Court (2379)

Ernst And Young Limited Vs Additional Commissioner CGST (Delhi High Court) In the present case, the petitioner has provided professional services in terms of the service agreements to overseas entities (EY Entities). It had issued the invoices for the said services directly to EY Entities and had received the invoiced consideration from EY Entities, in foreign convertible exchange. As stated hereinbefore, there is no dispute that the professional services were, in fact, rendered by the petitioner. The Adjudicating Authority has proceeded on the basis that since the service agreements were between EY Entities and the petitioner's head office (E&Y Limited), the petitioner has rendered services on behalf of its head office (E&Y Limited). It reasoned that since the professional services were rendered on behalf of its head office, the same were not on the petitioner's 'own account'; therefore, the petitioner is an intermediary.

It is apparent that the Adjudicating Authority has interpreted the last limb of the definition of 'intermediary' under Section 2(13) of the IGST Act as controlling the definition of the term. We are unable to agree with this interpretation. The limb of Section 2(13) of the IGST Act reads as "but does not include a person who supplies such goods or services or both or securities on his own account" but this does not control the definition of the term 'intermediary'; it merely restricts the main definition. The opening lines of Section 2(13) of the IGST Act expressly provides that an intermediary means a broker, agent or any other person who "arranges or facilitates supply of goods or services or both or securities between two or more persons". The last line of the definition merely clarifies that the definition is not to be read in an expansive manner and would not include a person who supplies goods, services or securities on his own account. There may be services, which may entail outsourcing some constituent part to a third party. But that would not be construed as intermediary services, if the service provider provides services to the recipient on his own account as opposed to merely putting the third party directly in touch with the service recipient and arranging for the supply of goods or services.

Thus, even if it is accepted that the petitioner has rendered services on behalf of a third party, the same would not result in the petitioner falling within the definition of 'intermediary' under Section 2(13) of the IGST Act as it is the actual supplier of the professional services and has not arranged or facilitated the supply from any third party.

The assumption that the petitioner has acted as a buying and selling agent, is without any basis. The Adjudicating Authority had referred to the letter dated 04.04.2008 issued by RBI permitting E&Y Limited to open a branch office in India (that is establishing the petitioner) and

further clarifying the activities that a branch office could carry on. The same included export-import of goods; rendering professional or consultancy services, carrying out research work in which the parent company is engaged, promoting technical or financial collaboration between Indian companies and parent or overseas group companies and representing the parent company in India and acting as a buying or selling agent in India. However, merely because one of the activities that could be carried on by the petitioner is to act as buying/selling agent in India does not mean that the petitioner had carried on such activities and the invoices raised were for services as a buying/selling agent. As noted above, in the facts of the present case, there is no dispute that the petitioner had, in fact, rendered professional and consultancy services, which is also one of the permissible activities.

Concededly, the services rendered by the petitioner to EY Entities, prior to roll out of the GST regime, was considered as 'export of services'. The petitioner prevailed before the concerned service tax authorities in establishing that the professional services rendered by it cannot be considered as services as an 'intermediary'. It is also material to note that the petitioner's application for refund of ITC for the period after March 2020 has also been accepted by the Adjudicating Authority. Thus, the petitioner has been denied ITC only for the period from December 2017 to March 2020; it has been allowed CENVAT credit for the period covered under the service tax regime as well as ITC for the period after March 2020.

Section 13 of the IGST Act contains provisions for determining the place of services where the location of supplier or location of the recipient is outside India. Thus, the question whether the supply of service by the petitioner is outside India is required to be determined with reference to Section 13 of the IGST Act.

In terms of Section 13(2) of the IGST Act, the place of supply of services except the services specified in Sub-section (3) to (13) is the location of the recipient of the services. In the present case, there is no dispute that the provisions of Sub-sections (3) to (13) except Sub-section (8) of Section 13 are not attracted. In terms of Sub-section (8) of Section 13 of the IGST Act, the place of supply of certain services would be the location of the supplier of the services. In terms of Clause (b) of Sub-section (8) of Section 13 of the IGST Act, the place of supply of intermediary services is the location of the supplier of services. In the present case, the place of supply of services has been held to be in India on the basis that the petitioner is providing intermediary services. As discussed above, the Services rendered by the petitioner are not as an intermediary and therefore, the place of supply of the Services rendered by the petitioner to overseas entities is required to be determined on basis of the location of the recipient of the Services. Since the recipient of the Services is outside India, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.

There is no dispute that the recipient of Services – that is EY Entities – are located outside India. Thus, indisputably, the Services provided by the petitioner would fall within the scope of the definition of the term 'export of service' under Section 2(6) of the IGST Act.

16. Allegation of fake credit availment by supplier cannot be ground to reject refund application

Case Name : Balaji Exim Vs Commissioner, CGST And Ors. (Delhi High Court)
Appeal Number : W.P.(C) 10407/2022
Date of Judgement/Order : 10/03/2023
Courts : All High Courts (10237) Delhi High Court (2379)

Balaji Exim Vs Commissioner, CGST And Ors. (Delhi High Court) Delhi High Court held that rejection of refund application on allegation of fake credit availed by the supplier is unsustainable in absence of any establishment of non-supply of goods from the said supplier.

Facts- The petitioner had filed its refund application dated 11.09.2020 (in Form – GST-RFD – 01) seeking refund of the unutilized Input Tax Credit. The petitioner also filed another refund application dated 12.09.2020 (in Form GST-RFD – 01). The refund sought was in respect of goods exported by the petitioner.

Respondent no.2 issued an acknowledgment (in Form GST-RFD-02) dated 27.09.2020, in respect of the petitioner's refund application dated 12.09.2020. In respect of the first application dated 11.09.2020, respondent no.2 issued a deficiency memo dated 21.09.2020, inter alia, stating that the supporting documents were not uploaded on the GST portal. Accordingly, the petitioner filed another application dated 23.09.2020 along with all documents in support of its refund application. The same was acknowledged by the respondent on 01.10.2020. The petitioner's applications were not processed as the supplier from whom the petitioner had purchased the goods had allegedly received fake invoices from its suppliers.

Conclusion- There is merit in the petitioner's contention that it is not required to examine the affairs of its supplying dealers. The allegations of any fake credit availed by M/s Shruti Exports cannot be a ground for rejecting the petitioner's refund applications unless it is established that the petitioner has not received the goods or paid for them. In the present case, there is little material to support any such allegations. In view of the above, the petitioner would be entitled to the refund of the ITC on goods that have been exported by it. The present petitions are, accordingly, allowed and the respondents are directed to forthwith process the petitioner's applications for refund of the ITC including Cess.

17. Personal bond instead of bank guarantee as condition for stay of assessment order allowed

Case Name : Royal Welding Wires Private Limited Vs Deputy Commissioner (CT) (Madras High Court)

Appeal Number : W.P. Nos. 5936 and 5939 of 2023

Date of Judgement/Order : 01/03/2023

Courts : All High Courts (10237) Madras High Court (1143)

Royal Welding Wires Private Limited Vs Deputy Commissioner (CT) (Madras High Court) Madras High Court allowed the writ petition and directed acceptance of personal bond instead of bank guarantee, as condition for stay of assessment order, pending disposal of appeal in VAT demand matter.

Facts- Present Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent passed and to quash the same insofar as directing the petitioner to furnish Bank Guarantee for balance tax amount and further direct the second respondent to accept personal bond instead of Bank Guarantee pending disposal of appeal. The petitioner is aggrieved by the conditions imposed by the first respondent while granting stay of the impugned assessment orders in the Appeals filed by them.

Conclusion- These writ petitions are disposed of by directing the first respondent to accept the Personal Bond of the petitioner in lieu of the Bank Guarantee amounts, mentioned in the impugned orders dated 02.02.2023 and 30.01.2023 and the petitioner is directed to execute a Personal Bond as directed supra, within a period of one week from the date of receipt of a copy of this order. On receipt of the Personal Bond from the petitioner as stated supra, in lieu of the Bank Guarantee, the first respondent is directed to pass final orders on the petitioner's Statutory Appeals within a period of four weeks thereafter.

18. Finalization of GST assessment without providing personal hearing is unjustified

Case Name : SKS Builders and Promoters Vs Assistant Commissioner (ST) (Madras High Court)

Appeal Number : W.P. Nos. 6801 and 6805 of 2023

Date of Judgement/Order : 06/03/2023

Related Assessment Year : Courts : All High Courts (10237) Madras High Court (1143)

SKS Builders and Promoters Vs Assistant Commissioner (ST) (Madras High Court) Madras High Court held that finalization of assessment without granting of personal hearing is against the principles of natural justice and liable to be quashed.

Facts- The petitioner is a company engaged in the activity of civil construction and is registered under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017. The

petitioner participates in Government tenders and is also a sub-contractor engaged in activity sub-contracted by the main contractors as a consequence of contracts entered into by the former with the Government.

The main claim of the petitioner is avowed entitlement to the benefit of Notification No. 11 of 2017 dated 28.06.2017, which, in terms of clause (ix) thereof, grants the benefit of concessional rate of composite supply of works contract, as defined under clause 119 of Section 2 of the Central Goods and Services Tax Act, 2017, to a sub-contractor to the main contractor who provides services as specified in item (iii) or (vi) to the Central or State Governments, Union Territory, Local Authority, Government authority or Government entity.

However, the flip side of the matter is that the petitioner has, admittedly, not been heard prior to passing of the impugned order.

Conclusion- Held that the sum and substance of Section 75(4) is that a personal hearing shall be granted in all matters prior to finalisation of assessment except where the stand of the assessee is intended to be accepted by the Department. Thus, on this score, the officer has grossly erred in proceeding to finalise the impugned assessment in violation of the principles of natural justice.

19. Writ entertained by Sikkim HC for GST levied by Goa Govt is unjustifiable

Case Name : State of Goa Vs Summit Online Trade Solutions (P) Ltd. & Ors. (Supreme Court of India)

Appeal Number : Civil Appeal No. 1700/2023

Date of Judgement/Order : 14/03/2023

Courts : Supreme Court of India

State of Goa Vs Summit Online Trade Solutions (P) Ltd & Ors. (Supreme Court of India) Supreme Court held that writ petition entertained by the High Court (HC) of Sikkim for tax levied by the Government of Goa, merely because the petitioning company has its office in Gangtok, Sikkim, is unjustifiable and lacks jurisdiction.

Facts- Various notifications issued under the Central Goods and Services Tax Act, 2017 (CGST Act) and the Integrated Goods and Services Tax Act, 2017 (IGST Act) are under challenge in all the three writ petitions together with rate-notifications issued by the States of Goa, Maharashtra, Punjab and Sikkim. Inter alia, the challenge is to a notification stated to bear “No. 01/2017” dated 30th June, 2017 issued by the Government of Goa in exercise of power conferred by sub-section (1) of section 11 of the Goa Goods and Services Tax Act, 2017 (GGST Act) levying tax @ 14% on Lottery authorized by State Governments. The writ petitioners have invoked the high prerogative writ jurisdiction of the High Court to seek a declaration that the impugned notification is unconstitutional and illegal.

The short question that arises for a decision on these appeals is, whether the High Court was justified in returning the finding that “at least a part of the cause of action has arisen within the jurisdiction of this Court” and premised on such a finding, to dismiss the applications.

Conclusion- Here, tax has been levied by the Government of Goa in respect of a business that the petitioning company is carrying on within the territory of Goa. Such tax is payable by the petitioning company not in respect of carrying on of any business in the territory of Sikkim. Hence, merely because the petitioning company has its office in Gangtok, Sikkim, the same by itself does not form an integral part of the cause of action authorizing the petitioning company to move the High Court. Held that the High Court was not justified in dismissing the interim applications. Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum convenient ought to have been considered by the High Court. Even if a small part of the cause of action arises within the territorial jurisdiction of a high court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit.

20. Substantive GST liability falls on supplier and protective liability upon Purchaser

Case Name : Pinstar Automotive India Pvt. Ltd. Vs Additional Commissioner (Madras High Court)

Appeal Number : W.P. No. 8493 of 2023

Date of Judgement/Order : 20/03/2023

Courts : All High Courts Madras High Court

Pinstar Automotive India Pvt. Ltd. Vs Additional Commissioner (Madras High Court) There can be no dispute on the position that the provisions of Section 16 are to be observed strictly, such that, there is no jeopardy to the interests of the revenue. The provisions of the Central Goods and Services Tax Act, 2017 has, assimilating wisdom of experience from the erstwhile tax regimes, gone one step further to ensure that the interests of the revenue are protected by providing for a mandate that the tax liability is defrayed/met either at the hands of the supplier or the purchaser, the petitioner in this case. Thus, no fault can be attributed to the revenue in this regard.

An additional factor is that where the tax liability has been met by way of reversal of ITC and similarly recovery is effected from the supplier as well, this would amount to a double benefit to the revenue. Thus, while the Department may reverse credit in the hands of the purchaser, this has to be a protective move, to be reversed and credit restored if the liability is made good by the supplier. Thus, the substantive liability falls on the supplier and the protective liability upon the purchaser. A mechanism must be put in place to address this situation.

In the present case, the petitioner has chosen to seek rectification of order-in-original dated 29.07.2022 based upon the aforsaid decisions. The Court has no intention of intervening in the conclusion of the assessing authority on this aspect. However, the procedure followed by the authority is clearly contrary to the third proviso to Section 16 of the Act that necessitates that, where the authority proposes to take a view adverse to the applicant, due process must be followed.

21. TNVAT: Disallowance of ITC due to mismatch to be dealt as per Circular No. 5 of 2021

Case Name : CBC Fashions (Asia) Private Limited Vs The Assistant Commissioner (Madras High Court)

Appeal Number : W.P. No. 14783 of 2020

Date of Judgement/Order : 15/03/2023

Courts : All High Courts (10240) Madras High Court (1145)

CBC Fashions (Asia) Private Limited Vs The Assistant Commissioner (Madras High Court) Madras High Court directed to deal with the matter of disallowance of ITC on account of mismatch between returns filed by the petitioners and returns filed by purchasing/ selling third party dealers as per Circular No. 5 of 2021 dated 24.02.2021

Facts- the issue arising in these matters relates to (i) the disallowance of Input Tax Credit (ITC) arising out of the alleged mismatch between the returns filed by the petitioners when compared with the returns and annexures filed by the purchasing / selling third party dealers and (ii) reversal of ITC on the allegations that there has been no actual movement of goods qua the transactions in question.

Conclusion- In regard to the first issue a Bench of this Court in the case of M/s.JKM Graphics Solutions Private Limited v Commercial Tax Officer (99 VST 343) had issued certain directions for conduct of verification and assessment in such matters. While some of these directions have been complied with in the present cases, learned counsel concur on the position that there are other conditions that have been set out under Circular No.5 of 2021 dated 24.02.2021 that yet remain to be complied. For the second issue relating to movement of goods it is directed to the assessing authority to await decision in W.A.No.2607 of 2021 and complete the assessments thereafter in light of the judgment of the Hon'ble Supreme Court in Ecom Gill Coffee Trading Private Limited and the decision of the Division Bench within a period of 12 weeks from date of pronouncement of the decision in W.A.No.2607 of 2021.

22. HC allows rectification of mistakes in Form GSTR 1

Case Name : Deepa Traders Vs Principal Chief Commissioner of GST & Central Excise (Madras High Court)

Appeal Number : W.P.No.12382 of 2020

Date of Judgement/Order : 09/0302023

Courts : All High Courts (10240) Madras High Court (1145)

Deepa Traders Vs Principal Chief Commissioner of GST & Central Excise (Madras High Court) The petitioner has, in respect of the returns for a few months during the period 2017-18, admittedly, committed certain errors. The errors are of following nature.

i) Recipients GSTIN/name has been wrongly mentioned.

ii) The invoice number/date have been wrongly mentioned.

iii) Supply details were correctly supplied in GSTR 3 and tax duly remitted. However, some of the invoice wise details have been omitted to be reported in Form GSTR 1.

iv) IGST was inadvertantly remitted under the heads SGST and CGST. The aforesaid errors are attributed to inadvertant carelessness on the part of a part-time accountant then employed by the petitioner. The petitioner would also state that the errors had been occasioned during the initial months of implementation of Goods and Services Tax and thus it had also no knowledge of the conditions fully to meet the demands of the system. It was the unfamiliarity with the procedures and the newness in the system itself that had resulted in the commission of these errors.

It was only in December, 2019 that the petitioner states that these errors came to light on account of the customers bringing the same to its attention. Admittedly, no details of such reports by the customers have been placed on file, though the averment figures at paragraph Nos. 5 and 6 of the affidavit of the petitioner. At paragraph 7, the petitioner states that immediately on coming to know of the errors, an attempt was made to rectify the returns only to find that there was no mechanism set out under the Act or in the portal to enable the same.

The fact remains that this Court has taken a view in very similar circumstances as in the present case, in the case of Sun Dye Chem V. Assistant Commissioner (2021 (44) GSTL 358) reiterated in Pentacle Plant Machineries Pvt. Ltd. V. Office of the GST Council, New Delhi (2021 (52) GSTL 129) to the effect that those petitioners must be permitted the benefit of rectification of errors where there is no malafides attributed to the assessee. The errors committed are clearly inadvertent and, the rectification would, in fact, enable proper reporting of the turnover and input tax credit to enable claims to be made in an appropriate fashion by the petitioner and connected assessees.

In light of the consistent view taken by the Court and in deference to the position that such matters, where an expansive view of the issue is called for, are few and far between, as on date, this Court is inclined to accept the prayer of the petitioner and issues mandamus to the respondents to do the needful to enable uploading of the rectified GSTR 1

23. Writ accepted in case of cancellation of GST registration due to non-formation of GST Tribunal

Case Name : Abiswathika Infra Vs State of Andhra Pradesh (High court of Andhra Pradesh)

Appeal Number : W.P. No. 39319 of 2022

Date of Judgement/Order : 17/03/2023

Courts : All High Courts (10253) Andhra Pradesh HC (164)

Abiswathika Infra Vs State of Andhra Pradesh (High court of Andhra Pradesh) Andhra Pradesh High Court allowed the writ petition in the matter of cancellation of GST registration on account of non-filing of GST return as GST Tribunal has not been constituted.

Facts- The petitioner seeks writ of mandamus declaring the order in Ref.No.ZA370122025616U, dated 20.01.2022 issued by the 4th respondent cancelling the

Goods and Service Tax registration of the petitioner firm on the ground that the petitioner firm did not submit returns for a continuous period of six (6) months but without providing an opportunity of hearing as arbitrary and illegal and consequently set aside the same.

Conclusion- In that view of the matter and as the GST Tribunal has not been constituted as per the provisions of the Act so as to enable the petitioner to pursue his further legal remedy, this writ petition is allowed and the matter is remitted back to the preliminary authority i.e., the 4th respondent to consider the case of the petitioner and after verifying the returns submitted by the petitioner and after affording an opportunity of personal hearing pass an appropriate order in accordance with governing law and rules expeditiously but not later than two weeks from the date of receipt of a copy of this order. It is needless to emphasize that depending upon the revival of the cancellation of his registration, the writ petitioner shall be liable to file his returns for the subsequent period till date and pay due tax. No costs.

24. Petitioner required to compensate by payment of interest as State of Odisha deprived of recovering 2/3rd tax due

Case Name : Bharat Motors Ltd. Vs Sales Tax Officer (Orissa High Court)
Appeal Number : W.P.(C) No. 13736 of 2017
Date of Judgement/Order : 15/03/2023
Courts : All High Courts (10253) Orissa High Court (173)

Bharat Motors Ltd. Vs Sales Tax Officer (Orissa High Court) Orissa High Court held that State of Odisha was deprived of recovering 2/3rd of tax due by virtue of interim order of the Supreme Court of India, accordingly, petitioner is required to compensate the State of Odisha by making payment towards interest in the interest of justice and equity.

Facts- The petitioner No.1-Shree Bharat Motors Ltd., public limited company, represented by Sri Jay Prakash Didwania, Managing Director of the company joined as the petitioner No.2 (petitioner) questioning the veracity of Assessment Order dated 11.11.2016 passed by the Assessing Authority (ET), Bhubaneswar-I Circle, Bhubaneswar under Section 9C of the Odisha Entry Tax Act, 1999 ("OET Act" for short) pertaining to tax periods 01.04.2013 to 31.03.2015 (Annexure-6) and issue of Notice(s) in Form E-24 prescribed under Rule 10(6)(b) of the Odisha Entry Tax Rules, 1999 (for brevity referred to as, "OET Rules") whereby along with the quantum of deficit tax found in the returns relating to the tax periods from 01.04.2015 to 30.04.2017, the Assessing Authority raised demand(s) of interest @ 1% per month in terms of Section 7(5) vide Annexure-9 series, assailed the revised entry tax demand notice issued in Form E-8 by the Deputy Commissioner of Sales Tax, Bhubaneswar-I Circle, Bhubaneswar for the tax periods from 01.04.2008 to 31.03.2015 as upheld vide Annexure-10, i.e., Order dated 24.06.2017 passed in Revision Case No.30(E)/2017-18 by the Commissioner of Sales Tax, Odisha while disposing of revision petition filed at the behest of the petitioner u/s. 18 of said Act. This apart, the petitioner has also assailed instructions vide Letter bearing No.9755-Rev-35/59/2017-Rev-CCT/CT, dated 23.06.2017 addressed to the field formations to undertake recovery process in view of Order dated 28th March, 2017 of the Hon'ble Supreme Court

passed in State of Odisha Vrs. Reliance Industries Ltd. and Others, SLP(C) No.14454-14778/2008 pursuant to legal position as set at rest by Nine-Judge Constitution Bench decision of said Hon'ble Court in the matters of Jindal Stainless Ltd. Vrs. State of Haryana, (2017) 12 SCC 1.

Conclusion- Analysis of Section 7(5) of the OET Act read with Rule 10 of the OET Rules transpires that interest is payable on tax due as discussed above, and the same is subject to fulfilment of condition that on failure to pay the amount of tax due as per the return "without sufficient cause". Held that there is no ambiguity in holding that in the presence of the expression "without sufficient cause" in sub-section (5) of Section 7 of the OET Act and the petitioners having justified by showing sufficient cause for failure to deposit amount of tax due along with the return, which cannot be treated as admitted tax in view of legal position contained in Reliance Industries Ltd, interest under Section 7(5) of the OET Act is not chargeable on such turnover falling within the ambit of portion the said Judgment. Applying the aforesaid principles for grant of interest at a rate fixed as compensation, this Court is of the considered opinion that since by virtue of interim orders of the Supreme Court of India and the orders in writ petition(s) by this Court following such interim orders, the State of Odisha was deprived of recovering 2/3rd of tax due relating to September, 2009 to February, 2017, the petitioner(s) is required to compensate the State of Odisha by making payment towards interest in the interest of justice and equity. Hence, writ of mandamus is liable to be issued in exercise of extraordinary power under Article 226 of the Constitution of India.