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

GST UPDATE

(OCTOBER 2022)

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GIST OF THE NOTIFICATIONS

1. Notification No. 21/2022 – Central Tax | Dated: 21st October, 2022

   CBIC notifies that the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B, for the registered persons required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017, for the month of September, 2022 till the 21st day of October, 2022.

2. Notification No. 18-Leg./2022, Dated: 20th October, 2022

   The Governor of Punjab on the 18th day of October, 2022 notifies on behalf of the Government of Punjab "THE PUNJAB GOODS AND SERVICES TAX (AMENDMENT) ACT, 2022 (Punjab Act No. 18 of 2022) " in which amendments in Section 16, Section 29, Section 34, Section 37, Section 39, Section 47, Section 48, Section 49, Section 50, Section 52, Section 54, Amendment of notification issued under Section 146 of the Punjab Goods and Services Tax Act , 2017 retrospectively, Amendment of notification issued under sub -sections (1) and (3) of section 50, sub- section (12) of Section 54 and Section 56 of the Punjab Goods and Services Tax Act , 2017 retrospectively. Retrospective exemption from, or levy or collection of state tax in certain cases and Retrospective effect to notification issued under sub- section (2) of section 7 of the Punjab Goods and Services Tax Act, 2017.

CGST Notification

CBIC extend due date of filing GSTR 3B to 21st day of October, 2022

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

New Delhi

Notification No. 21/2022 – Central Tax | Dated: 21st October, 2022

G.S.R. 786 (E).—In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B, for the registered persons required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017, for the month of September, 2022 till the 21st day of October, 2022.

[F. No. CBIC-20006/9/2022-GST]

RAJEEV RANJAN, Under Secy.

SGST Notification

Punjab Government Gazette

EXTRAORDINARY

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LEGISLATIVE SUPPLEMENT

(xcii)

PART I

GOVERNMENT OF PUNJAB

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

NOTIFICATION

The 20th October, 2022

No.18-Leg./2022.- The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 18th day of October, 2022, is hereby published for general information:-

THE PUNJAB GOODS AND SERVICES TAX (AMENDMENT) ACT, 2022

(Punjab Act No. 18 of 2022)

AN
ACT

Further to amend the Punjab Goods and Services Tax Act, 2017.

BE it enacted by the Legislature of the State of Punjab in the Seventy -third Year of the Republic of India, as follows:-

Short title and commencement.

1. (1) This Act may be called the Punjab Goods and Services Tax (Amendment) Act, 2022.

(2) Save as otherwise provided, the provisions of this Act shall come into force on such date as the Government of Punjab may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the

commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment in section 16 of Punjab Act 5 of 2017.

2. In the Punjab Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act), in section 16, -

(a) in sub-section (2),-

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

"(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;"; and

(ii) in clause (c), the words, figures and letter "or section 43A" shall be omitted; and

(b) in sub-section (4), for the words and figures "due date of furnishing of the return under section 39 for the month of September", the words "thirtieth day of November" shall be substituted.

Amendment in section 29 of Punjab Act 5 of 2017.

3. In the principal Act, in section 29, in sub-section (2),—

(a) in clause (b), for the words "returns for three consecutive tax periods", the words "the return for a financial year beyond three months from the due date of furnishing the said return" shall be substituted; and

(b) in clause (c), for the words "a continuous period of six months", the words "such continuous tax period, as may be prescribed" shall be substituted.

Amendment in section 34 of Punjab Act 5 of 2017.

4. In the principal Act, in section 34, in sub-section (2), for the word "September", the words "the thirtieth day of November" shall be substituted.

Amendment in section 37 of Punjab Act 5 of 2017.

5. In the principal Act, in section 37,—

(a) in sub-section (1), —

(i) after the words "shall furnish, electronically,", the words "subject to such conditions and restrictions and" shall be inserted;

(ii) for the words "shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed", the words "shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies" shall be substituted;

(iii) the first proviso shall be omitted;

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

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

(b) sub-section (2) shall be omitted;

(c) in sub-section (3),—

(i) the words and figures "and which have remained unmatched under section 42 or section 43" shall be omitted;

(ii) in the first proviso, for the words and figures "furnishing of the return under section 39 for the month of September", the words "the thirtieth day of November" shall be substituted; and

(d) after sub-section (3), the following sub-section shall be added, namely: -

"(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.".

Substitution of section 38 of Punjab Act 5 of 2017.

6. In the principal Act, for section 38, the following section shall be substituted, namely:—

"38. (1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made

Communication of details of inward supplies and input tax credit.

available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions, as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking Registration, as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period, as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed exceeds the output tax paid by him during the said period by such limit, as may be prescribed; or

(iv) by any registered person who, during such period, as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit, as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions, as may be prescribed; or

(vi) by such other class of persons, as may be prescribed.".

Amendment in section 39 of Punjab Act 5 of 2017.

7. In the principal Act, in section 39,—

(a) in sub-section (5), for the word "twenty", the word "thirteen" shall be substituted;

(b) in sub-section (7), for the first proviso, the following proviso shall be substituted, namely:—

"Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,–

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions, as may be prescribed. ";

(c) in sub-section (9),—

(i) for the words and figures "Subject to the provisions of sections 37 and 38, if", the word "Where" shall be substituted; and

(ii) in the proviso, for the words "the due date for furnishing of return for the month of September or second quarter", the words "the thirtieth day of November" shall be substituted;

(d) in sub-section (10), for the words "has not been furnished by him", the following shall be substituted, namely:—

"or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for

one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period. ".

Substitution of section 41 of Punjab Act 5 of 2017.

8. In the principal Act, for section 41, the following section shall be substituted, namely:—

"41. Availment of input tax credit. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner, as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner, as may be prescribed. ".

9. In the principal Act, sections 42, 43 and 43A shall be omitted.

Omission of sections 42, 43 and 43 A of Punjab Act 5 of 2017.

10. In the principal Act, in section 47, in sub-section (1),—

(a) the words "or inward" shall be omitted;

(b) the words and figures "or section 38" shall be omitted; and

(c) after the words and figures "section 39 or section 45", the words and "or section 52" shall be inserted.

Amendment in section 47 of Punjab Act 5 of 2017.

11. In the principal Act, in section 48, in sub-section (2), the words and figures ", the details of inward supplies under section 38" shall be omitted.

Amendment in section 48 of Punjab Act 5 of 2017.

12. In the principal Act, in section 49,—

(a) in sub-section (2), the words, figures and letter "or section 43A" shall be omitted;

(b) in sub-section (4), after the words "subject to such conditions", the words "and restrictions" shall be inserted;

(c) after sub-section (11), the following sub-section shall be added, namely:—

"(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such

Amendment in section 49 of Punjab Act 5 of 2017.

maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.".

Amendment in section 50 of Punjab Act 5 of 2017.

13. In the principal Act, in section 50, for sub-section (3), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—

"(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent, as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner, as may be prescribed.".

Amendment in section 52 of Punjab Act 5 of 2017.

14. In the principal Act, in section 52, in sub-section (6), in the proviso, for the words "due date for furnishing of statement for the month of September", the words "thirtieth day of November" shall be substituted.

Amendment in section 54 of Punjab Act 5 of 2017.

15. In the principal Act, in section 54, —

(a) in sub-section (1), in the proviso, for the words and figures "the return furnished under section 39 in such", the words "such form and" shall be substituted;

(b) in sub-section (2), for the words "six months", the words "two years" shall be substituted;

(c) in sub-section (10), the words, brackets and figure "under sub-section (3) "shall be omitted;

(d) in the Explanation, in clause (2), after sub-clause (b), the following sub-clause shall be inserted, namely:—

"(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where are fund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;".

Amendment of notification issued under section 146 of the Punjab Goods and Services Tax Act , 2017 retrospectively.

16. (1) The Government of Punjab, Department of Excise and Taxation Notification No. S.O.17/ P.A.5/ 2017/ S.146/ C.A.13/2017/S.20/2018, dated the 27th February, 2018 issued by the State Government on the recommendations of the Council, under section 146 of the Punjab Goods and Services Tax Act,2017, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Fifth Schedule, on and from the date specified in column (3) of that Schedule.

(2) For the purposes of sub-section (1), the State Government shall have and shall be deemed to have the power to amend the notification referred to in the said sub-section with retrospective effect as if the State Government had the power to amend the said notification under section 146 of the Punjab Goods and Services Tax Act, 2017 retrospectively, at all material times.

Amendment of notification issued under sub -sections (1) and (3) of section 50, sub- section (12) of section 54 and section 56 of the Punjab Goods and Services Tax Act , 2017 retrospectively.

17. (1) the Government of Punjab, Department of Excise and Taxation Notification No. S.O. 24/P.A.5/2017/Ss. 50, 54 and 56/2017, dated the 30th June, 2017 issued by the State Government on the recommendations of the Council, under sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Punjab Goods and Services Tax Act, 2017 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Sixth Schedule, on and from the date specified in column (3) of that Schedule.

(2) For the purposes of sub-section (1), the State Government shall have and shall be deemed to have the power to amend the notification referred to in the said sub-section with retrospective effect as if the State Government had the power to amend the said notification under sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Punjab Goods and Services Tax Act, 2017 retrospectively, at all material times.

Retrospective exemption from, or levy or collection of state tax in certain cases.

18. (1) Notwithstanding anything contained in the Government of Punjab, Department of Excise and Taxation Notification No. S.O.16/P.A.5/2017/S.9/2017, dated the 30th June, 2017 issued on the recommendations of the Council, in exercise of the powers under sub-section (1) of section 9 of the Punjab Goods and Services Tax Act, 2017, no state tax shall be levied or collected in respect of supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, during the period commencing from the

1st day of July, 2017 and ending with the 30th day of September, 2019 (both days inclusive) .

(2) No refund shall be made of all such tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.

Retrospective effect to notification issued under sub- section (2) of section 7 of the Punjab Goods and Services Tax Act, 2017.

19. (1) Subject to the provisions of sub-section (2), the Government of Punjab, Department of Excise and Taxation Notification No. S.O.123/P.A.5/ 2017/S.7/2019, dated the 24th day of October, 2019 issued by the State Government, on the recommendations of the Council, in exercise of the powers under sub- section (2) of section 7 of the Punjab Goods and Services Tax Act , 2017, shall be deemed to have, and always to have, for all purposes, come into force on and from the 1st day of July, 2017.

(2) No refund shall be made of all such tax which has been collected, but which would not have been so collected, had the notification referred to in sub-section (1) been in force at all material times.

NAVAL KUMAR,
Secretary to Government of Punjab,
Department of Legal and Legislative Affairs.

2683/10-2022/Pb.Govt. Press, S.A.S. Nagar

Advance Rulings

1. GST on Compensation of additional cost incurred due to various delays

Case Name : In re Continental Engineering Corporation (GST AAAR Telangana)
Appeal Number : AAAR.COM/05/2022
Date of Judgment/Order : 19/10/2022
Courts : AAAR AAR Telangana Advance Rulings

Whether GST payable on the claim of Rs. 2,20,00,000/- for the HGCL share of sitting fee and other expenses paid by the applicant on the directions of the Arbitrators for an amount

1. On this count, the lower authority had held that Arbitration as service was supplied independently after the introduction of GST i.e. the tribunal was constituted conclusively on 20.11.2017 and rendered its orders on 9.5.2019 and therefore this supply is liable to tax on reverse charge basis under GST.

2. Against the above, the applicant, interalia contended that they had just received the Award for payment of money in the post-GST regime for the services rendered before GST. Money is neither a good nor a service.

3. It is observed by this Authority that the Government, vide Sl.No.3 of Notification No.13/2017. dt. 28.6.2017 has levied tax in respect of services provided by the Arbitrary Tribunals to be paid by any business entity located in the taxable territory, under reverse charge mechanism. The relevant tariff also provides SAC code of 998215 for such services @ 9% each under CGST and SGST.

4. Hence, the argument of the applicant that their activity do not attract GST has no legal backing.

Whether GST is payable on the claim of INR of Rs. 1,15,80,62,000/-(including interest amount) on account of compensation of additional cost incurred due to delay in issue of drawings and failure of HGCL to handover site on time and refusal to issue the taking over certificate

1. On this issue, the lower authority had, interalia, observed that these damages are claimed by the applicant from the contractee due to the delays in making available possession of site, drawings & other schedules by the contractee beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. As per the issues mentioned in the arbitration award, clauses 6.4 and 42.2 of the General Conditions of Contract (GCC) specifically state that in case of any delay in issuance of drawings or failure to give possession of site the engineer shall determine the extension of time and amount of cost that the contractor may suffer due to such delays in consultation with the employer and the contractor. Therefore the time of supply of the service of tolerance is the time when such determination takes place. However, the contractee/employer has not determined the cost of delay prior to arbitration award. It was determined only by arbitration award on 09.05.2019. There tore the time of supply of this service as per Section 13 of the CGST Act is 09.05.2019. The Consideration received for such

forbearance is taxable under CGST and SGST @ 9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate.

2. While denying, the applicant, submitted that the amounts claimed are towards there imbursement of additional costs incurred during extended period while performing the work. It is not a consideration towards the supply of goods and services. They also relied on some case law to support their submissions.

3. This Authority has carefully gone through the submissions and the case law cited. As per the claim documents submitted before the lower authority, not disputed by the applicant, the amount was towards compensation for delay in execution of the works and prolongation costs. When a subjective meaning is deciphered from the phase used by the applicant themselves, the amounts were recovered as compensation for delay in execution of the works. That is to say that the applicant had received the amount to agreeing to the obligation to refrain from an act, or tolerating an act or a situation that arose due to delay in execution or protraction or elongation of work. This is nothing but compensation for refraining to do an act or tolerating to do an act. The consideration received for such act is taxable @ 9% each under CGST and SGST and falls under Ch Head 9997 at Sl.No. 35 of Notfn No. 11/2017-CT (rate).

2. <u>Seeds not covered under agricultural produce for GST: AAAR</u>

Case Name : In re Narsimha Reddy & Sons (GST AAAR Telangana)
Appeal Number : AAAR.COM/02/2022 - Order-in-Appeal No. AAAR/08/2022
Date of Judgment/Order : 19/10/2022
Courts : AAAR AAR Telangana

Appellants are in the business of production and sale of agricultural seeds. In the process of production, the applicant outsources certain services such as cleaning, drying, grading and packing to the job workers and stores the seeds in various facilities after processing them. In the process they also transport the seeds by engaging a GTA. The applicant filed an application before the lower authority for a ruling on their activities with reference to exemption/taxability under Goods and Services Tax Act. Since, the ruling of the lower authority was pronounced against the interests of the applicant, they filed the present appeal before this authority.

This authority observes that the whole gamut of dispute is around exemption contained in the two 11/2017- Central Tax (Rate) dated 28-06-2017 and Notfn No. 12/2017-CT(R), dt. 28.6.2017. Both the notifications have defined “agriculture produce” as any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

The appellant contends that their activities falls under the definition of ‘agriculture produce’, and hence, they are eligible for exemption under above two notifications. As against this contention, the lower authority held that the activities are outside the purview of definition of ‘agriculture produce’ and hence, no exemption is available to the applicant.

Hence, it becomes imperative to analyse the definition of ‘agriculture produce’. The primary factory which needs to be understood is that to get into the bracket of agriculture

produce for claiming exemption, the main condition is that either no processing is done on the produce or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

In the present case, as per the written submission, the applicant takes organizing the production of agricultural seeds, storing the agricultural seeds, drying of maize cobs, it segregates part of the agriculture produce based on its quality and germination strength and undertakes preservation process such as clearing, drying, grading and chemical processing to make the seed fit for sowing purpose and to have better shelf life. The applicant has pleaded that till the chemical processing is taken up the seed retains the character of the agriculture produce on par with any agriculture produce and they are entitled for exemption in respect of services availed by them. Had the activities of the applicant are only cleaning, drying, grading without involving any chemical processing on the subject produce, then the services would be on agriculture produce and exemption would be available. However, since in this case it is not proved beyond doubt by the applicant that their activities get exempted under the said two notifications, we are not inclined to accept the plea of the applicant.

3. <u>GST applicable on cost of diesel incurred for running DG Set in Course of Providing DG Rental Service</u>

Case Name : In re Tara Genset Engineers Regd (GST AAR Uttarakhand)
Appeal Number : Advance Ruling 11/2022-23
Date of Judgment/Order : 31/10/2022
Courts : AAR Uttarakhand Advance Rulings

Determination of the liability to pay tax on cost of diesel incurred for running DG Set in the course of providing DG rental service under CGST Act 2017 and Uttarakhand GST Act,2017.

GST @ 18 % is applicable on the cost of the diesel incurred for running DG Set in the Course of Providing DG Rental Service as per Section 15 of the Central Goods and Services Tax Act, 2017 / Uttarakhand Goods and Service Tax Act, 2017.

4. <u>GST on Operation & Maintenance of Mansi Wakal dam on ESCO Model</u>

Case Name : In re Secure Meter Limited (GST AAR Rajasthan)
Appeal Number : Advance Ruling No. RAJ/AAR/2022-23/12
Date of Judgment/Order : 12/10/2022
Courts : AAR Rajasthan Advance Rulings

ARA, Rajasthan has pronounced judgment on 12.10.2022, in the case of Secure Meter Limited, Udaipur (2022) 38 J.K. Jain's GST & VR 371, that;

"The activity of O&M of Mansi Wakal dam Project on ESCO Model and O&M work by the applicant is to be undertaken/being undertaken for a Govt. Department, which is in relation to clean drinking water facility to the citizens & is covered under point No.5 of 12th Schedule under Art.243W, Constitution of India. It is a composite supply under Works contract service, to Govt. Authority with Nil GST rate till the value

of Goods supplied is up to 25% of the total value of supply. In case the value of Goods exceeds 25% of the total value of the composite supply, the GST rate would be 12%".

5. GST on Compensation of additional cost incurred due to various delays

Case Name : In re Continental Engineering Corporation (GST AAAR Telangana)
Appeal Number : AAAR.COM/05/2022
Date of Judgment/Order : 19/10/2022
Courts : AAAR AAR Telangana Advance Rulings

Whether GST payable on the claim of Rs. 2,20,00,000/- for the HGCL share of sitting fee and other expenses paid by the applicant on the directions of the Arbitrators for an amount

1. On this count, the lower authority had held that Arbitration as service was supplied independently after the introduction of GST i.e. the tribunal was constituted conclusively on 20.11.2017 and rendered its orders on 9.5.2019 and therefore this supply is liable to tax on reverse charge basis under GST.

2. Against the above, the applicant, interalia contended that they had just received the Award for payment of money in the post-GST regime for the services rendered before GST. Money is neither a good nor a service.

3. It is observed by this Authority that the Government, vide Sl.No.3 of Notification No.13/2017. dt. 28.6.2017 has levied tax in respect of services provided by the Arbitrary Tribunals to be paid by any business entity located in the taxable territory, under reverse charge mechanism. The relevant tariff also provides SAC code of 998215 for such services @ 9% each under CGST and SGST.

4. Hence, the argument of the applicant that their activity do not attract GST has no legal backing.

Whether GST is payable on the claim of INR of Rs. 1,15,80,62,000/-(including interest amount) on account of compensation of additional cost incurred due to delay in issue of drawings and failure of HGCL to handover site on time and refusal to issue the taking over certificate

1. On this issue, the lower authority had, interalia, observed that these damages are claimed by the applicant from the contractee due to the delays in making available possession of site, drawings & other schedules by the contractee beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. As per the issues mentioned in the arbitration award, clauses 6.4 and 42.2 of the General Conditions of Contract (GCC) specifically state that in case of any delay in issuance of drawings or failure to give possession of site the engineer shall determine the extension of time and amount of cost that the contractor may suffer due to such delays in consultation with the employer and the contractor. Therefore the time of supply of the service of tolerance is the time when such determination takes place. However, the contractee/employer has not determined the cost of delay prior to arbitration award. It was determined only by arbitration award on 09.05.2019. There tore the time of supply of this service as per Section 13 of the CGST Act is 09.05.2019. The Consideration received for such

forbearance is taxable under CGST and SGST @ 9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate.

2. While denying, the applicant, submitted that the amounts claimed are towards there imbursement of additional costs incurred during extended period while performing the work. It is not a consideration towards the supply of goods and services. They also relied on some case law to support their submissions.

3. This Authority has carefully gone through the submissions and the case law cited. As per the claim documents submitted before the lower authority, not disputed by the applicant, the amount was towards compensation for delay in execution of the works and prolongation costs. When a subjective meaning is deciphered from the phase used by the applicant themselves, the amounts were recovered as compensation for delay in execution of the works. That is to say that the applicant had received the amount to agreeing to the obligation to refrain from an act, or tolerating an act or a situation that arose due to delay in execution or protraction or elongation of work. This is nothing but compensation for refraining to do an act or tolerating to do an act. The consideration received for such act is taxable @ 9% each under CGST and SGST and falls under Ch Head 9997 at Sl.No. 35 of Notification No. 11/2017-CT (rate).

6. ITC eligible on CSR expenditure spent by company

Case Name : In re Bambino Pasta Food Industries Private Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No. 52/2022
Date of Judgment/Order : 20/10/2022
Courts : AAR Telangana Advance Rulings

Whether ITC is available on CSR expenditure spent by the company? The expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.

7. Telangana AAR of cannot give ruling on GST liability in a different state

Case Name : In re Comsat Systems Private Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No. 51/2022
Date of Judgment/Order : 20/10/2022
Courts : AAR Telangana Advance Rulings

The applicant is having his place of business in the state of Telangana and is seeking a ruling on his liability to obtain a registration in other states where he is executing to contracts including installation, testing and commissioning of antennas. In this connection it is inform that under section. 96 of the CGST Act, the authority for advance ruling constituted under the provisions of a state goods and services Act shall be deemed to be the authority for advance ruling of that state. As seen from this provision there is a territorial nexus between the authority for advance ruling' of a state and its geographical boundary. Therefore, this advance ruling authority constituted under the Telangana State Goods and Services Act cannot give a ruling on the

liability arising under the CGST Act or SGST Act in a different state. Therefore, the application is Rejected.

8. No GST on recovery of Notice Pay, Bond Forfeiture, Canteen Charges, ID Cards Replacement

Case Name : In re Rites Limited (GST AAR Haryana)
Appeal Number : Advance Ruling No. HR/ARL/19/2022-23
Date of Judgment/Order : 18/10/2022
Courts : AAR Haryana Advance Rulings

The AAR, Haryana in the matter of M/s Rites Ltd. [Advance Ruling No. HR/ARL/19/2022-23 dated October 18, 2022], Re has passed a ruling on the taxability of amount collected or received or forfeited as Notice Pay Recovery, Bond forfeiture of contractual employees, canteen charges, recovery on account of loss or replacement of ID Cards, Liquidated damages due to delay in completion, Forfeiture of earnest money and security deposit and bank guarantee by applicant, and Amount written off as creditors balance in the books of accounts of the applicant.

9. AAR Karnataka allows Sri Balaji Rice Mill to withdraw application

Case Name : In re Sri Balaji Rice Mill (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 41/2022
Date of Judgment/Order : 27/10/2022
Courts : AAR Karnataka Advance Rulings

M/s. Sri Balaji Rice Mill, Door No.125/F, Ward No.5, Bengaluru Road, Ballary-583101 (hereinafter referred to as The applicant'), having GSTIN 29AAQFS4802E1Z0 have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under ,care: CGST Act and the KGST Act.

2. The applicant is a Partnership Firm registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The applicant is engaged in trading of rice and broken rice. They are selling rice and broken rice under registered brand name as well as unregistered brand name.

3. The applicant has sought advance ruling in respect of the following questions:

i. Will the GST exemption continue on sale of unbranded rice and broken rice even if we undertake advertisement and sales promotion activity on such rice and broken rice?

ii. Can we display the name of our registered brand on the name board displayed outside the shop / store?

iii. Should the TV advertisements, pamphlets, print advertisements, bill boards, etc. should also carry declaration that we have voluntarily foregone the actionable claim over such brand for continuing to claim the exemption?

iv. If the advertisement also includes a mention of our registered brand, will it have a bearing on the GST exemption which is currently being claimed by us? Whether combined advertising of our registered and unregistered brand have any bearing on the GST exemption claimed by them on sale of unbranded goods?

4. Shri Sandesh S Kutnikar Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 22-06-2022 and reiterated the facts narrated in their application. Further, through email dated 16.08.2022, they have stated that they wish to withdraw their application for advance ruling in view of the recent GST council meetings and notifications issued thereafter.

5. In view of the foregoing, we pass the following:

RULING

The application filed by the Applicant for advance ruling is disposed-off as withdrawn.

10. ITC on expenses & capital Goods to Applicant who is under Marginal Scheme

Case Name : In re Attica Gold Private Limited (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 40/2022
Date of Judgment/Order : 27/10/2022
Courts : AAR Karnataka Advance Rulings

Q1. Whether Applicant who is under Marginal Scheme can claim Input Tax Credit on the expenses like Rent, advertisement expenses, commission, Professional expenses and other like expenses?

Applicant who is under Marginal Scheme can claim Input Tax Credit on the expenses like Rent, Advertisement expenses, commission, Professional expenses and other like expenses subject to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017.

Q2. Whether ITC is allowed to be claimed on Capital Goods for the Applicant under Marginal Scheme?

ITC can be claimed on Capital Goods by the Applicant under Marginal Scheme subject to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017.

11. GST on Reimbursement of tree cut compensation amount

Case Name : In re Sree Subha Sales (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 39/2022
Date of Judgment/Order : 27/10/2022
Courts : AAR Karnataka Advance Rulings

Applicability of GST for reimbursement of tree cut compensation and land compensation amount paid to farmers and land owners during the course of execution of work.

Reimbursement of tree cut compensation amount paid to farmers and land owners during the course of execution of work is not chargeable to GST as the Applicant qualifies to be a Pure Agent and Reimbursement of land compensation amount paid to farmers and land owners during the course of execution of work is chargeable to GST as the Applicant does not qualifies to be a Pure Agent.

12. Advance ruling cannot be obtained by Service Receiver

Case Name : In re Karnataka Urban Infrastructure Development and Finance Corporation Limited (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 38/2022
Date of Judgment/Order : 27/10/2022
Courts : AAR Karnataka Advance Rulings

AAR examined whether the applicant, is the proper person to file the instant application or not, being the recipient of the impugned services to which the questions are related.

In this regard we observe that Section 95(a) of the CGST Act 2017, while defining the term 'advance ruling', stipulates that an applicant can seek advance ruling on the questions specified under Section 97(2) of the CGST Act 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the said applicant. In the instant case the questions, on which the applicant seeks advance ruling, are not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the said applicant, but in relation to the service/s being received by them. Therefore the instant application is beyond the jurisdiction of this authority and hence is liable for rejection.

13. GST exemptions not have a bearing on GST liabilities under RCM on supplies received by applicant: AAR

Case Name : In re Innovative Nutrichem Pvt. Ltd. (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 37/2022
Date of Judgment/Order : 27/10/2022
Courts : AAR Karnataka Advance Rulings

1. Whether they are liable to pay GST under RCM for the services procured from the respective service providers being the manufacturer and supplier of exempted goods falling under HSN 23099020?

The applicant are the manufacturer and supplier of animal feeds, classifiable under HSN 2309 90 20, exempted from GST vide entry No.102 of the Notification 02/2017-Central Tax (Rate) dated 28.06.2017. They utilise the services of Goods Transport Agencies (GTA), to transport their products, and Security Services which are covered under Reverse Charge Mechanism (RCM) in terms of entry numbers 01 8614 respectively of the Notification 13/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No.29/2018-Central Tax (Rate) dated 31.12.2018. In view of this the applicant sought advance ruling in respect of the question as to whether they are liable to pay GST under RCM on the GTA & Security services utilized as their outward supply is exempted.

The applicant, admittedly is a registered person under GST Act and located in the taxable territory. They are the recipients of the services of the Goods Transport Agency and Security services, which are squarely covered under the category of supplies attracting GST liabilities on reverse charge basis, in terms of the Notification supra. Further Section 9(3) of the CGST Act 2017 stipulates that all the provisions of the CGST Act 2017 shall apply to the recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both, where the tax shall be paid on reverse charge basis by the recipient. Thus the recipient of service is liable to pay GST in respect of the services notified under Section 9(3) of the Act, ibid read with Notification 13/2017-Central Tax(Rate). It is pertinent to mention that GST is levied on the supply of service and liability is fastened independently for each of the supplies. Levy of tax or otherwise on a particular supply does not have a bearing on the taxability of other supplies received or provided by a taxpayer. Thus the exemption provided to the outward supplies of the applicant does not have a bearing on the GST liabilities under reverse charge basis on the supplies received by the applicant.

The applicant is liable to pay GST under RCM, for the services notified and covered under RCM, received from the service providers, in spite of being a manufacturer and supplier of exempted goods falling under HSN 2309 90 20.

14. 'Multi-Verse Technologies' is e-commerce operator for GST: AAR Karnataka

Case Name : In re Multi-Verse Technologies Pvt. Ltd (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 36/2022
Date of Judgment/Order : 27/10/2022
Courts : AAR Karnataka Advance Rulings

Applicant is engaged in the business of providing computer software application services designed to run on digital devices such as mobile phones, tablets, personal computers in the state of Karnataka and the said services are meant for facilitating business transactions of supply of goods or services or both connecting through the platform of suppliers/sellers and recipients/buyers. Applicant raised following queries which are answered by AAR-

1. **Whether the Applicant satisfies the definition of an e-commerce operator and the nature of supply as conceptualized in Section 9(5) of CGST Act, 2017 r/w Notification No. 17/2017 dated 28.06.2017?**

   The Applicant satisfies the definition of an e-commerce operator but does not satisfy the conditions of Section 9(5) of CGST Act 2017 r/w Notification No. 17/2017 dated 28.06.2017, for the discharge of tax liability by electronic commerce operator.

2. **Whether the supply by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application amounts to supply by the Applicant?**

   The supply by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application does not amounts to supply by the Applicant.

3. **Whether the Applicant is liable to collect and pay GST on the supply of goods or services supplied by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application?**

   The Applicant is not liable to collect and pay GST on the supply of goods or services supplied by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application.

15. Advance ruling cannot be given if appellant mis-declared facts of initiation of proceedings

Case Name : In re Shalby Limited (GST AAAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAAR/APPEAL/2022/22
Date of Judgment/Order : 06/10/2022
Courts : AAAR AAR Gujarat

We find that the appellant in their application for advance ruling made before the GAAR had at Para 17 of Form GST ARA-01 had ticked on both the options thereby declaring that the question raised in the application is not already pending in any proceedings in the applicant's case under any of the provisions of the Act and not already decided in any proceedings in the applicant's case under any of the provisions of the Act. The same is reproduced below:

17.	I hereby declare that the question raised in the application is not (tick)-
√	a. Already pending in any proceedings in the applicant's case under any of the provisions of the Act
√	b. Already decided in any proceedings in the applicant's case under any of the provisions of the Act

The appellant was aware of the fact that investigations/proceedings were initiated against them by the Gujarat State Tax department and further three GST DRC-01A Part A all dated 11.02.2020 were also issued by the said department. The questions raised in the Advance Ruling application dated 02.12.2020 and the issue pending in the referred investigation and the proceedings initiated are the same. We find that the appellant has obtained the advance ruling by suppressing these material facts. Explanation 2 under Section 74 of CGST Act, 2017 provides as under:-

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

There can be no doubt that the appellant had indeed not declared/ mis-declared the fact of initiation of proceedings clearly evidenced by GST DRC-01A Part A issued in this case and therefore this is also covered under the scope of the term 'suppression' as defined above. It was encumbent upon the appellant while making application for Advance Ruling, to have declared the true and complete facts, given the provisions of the GST law, in particular Sections 98(2) and 104 of the CGST Act, 2017. We, therefore hold that invocation of Section 104 of CGST Act by the GAAR and declaring advance ruling dated 20.01.2021 void ab initio is legal.

In view of the foregoing, we reject the appeal filed by appellant M/s Shalby Limited Ltd and uphold the Advance Ruling No. GUJ/GAAR/R/31/2021 dated 19.07.2021 of the Gujarat Authority for Advance Ruling.

16. Geo-membrane merits classification at HSN 5911, tariff item 59111000

Case Name : In re Ambica Geotex Pvt. Ltd (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/46
Date of Judgment/Order : 18/10/2022
Courts : AAR Gujarat Advance Rulings

Whether the product, namely, Geo-membranes merits classification under Heading 5911, Sub Heading 59111000 or Sub Heading 59119090, as Textile products, coated, covered or laminated with plastic, used for technical purposes?
Geo-membrane merits classification at HSN 5911, tariff item 59111000.

17. GST not payable on liquidated damages if principal supply is exempt

Case Name : In re Achampet Solar Private Limited (GST AAAR Telangana)
Appeal Number : Advance Ruling No. AAAR.COM/04/2022
Date of Judgment/Order : 19/10/2022
Courts : AAAR AAR Telangana Advance Rulings

The CBIC has issued Circular No. 178/10/2022-GST dated:3.8.2022 related to GST applicability on liquidated damages. As per para 7.1.6 of the said circular, it was, interalia, observed that when principal supply is exempt, the ancillary activities to such principal supply would not get attracted to GST. Since in the present case, the applicant's principal supply is production and distribution of electricity, which is exempt from payment of GST, the liquidated damages received by the applicant towards such supply need to be considered as flow of money without having implication of GST payment.

As per the circular where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to do or abstain from doing anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

18. GST exempt on conservancy/solid waste management services to Howrah Municipal Corporation

Case Name : In re Banchu Das (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 13/WBAAR/2022-23
Date of Judgment/Order : 21/10/2022
Courts : AAR West Bengal Advance Rulings

Whether conservancy/solid waste management services provided by the applicant to Howrah Municipal Corporation is exempt from GST?

AAR held that applicant's supply to the Howrah Municipal Corporation for operation and maintenance of capacity portable compactor and hook loader is eligible for exemption from payment of tax vide serial number 3A of the Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding West Bengal State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time, if the value of goods involved in such composite supply does not exceed 25% of the value of supply.

19. Shifting of electrical utilities cannot be regarded as road construction services

Case Name : In re Shree Powertech (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 12/WBAAR/2022-23
Date of Judgment/Order : 21/10/2022
Courts : AAR West Bengal Advance Rulings

Whether the activities being carried out by the applicant as a sub-contractor for shifting of electrical utilities can be regarded as composite supply of works contract by way of construction of road as specified under serial number 3(iv)(a) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017?

In the instant case, the applicant has entered into the agreement with M/s KCC Buildcon Pvt Ltd i.e., the main contractor for shifting of electrical utilities and for this work, the main contractor is liable to pay the consideration to the applicant. So, in terms of sub-clause (a) of clause 93 of section 2, there can be no dispute that the applicant is supplying the services to M/s KCC Buildcon Pvt Ltd and not to NHAI.

It transpires from the documents produced that the work being undertaken by the applicant is limited to shifting/erection of electrical utilities. Therefore, the moot question involved in the case is to decide whether the work of such shifting of electrical utilities can be regarded as services provided by way of construction of road or not. Admittedly the ‗Scope of Project' in respect of the main contractor means and includes construction of Project Highway which demands shifting of obstructing utilities as and where required and for that purpose, such shifting work can be considered as an ancillary to the main work. However, when the sub-contractor, on being awarded, provides services of shifting of electrical utilities only, can it be said that the sub-contractor is supplying services by way of construction of road. The issue may be examined with an example. A contractor, say Mr. X is engaged in construction of a building pursuant to a work order awarded to him by Mr. Y. The scope of work of the said contract includes laying of pipe under the ground for water connectivity and Mr. X awards that specific work i.e., laying of underground pipeline to Mr. Z on sub-contract basis. Admittedly the services provided by Mr. Z to Mr. X is an ancillary services to construction of building but such services itself, in any way, cannot be considered as

services of construction of a building. Similarly, in the instant case, the services provided by the applicant, for its very limited scope towards shifting of electrical utilities, cannot be regarded as supply by way of construction of road. The terms and condition of the agreement made between NHAI and the contractor stipulates that the cost of such shifting shall be reimbursed by the Authority to the Contractor which also indicates the independent nature of the work.

In the case of Gaurish Sharma, the Rajasthan AAR has observed that the proposed activity carried out by the applicant is of shifting/erection of 11 KV & LT lines only and the same cannot be categorized as construction of road as classified under Entry number 3(iv)(a) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended. The AAR also observed that since such cost of the aforesaid activity will be borne by the Authority or by the entity owning such utility, therefore such payment of above mentioned activity is not the part of the main contract i.e. construction of road as awarded to main contractor by NHAI. Thus, there establish no nexus between the main contract awarded for construction of road by the NHAI and the work proposed to be undertaken by the applicant.

We find that the activities carried out by the applicant in the instant case is identical with the case of Gaurish Sharma before the Rajasthan AAR. Further, we also have expressed our view that providing services of shifting of electrical utilities only cannot be regarded as services by way of construction of road. We are, therefore, of the opinion that the work being undertaken by the applicant fails to get covered under serial number 3(iv)(a) of the Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017, as amended.

20. <u>GST rate and HSN Code of industrial safety belt and harness</u>
Case Name : In re Singha Baheni Industries (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 11/WBAAR/2022-23
Date of Judgment/Order : 21/10/2022
Courts : AAR West Bengal Advance Rulings

What shall be the rate of tax and HSN Code of industrial safety belt and harness?
The item industrial safety belt manufactured by the applicant would be classified under chapter sub-heading 6307 20 90 and tax would be levied @ 5% of item sale value not exceeding Rs.1000/- per piece and @ 12% in case where sale value exceeds Rs.1000/- per piece.

JUDGEMENTS

1. Omission/ error in GSTR-1 cannot be rectified beyond period prescribed u/s 39(9) of CGST Act

Case Name : Yokohama India Private Limited Vs State of Telangana
Appeal Number : Writ Petition No.15284 of 2022
Date of Judgment/Order : 31/10/2022
Courts : Telangana High Court

Telangana High Court held that statute has introduced limitation under section 39(9) of the Central Goods and Services Tax Act, 2017 to rectify omission/ error in GSTR-1 return and accordingly assessee cannot be permitted to carry out rectification beyond the statutorily prescribed period.

Facts- Vide the present writ petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to allow amendments in the GSTR- 1 form filed for the period January, 2018 to August, 2018 so as to correctly reflect the input tax credit as well as the output tax liability of the petitioner.

The petitioner submits that in the said GSTR-1 the details of the distributor were wrongly mentioned. It was a bona fide mistake whereby the name of the distributor was mentioned as M/s. Hyderabad Service Station instead of M/s. Bade Miyan Wheels. Because of the aforesaid error, the distributor – M/s. Bade Miyan Wheels, is not able to utilise the input tax credit for the said purpose which is being reflected in the GSTR-2A forms of M/s. Hyderabad Service Station. Because of the above, the distributor had not paid amount due to the petitioner equivalent to the input tax credit because of the wrong entity which would be to the tune of Rs.11,68,456.00.

Conclusion- Section 39(9) of the CGST Act provides that if after furnishing such return a registered person discovers any omission or incorrect particulars other than as a result of scrutiny, audit etc., he shall rectify such omission or incorrect particulars in such form and in such manner as may be prescribed, subject to payment of interest etc. The proviso says that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year to which such details pertain or the actual date of furnishing of relevant annual return, whichever is earlier. In other words, such rectification could be carried out after the due date for furnishing of return up to the following month of September.

Supreme court in the case of Bharti Airtel Ltd. has held that that the law provides for rectification of errors and omissions in the specified manner. Beyond the statutorily prescribed period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in the electronic records. Supreme Court considered the mechanism provided by Section 39(9) of the CGST Act and thereafter took the view that allowing the assessee to carry out rectification of errors and omissions beyond the statutorily prescribed period would lead to complete uncertainty and collapse of the tax administration.

2. Date of payment towards GST liability is to be construed from date of filing of GSTR-3B

Case Name : RSB Transmissions India Limited Vs Union of India
Appeal Number : W.P (T) No. 23 of 2022
Date of Judgment/Order : 18/10/2022
Courts : Jharkhand High Court

A combined reading of Section 49(1) of CGST Act, 2017 and Rule 87 (6) and (7) of CGST Rules, 2017 both go to show that such deposit does not mean that the amount is appropriated towards the Government exchequer. On other hand other, a bare reading of sub-section (3) of Section 49 indicates that such amount available in the Electronic Cash Ledger is used for making payment towards tax, interest, penalty, fees or any other amount under the provisions of the Act and the Rules in the manner prescribed and subject to such conditions as may be prescribed. As per sub-section (4), the amount available in the Electronic Credit Ledger may be used for making any payment towards output tax under this Act or IGST Act in the manner prescribed and subject to the conditions. Explanation to sub-section (11) of Section 49 also makes it clear that the date of credit to the amount of Government in the authorized Bank shall be deemed to be the date of deposit in the Electronic Cash Ledger. The deposit in the Electronic Cash Ledger, therefore, does not amount to payment of the tax liability. If the scheme of the Act and the relevant provisions of Section 3 9(7) is read in conjunction with the manner of payment of tax prescribed under Section 49, it is clear that any registered person can pay the tax not later than the last date on which he is required to furnish such return. But on filing of GSTR-3B only, the amount lying in his Electronic Cash Ledger is debited towards payment of tax, interest or tax liability. Under the scheme of the Act, no person can make payment of tax prior to filing of GSTR 3B return, though such deposits may be made or are lying in his Electronic Cash Ledger. Tax liability gets discharged only upon filing of GSTR 3B return, the last date of which is 20th of the succeeding month on which the tax is due and even though GSTR-3B return can be filed prior to the last date and such tax liability can be discharged on its filing, but mere deposit of amount in the Electronic Cash Ledger on any date prior to filing of GSTR-3B return, does not amount to payment of tax due to its State exchequer. The expression 'deposit' used in Section 49(1) and the expression 'may be used' in Section 49(3) leave no room of doubt in this regard. Further, a bare reading of the proviso to Section 50, which has been introduced by amendment in the Finance Act, 2019 and made retrospectively effective from 1st July, 2017, also goes to show that the interest on tax payable during the tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, (except where such return is furnished after commencement of any proceeding under Section 73 or Section 74 in respect of the said period), shall be payable on that portion of the tax which is paid by debiting the Electronic Cash Ledger. This again goes to show that only on filing of GSTR-3B return, the debit of the tax dues is made from Electronic Cash Ledger and any amount lying in deposit in the Electronic Cash Ledger prior to that date does not amount to discharge of tax liability. A combined reading of Section 39 (7), 49 (1) and Section 50(1) read with its proviso and Rule 61(2) also confirms this position. Rule 6 1(2) provides that 'every registered person required to furnish return under Sub-Rule (1) shall subject to provisions of Section 49, discharged his liability

towards tax, interest, penalty, fee or any other amount payable under the Act or under the provisions of Chapter by debiting the Electronic Cash Ledger or Credit Ledger and include the details in the return in the form GSTR 3B.' Therefore, discharge of tax liability is simultaneous with the filing of GSTR 3B return under the scheme of GST regime and the provisions of GST Act intended to ensure seamless flow of movement of goods and services and payment of tax by the registered persons in the form prescribed through a digital mode maintained by GSTIN. The contention of the petitioner of having discharged the tax liability by mere deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR-3B return would be against the scheme of GST Act and would make the working of GST regime unworkable. It can also be understood in a different way. There is no time prescribed for deposit of cash in the Cash Ledger. It, in fact, is just an e-wallet where cash can be deposited at any time by creating the requisite Challans. Since, the amount lies deposited in the Electronic Cash Ledger, a registered assessee can claim its refund any time, following the procedure prescribed under the Act and the Rules. Of course, while making refund from the Electronic Cash Ledger, the proper officer has to satisfy whether any outstanding tax liability remains to be discharged by the person concerned. The computation of interest liability is dependent upon the delay in filing of returns beyond the due date. The tax payer can claim refund under Section 54 of CGST Act at any point of time in accordance with the provisions of the Act. There is a distinction, so far as ITC available in the Electronic Credit Ledger and Electronic Cash Ledger is concerned. As such cash is just in the nature of deposit in the Electronic Cash Ledger, whereas the ITC is available in favor of the assessee on account of tax already paid. Therefore, certain distinction has been made under Section 50 of CGST Act as regards the computation of interest only on that portion of the tax paid after due date of filing of return under Section 39(7) of the Act by debiting the Electronic Cash Ledger.

The aforesaid mechanism is the only manner in which provisions of Section 39 (7) relating to furnishing of returns read with Section 49 relating to payment of tax, Section 50 relating to computation of interest and Rule 62 (1) and Rule 87 (6) and (7) can be harmoniously interpreted. If such interpretation is accorded, the contention of the petitioner that the interest so levied against the petitioner is in the nature of penalty is not worth acceptance. The decision of Delhi High Court in the case of Prannoy Roy (Supra) dealing with altogether different provisions of the Income Tax Act cannot be borrowed while interpreting the provisions of CGST Act enacted under Article 246A to give effect to the principles of cooperative federalism in sphere of Indirect Tax regime. The contentions raised by the petitioner that interest cannot be levied upon delayed filing of return but only on delayed payment of tax, stands duly answered by virtue of the discussions made above and the reasons recorded.

Since the issue raised herein involves pure questions of law based on interpretation of the relevant provisions of CGST Act on undisputed facts, we are agreeable to the proposition advanced by learned senior counsel for the petitioner relying upon the case of Magadh Sugar & Energy Ltd (Supra) that the writ petition is maintainable. Applying the principles of interpretation as has been laid down by the Apex Court such as in the case J.K. Synthetics Limited (supra) and Dwarka Prasad (Supra), we have no hesitation in holding that the liability to pay interest arises on delayed filing of GSTR-3B return and debit of tax due from the Electronic Cash Ledger. Any deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the registered person. Since

the petitioner herein filed its return after some delay for the period July, 2017, October, 2017, November, 2017 and March, 2018 i.e. GSTR-3B return were filed after 20th day of the succeeding month for which the tax was due, the Revenue has rightly computed the interest on such delayed payment and requested the petitioner to pay the differential amount of Rs. 13,23,782.99. Since the petitioner has duly discharged his liability towards interest by making payment of total amount and filing Form DRC-03, no case of refund of such amount arises. The question posed at the outset is answered accordingly. Writ petition is dismissed.

3. Notice by Commercial Tax Tribunal not served: Allahabad HC allows fresh Revision

Case Name : Automark Industries (India) Pvt. Ltd. Vs Commissioner of Commercial Tax
Appeal Number : Sales/Trade Tax Revision No. 3 of 2022
Date of Judgment/Order : 21/10/2022
Courts : Allahabad High Court

One of the main planks of the arguments submitted by the revisionist before this Court is that their matter was remitted to the Tribunal for decision afresh in pursuance to which the impugned order has been passed. It has been submitted that the Tribunal did not inform the revisionist about listing of the said case and during the said period COVID 19 Pandemic was at its peak and, hence, the petitioner could not know the proceedings and was not informed about the date of hearing and consequently he could not be present before the Tribunal on the date of hearing and, hence, without giving any opportunity of hearing or considering the version of the petitioner the impugned order has been passed.

On examination of rival contentions, this Court is of considered view that though the registry of Commercial Tax Tribunal had issued notice but the same was not served on the revisionists and they remained unrepresented before the Tribunal. It is further noticed that their non-appearance was not intentional or deliberate and, hence, it will be in fitness of things that the revisionist is permitted to place his arguments / contentions before the Tribunal and the Tribunal may also take into consideration such arguments before coming to conclusion with regard to issues engaging the Tribunal in the present case.

For the reasons aforesaid the order dated 19.1.2021 is set aside and the matter is remitted back to Commercial Tax Tribunal for a fresh determination and such determination be done expeditiously.

4. GST @18% is leviable on alcoholic liquor for human consumption

Case Name : Esveeaar Distilleries Private Limited Vs Assistant Commissioner (State Tax)
Appeal Number : Writ Petition No.15534 of 2022
Date of Judgment/Order : 20/10/2022
Courts : Andhra Pradesh HC

Andhra Pradesh High Court held that alcoholic liquor for human consumption doesn't constitute food/ food product falling within Chapter 1 to 22 and hence liable to tax @ 18% in terms of notification no. 6/2021- Central Tax (Rate) dated 30.09.2021

Facts- The petitioner is a manufacturer of Indian Made Foreign liquor and is a franchisee of M/s.United Spirits Limited, Bangalore for manufacture of "McDowell" brand alcoholic beverages

like rum, whisky and brandy. An Assessment came to be made by the Respondent No. 1 for the Tax Period of 2017-2018, 2018-2019 & 2019-2020 in levying CGST amounting to Rs. 24,94,104/- with penalty and interest under CGST & IGST. The same is challenged on the ground that the job work charges relatable to manufacture of Alcoholic liquor in view of Notification No.6/2021-Central Tax (Rate) dated 30.09.2021 issued by the Department of Revenue, Ministry of Finance, Government of India, published in the gazette on 30.09.2021, at the rate of 18% as against 5% is illegal and contrary to law.

Conclusion- Held that "alcoholic liquor for human consumption" does not constitute food or food product falling within Chapters 1 to 22 of First Schedule of Customs Tariff Act, 1975, we hold that the petitioner is liable to pay tax at the rate of 18% in terms of Notification No.6/2021, dated 09.2021. Apart from that, it is also to be noticed that at no point of time, any exemption was specifically granted to "alcoholic liquor for human consumption". Neither the notification nor the items mentioned in Chapters 1 to 22 spell out clearly that "alcoholic liquor for human consumption" as food or food product. The petitioner, on its own, has been claiming exemption, which lead to issuance of notification No.6/2021. Though the same was published in Gazette on 30.09.2021, but this being clarificatory in nature, it has to be retrospective in operation.

5. Omission/ error in GSTR-1 cannot be rectified beyond period prescribed u/s 39(9) of CGST Act

Case Name : Yokohama India Private Limited Vs State of Telangana
Appeal Number : Writ Petition No.15284 of 2022
Date of Judgment/Order : 31/10/2022
Courts : Telangana High Court

Telangana High Court held that statute has introduced limitation under section 39(9) of the Central Goods and Services Tax Act, 2017 to rectify omission/ error in GSTR-1 return and accordingly assessee cannot be permitted to carry out rectification beyond the statutorily prescribed period.

Facts- Vide the present writ petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to allow amendments in the GSTR- 1 form filed for the period January, 2018 to August, 2018 so as to correctly reflect the input tax credit as well as the output tax liability of the petitioner.

The petitioner submits that in the said GSTR-1 the details of the distributor were wrongly mentioned. It was a bona fide mistake whereby the name of the distributor was mentioned as M/s. Hyderabad Service Station instead of M/s. Bade Miyan Wheels. Because of the aforesaid error, the distributor – M/s. Bade Miyan Wheels, is not able to utilise the input tax credit for the said purpose which is being reflected in the GSTR-2A forms of M/s. Hyderabad Service Station. Because of the above, the distributor had not paid amount due to the petitioner equivalent to the input tax credit because of the wrong entity which would be to the tune of Rs.11,68,456.00.

Conclusion- Section 39(9) of the CGST Act provides that if after furnishing such return a registered person discovers any omission or incorrect particulars other than as a result of scrutiny, audit etc., he shall rectify such omission or incorrect particulars in such form and in such manner as may be prescribed, subject to payment of interest etc. The proviso says that no such rectification of any omission or incorrect particulars shall be allowed after the due date for

furnishing of return for the month of September or second quarter following the end of the financial year to which such details pertain or the actual date of furnishing of relevant annual return, whichever is earlier. In other words, such rectification could be carried out after the due date for furnishing of return up to the following month of September.

Supreme court in the case of Bharti Airtel Ltd. has held that that the law provides for rectification of errors and omissions in the specified manner. Beyond the statutorily prescribed period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in the electronic records. Supreme Court considered the mechanism provided by Section 39(9) of the CGST Act and thereafter took the view that allowing the assessee to carry out rectification of errors and omissions beyond the statutorily prescribed period would lead to complete uncertainty and collapse of the tax administration.

6. <u>Date of payment towards GST liability is to be construed from date of filing of GSTR-3B</u>

Case Name : RSB Transmissions India Limited Vs Union of India
Appeal Number : W.P (T) No. 23 of 2022
Date of Judgment/Order : 18/10/2022
Courts : Jharkhand High Court

A combined reading of Section 49(1) of CGST Act, 2017 and Rule 87 (6) and (7) of CGST Rules, 2017 both go to show that such deposit does not mean that the amount is appropriated towards the Government exchequer. On other hand other, a bare reading of sub-section (3) of Section 49 indicates that such amount available in the Electronic Cash Ledger is used for making payment towards tax, interest, penalty, fees or any other amount under the provisions of the Act and the Rules in the manner prescribed and subject to such conditions as may be prescribed. As per sub-section (4), the amount available in the Electronic Credit Ledger may be used for making any payment towards output tax under this Act or IGST Act in the manner prescribed and subject to the conditions. Explanation to sub-section (11) of Section 49 also makes it clear that the date of credit to the amount of Government in the authorized Bank shall be deemed to be the date of deposit in the Electronic Cash Ledger. The deposit in the Electronic Cash Ledger, therefore, does not amount to payment of the tax liability. If the scheme of the Act and the relevant provisions of Section 3 9(7) is read in conjunction with the manner of payment of tax prescribed under Section 49, it is clear that any registered person can pay the tax not later than the last date on which he is required to furnish such return. But on filing of GSTR-3B only, the amount lying in his Electronic Cash Ledger is debited towards payment of tax, interest or tax liability. Under the scheme of the Act, no person can make payment of tax prior to filing of GSTR 3B return, though such deposits may be made or are lying in his Electronic Cash Ledger. Tax liability gets discharged only upon filing of GSTR 3B return, the last date of which is 20th of the succeeding month on which the tax is due and even though GSTR-3B return can be filed prior to the last date and such tax liability can be discharged on its filing, but mere deposit of amount in the Electronic Cash Ledger on any date prior to filing of GSTR-3B return, does not amount to payment of tax due to its State exchequer. The expression 'deposit' used in Section 49(1) and the expression 'may be used' in Section 49(3) leave no room of doubt in this regard. Further, a bare reading of the proviso to Section 50, which has been introduced by amendment in the

Finance Act, 2019 and made retrospectively effective from 1st July, 2017, also goes to show that the interest on tax payable during the tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, (except where such return is furnished after commencement of any proceeding under Section 73 or Section 74 in respect of the said period), shall be payable on that portion of the tax which is paid by debiting the Electronic Cash Ledger. This again goes to show that only on filing of GSTR-3B return, the debit of the tax dues is made from Electronic Cash Ledger and any amount lying in deposit in the Electronic Cash Ledger prior to that date does not amount to discharge of tax liability. A combined reading of Section 39 (7), 49 (1) and Section 50(1) read with its proviso and Rule 61(2) also confirms this position. Rule 6 1(2) provides that 'every registered person required to furnish return under Sub-Rule (1) shall subject to provisions of Section 49, discharged his liability towards tax, interest, penalty, fee or any other amount payable under the Act or under the provisions of Chapter by debiting the Electronic Cash Ledger or Credit Ledger and include the details in the return in the form GSTR 3B.' Therefore, discharge of tax liability is simultaneous with the filing of GSTR 3B return under the scheme of GST regime and the provisions of GST Act intended to ensure seamless flow of movement of goods and services and payment of tax by the registered persons in the form prescribed through a digital mode maintained by GSTIN. The contention of the petitioner of having discharged the tax liability by mere deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR-3B return would be against the scheme of GST Act and would make the working of GST regime unworkable. It can also be understood in a different way. There is no time prescribed for deposit of cash in the Cash Ledger. It, in fact, is just an e-wallet where cash can be deposited at any time by creating the requisite Challans. Since, the amount lies deposited in the Electronic Cash Ledger, a registered assessee can claim its refund any time, following the procedure prescribed under the Act and the Rules. Of course, while making refund from the Electronic Cash Ledger, the proper officer has to satisfy whether any outstanding tax liability remains to be discharged by the person concerned. The computation of interest liability is dependent upon the delay in filing of returns beyond the due date. The tax payer can claim refund under Section 54 of CGST Act at any point of time in accordance with the provisions of the Act. There is a distinction, so far as ITC available in the Electronic Credit Ledger and Electronic Cash Ledger is concerned. As such cash is just in the nature of deposit in the Electronic Cash Ledger, whereas the ITC is available in favor of the assessee on account of tax already paid. Therefore, certain distinction has been made under Section 50 of CGST Act as regards the computation of interest only on that portion of the tax paid after due date of filing of return under Section 39(7) of the Act by debiting the Electronic Cash Ledger.

The aforesaid mechanism is the only manner in which provisions of Section 39 (7) relating to furnishing of returns read with Section 49 relating to payment of tax, Section 50 relating to computation of interest and Rule 62 (1) and Rule 87 (6) and (7) can be harmoniously interpreted. If such interpretation is accorded, the contention of the petitioner that the interest so levied against the petitioner is in the nature of penalty is not worth acceptance. The decision of Delhi High Court in the case of Prannoy Roy (Supra) dealing with altogether different provisions of the Income Tax Act cannot be borrowed while interpreting the provisions of CGST Act enacted under Article 246A to give effect to the principles of cooperative federalism in sphere of Indirect Tax regime. The contentions raised by the petitioner that interest cannot be

levied upon delayed filing of return but only on delayed payment of tax, stands duly answered by virtue of the discussions made above and the reasons recorded.

Since the issue raised herein involves pure questions of law based on interpretation of the relevant provisions of CGST Act on undisputed facts, we are agreeable to the proposition advanced by learned senior counsel for the petitioner relying upon the case of Magadh Sugar & Energy Ltd (Supra) that the writ petition is maintainable. Applying the principles of interpretation as has been laid down by the Apex Court such as in the case J.K. Synthetics Limited (supra) and Dwarka Prasad (Supra), we have no hesitation in holding that the liability to pay interest arises on delayed filing of GSTR-3B return and debit of tax due from the Electronic Cash Ledger. Any deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the registered person. Since the petitioner herein filed its return after some delay for the period July, 2017, October, 2017, November, 2017 and March, 2018 i.e. GSTR-3B return were filed after 20th day of the succeeding month for which the tax was due, the Revenue has rightly computed the interest on such delayed payment and requested the petitioner to pay the differential amount of Rs. 13,23,782.99. Since the petitioner has duly discharged his liability towards interest by making payment of total amount and filing Form DRC-03, no case of refund of such amount arises. The question posed at the outset is answered accordingly. Writ petition is dismissed.

7. <u>HC allows amendment in GSTR-1 to rectify mistake of wrong GSTIN mentioned against invoices raised on purchaser</u>

Case Name : Mahalaxmi Infra Contract Ltd. Vs Goods and Services Tax Council through the Secretary
Appeal Number : W.P.(T) No. 2478 of 2021
Date of Judgment/Order : 18/10/2022
Courts : Jharkhand High Court

In the instant case it appears that on account of an inadvertent error, the entry relating to Tax Invoice No. 01/2018- 19 dated 17th January 2019 could not be reflected in the GSTR-1 filed by the petitioner against the GSTIN of Eastern Coalfields Limited (GSTIN No. 20AAACE7590E3ZX). Instead it was quoted in the GSTIN of Respondent No.6 MIPL-NKAS (JV) [GSTIN No.20AAEAM0162G1Z9] which was not the recipient of such supplies. Though, Respondent No.5 availed of such input tax credit bona fide believing that it had paid the taxes against such invoices, but on realizing the same reversed the entries in May 2022 as the same we are not reflected in his GSTR-2A return for the said period. The said entries, though reflected in the GSTR-2A of Respondent No. 6 inadvertently, were not availed by Respondent No.6 and rightly so, as it had not received any such supplies against the tax invoice in question. It further appears that the mechanism conceived under substituted Rule 59 specifically, sub rule (3) and (4) and Rule 60 (1) having not put into place by notification of form GSTR-2 and GSTR-1A the petitioner could not discover such error in the absence of GSTR-2 being available to be filed by the recipient Respondent No.5. In the absence of notification of such forms GSTR-2 and GSTR-1A the Respondent No.6 could also not submit the relevant form GSTR-2 indicating such incorrect entries in its GSTR-2A due to incorrect entries in GSTR-1 by the petitioner. Since the mechanism

provided for matching of details of inward supply furnished by a registered person or outward supply not being rightly declared by the supplier in his returns GSTR-1, not being place, such discrepancy could not be communicated to petitioner. The relevant form GST-MIS 1 and GST-MIS 2 as conceived under section 70 and 71 read with section 42 (prior to its omission under notification no.19/2022 and 18/2022 vide notification dated 28.09.2022 of CBIC) also having not been prescribed, the online mechanisms for discovery and correction of such mistake either by the supplier or by the recipient or both, could not take place. Petitioner therefore, appears to have a valid reason in not being able to rectify the entries in the GSTR-1 returns of March 2019 in the returns of September 2019 to be filed by 20th of October 2019 or the date of filing of the annual return, whichever is earlier. The error apparently came to the notice of the petitioner only during finalization of the accounts with respondent no.5 who had also by that time detected availment of ITC in lieu of the Tax Invoice No. 1/201819 dated 17th January 2019, though not reflected in its GSTR-2. Petitioner approached this court immediately thereafter on 9th July 2022 seeking a direction upon the respondent GSTN to allow it to rectify returns. The detailed structured mechanism conceived under the JGST Act and the rules framed thereunder having not been put into place, the online portal did not permit such correction by any aggrieved registered person on its own. Therefore, the necessity for such an aggrieved registered person to approach this court under Article 226 of the Constitution of India. It is not in dispute that such incorrect entries in GSTR-1by Petitioner for the period January 2019 filed in March 2019 were not going to entail any additional tax impact. The rectification exercise would remain revenue neutral. Such TRAN I forms have been allowed to be filed online or manually in cases where TRAN-1 forms were not filed within the time prescribed by certain registered persons/ assessees. The judgment relied upon by the learned counsel for the petitioner are to that effect.

Having gone through the decisions cited in support by learned counsel for the petitioner and that the instant case does not present any additional tax impact, or loss of revenue for the State Exchequer and, in fact, such correction of relevant returns in case of the petitioner i.e.,GSTR-1, GSTR-2A in case of the respondent no. 5 and 6 would allow the respondent no.5 to rightly avail the ITC against the tax paid under Tax Invoice number 1/ 2018-19 dated 17th January 2019 issued by the petitioner, we are of the considered view that interest of justice would be served if the petitioner is allowed to make the necessary correction in GSTR-1 form for January 2019. Such correction, if does not entail technical difficulties by the GSTN, may be allowed to be made online by GSTN by opening the portal for a limited period upon due communication to the petitioner and respondent no.5 and 6 as it would reflect corresponding correction in their GSTR-2A form for the relevant period. If such a course is not possible to be done online for technical reasons, the GSTN could allow the petitioner to make such corrections through manual mode. Let such correction be allowed to be made within a period of 8 weeks from the date of receipt of this order.

8. <u>Amendment to section 50 of CGST Act 2017 levying interest on net tax liability is effective from 1st July 2017</u>

Case Name : Abis Export India Private Limited Vs State of Chhattisgarh
Appeal Number : WPT No. 100 of 2019

Date of Judgment/Order : 31/10/2022
Courts : Chhattisgarh High Court

Chhattisgarh High Court held that amendment to section 50 of the CGST Act, 2017, that interest shall be levied on that portion of tax paid by debiting the electronic cash ledger (i.e. net tax liability), is effective retrospectively from 1st July 2017.

Facts- The petitioner's company approached the authority showing the difference in its GSTR 1 & GSTR 3B and sought directions from the authorities about the mechanism to rectify its return, but on account of the non-availability of the mechanism, the return could not be rectified. The petitioner was held liable for payment of interest of Rs. 72,69,975 after examining the GSTR 3B which is return as provided under Section 39 of the GST Act.

Conclusion- The amendment which has been made effective from 01.07.2017 clearly provides that the interest on tax payable in respect of supplies made during the tax paid and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39 of the Act, 2017 except where the such return is furnished after commencement of any proceedings under Section 73 or 74 of the Act, 2017 shall be levied on that portion of tax i.e. paid by debiting the electronic cash ledger, as such, the amendments are having retrospectively applicability effect, as such.

Held that in view of the amendment made by the Central Government, the writ petition is disposed of with a direction to the appellate authority to examine whether, in the given facts and circumstances of the case, the petitioner can be extended benefits of the amendment made in Section 50 of the Income Tax Act or not.

9. HC disposes petition with a direction to recompute GST interest – Section 50

Case Name : V.L.S. Fibre Vs Assistant Commissioner of GST & Central Excise
Appeal Number : WP.Nos.4306 & 4310 of 2020
Date of Judgment/Order : 17/10/2022
Courts : All High Courts Madras High Court

Heard Ms.S.Sarojini, learned counsel for Mr.R.Anish Kumar, learned counsel on record for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for R1 and R2.

2. The challenge is to a notice of demand of interest under Section 50 of the Central Goods and Services Tax Act, 2017 (in short 'CGST Act') for various months between July, 2017 and October, 2019. No reply has been filed by the petitioner to this notice.

3. However, according to the petitioner, the computation of the demand is itself incorrect and liable to be revoked. Thus, it is appropriate that the petitioner file a reply to notice dated 04.02.2020, setting out the proper interest payable, according to it.

4. Let the amount be re-determined by the authority in light of the decision of this Court in the case of M/s. Maansarovar Motors Private Limited, Represented by its Director, No.292/294, S.F.No.290/2, 291, Mount Poonamallee High Road, Ayyappanthangal, Chennai-600056 v. The Assistant Commissioner, Poonamallee Division, Chennai Outer Commissionerate, C-48, TNHB Building, Anna Nagar, Chennai-600 040 and others [2021

(44) GSTL 126], within a period of four (4) weeks from today, after hearing the petitioner.

5. In light of the alleged demand for interest, the respondent has attached the bank account of the petitioner in Axis Bank Limited, Anna Salai, Chennai in Form GST DRC- 13. The attachment shall continue till such time re-computation is effected, as stipulated supra, and subject to the same.

6. Both writ petitions stand disposed as above. No costs. Connected

10. GST Registration Cancellation: Appeal Remedy cannot be denied merely because Revocation Option was not opted

Case Name : Smt. Shailaja Chandrashekar Vs Additional Commissioner of Central Tax (Appeals)
Appeal Number : Writ Petition No. 17778 of 2022 (T-RES)
Date of Judgment/Order : 13/10/2022
Courts : Karnataka High Court

An Appeal u/s 107 of CGST Act against cancellation of GST registration cannot be denied solely because remedy u/s 30 of CGST Act was not exercised by the assessee

The Hon'ble Karnataka High Court in M/s Shailaja Chandrashekar v. Additional Commissioner of Central Tax (Appeals), [Writ Petition No. 17778/ 2022 (T-RES) dated October 13, 2022] held that an Appeal under Section 107 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") against the cancellation of a GST registration cannot be disregarded just because the assessee did not avail the remedy under Section 30 of the CGST Act.

Facts: M/s Shailaja Chandrashekar ("the Petitioner") filed a writ petition in the Hon'ble High Court, alleging that the Respondents during a lockdown due to the COVID- 19 pandemic issued an Order dated April 13, 2020, revoking or cancelling the Petitioner's GST registration. The Petitioner could not prefer an Appeal within prescribed period because of the ongoing COVID- 19 pandemic. Petitioner could only prefer an Appeal before the Appellate Authority on March 30, 2022 and the Appellate Authority vide its Order dated April 22, 2022 dismissed the same on the ground that the Appeal is not maintainable since, the only option left to the Petitioner was to approach the concern Officer (Respondent No. 2) for revocation of the cancellation and Restoration of the Registration under Section 30 of the CGST Act. The Respondent submitted that the writ petition should be dismissed because the writ petition was preferred on September 2, 2022 and Respondent No. 3 vide letter dated September 6, 2022 informed the Petitioner that the application for revocation of the cancellation of registration cannot be considered.

Issue: Whether remedy of Appeal under Section 107 of the CGST Act can be availed even if remedy under Section 30 of the CGST Act is not exercised?

Held: The Hon'ble Karnataka High Court in Writ Petition No. 17778/ 2022 (T-RES) dated October 13, 2022 held as under: Section 107 of the CGST Act indicates that a remedy of an Appeal before the Appellate

- Authority is available against the Order passed by the Respondent no 3 cancelling the GST Registration. Merely because the Petitioner has an option of seeking revocation of the cancellation under Section 30 of the CGST Act it cannot be said that independent of the said remedy of seeking revocation of cancellation, an Appeal would not be maintainable.
- The Hon'ble Court set aside the Order dated April 22, 2022 and directed the Respondent No. 3 to reconsider the Petitioner's request for the revocation of the cancellation of registration in light of the observations made in the Order, without reference to the communication issued to the Petitioner by the Respondent on September 6, 2022.
- The Hon'ble Court also asked the Respondent to reconsider the claim of the Petitioner and pass appropriate Order and /or take appropriate decision in accordance with law within a period of two weeks from the date of receipt of copy of the Order.

11. <u>HC directs BDA to reconsider question of levy of GST on sale of developed plots</u>
Case Name : Shraddha Tiwari Vs Bhopal Development Authority
Appeal Number : Writ Petition No. 257 of 2022
Date of Judgment/Order : 27/10/2022
Courts : Madhya Pradesh HC

Challenge in this petition filed under Article 226 of the Constitution of India is to the land allotment notices dated 23-11-2021 and 09.12.2021 Annexures P/1, P/2, P/3, P/4 & P/5 by which GST @ 12% has been levied upon the sale consideration for purchase of developed land upon the petitioners who happen to be purchasers of the said land from Bhopal Development Authority.

During the pendency of this petition the counsel for respondent No. 1 Bhopal Development Authority and GST brought to the notice of this Court circular dated 03.08.2022 issued by Government of India, Ministry of Finance, Department of Revenue, issuing clarifications regarding applicable GST rates & exemptions on certain services, which inter-alia provide thus:-

> "14. Whether sale of land after leveling, laying down of drainage lines etc., is taxable under GST.
>
> (14.1) Representation has been received requesting for clarification regarding applicability of GST on sale of land after leveling, laying down of drainage lines etc.
>
> (14.2) As per Sl. No. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, sale of land is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

(14.3) Land may be sold either as it is or after some development such as leveling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

(14.4) However, it may be noted that any service provided for development of land like leveling laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

3. In view of the aforesaid clarification issued by the Government of India, Ministry of Finance, Department of Revenue, it would be appropriate that the Bhopal Development Authority applies its mind again on the question as to whether GST deserves to be levied in given facts and circumstances.

4. Accordingly, this petition is disposed of with direction to the Bhopal Development Authority to reconsider the question of levy of GST on the sale of developed plots to the petitioners in the light of aforesaid circular dated 08.2022 issued by Government of India, Ministry of Finance, Department of Revenue.

5. It is clarified that while doing so, Bhopal Development Authority shall not be influenced by the impugned orders dated 23-11- 2021 and 09.12.2021 Annexure P/1, P/2, P/3, P/4 & P/5 in respect of.

6. Let the aforesaid exercise be concluded within a period of 60 days from the date of receipt of copy of this order.

12. <u>Levy of GST & penalty cannot be based upon presumption</u>

Case Name : State of U.P Vs Maa Vindhyavasini Tobacco Pvt Ltd
Appeal Number : Writ - C No. - 20203 of 2019
Date of Judgment/Order : 20/10/2022
Courts : Allahabad High Court

The facts in brief as arise are that the goods being transported by the respondent were intercepted on 28.04.2019 at about 21:31 hours on the intelligence received by the petitioners that the goods were being transported on the basis of tax invoices which were pre used. After the interception, the statement of the truck driver was recorded. Based upon the said statement, the authorities proceeded to pass an order under Section 129(3) of the CGST Act after serving the copy of the notice to the respondent, whereby the respondents were directed to pay the tax on the goods being transported amounting to Rs.7,23,700/- and further cess of Rs.19,05,024/-. The said order was challenged by the respondents by preferring an appeal. The appellate authority by means of the impugned order held that there was no material available with the authorities concerned for detention and seizure of the goods, for passing the orders under Section 129 (3) of the CGST Act. While deciding the appeal, the appellate authority after

referring to the provisions of Section 129 held that it is well settled that the levy of tax and penalty cannot be based upon the presumption.

The Counsel for the petitioner argues that the petitioners had received intelligence that the goods are being transported twice over on the same set of invoices. The said argument, in the case in hand, is not worthy of acceptance, inasmuch as, the goods to be transported have to be accompanied by E-way bills as provided under Section 138 of the Rules framed under CGST Act and this fact that the said set of E-way bills would use neither emerged in the assessment order nor is there any basis to arrive at the conclusion that the appellate authority rightly allowed the appeal preferred by the respondent and directed for release of goods and the transport vehicle.

The plain reading of the provisions of CGST Act makes it clear that the provisions as contained in Chapter 19 including Section 129 are the provisions for release of goods intercepted during transportation on the ground as engrafted therein and provides an opportunity to the assessee to take the benefit and to come forward for release of the goods on payment of the amounts as indicated in Section 129 (1)(a)(b) and (c) as the case may be. The quantum of penalty which is to be paid under Section 129 (1)(a)(b) and (c) is to be determined under Section 129(3) of the CGST Act. The said power is purely an alternate mode given to the assessees to come forward and to avoid any future litigation and to offer and pay the amount. If the assessee does not avail the benefit as accrue from Section 129, the department is clearly free to take recourse under Chapter 15 read with Section 122 of the CGST Act to take steps for determining the tax due liability and the penalty.

In the present case, as the respondent has not approached for availing the benefit that flow from Section 129, coupled with the fact that the appellate authority found that the basis for initiating proceedings were non-existent, I do not see any reason to interfere with the order passed by the appellate authority, in exercise of powers under Section 226 of the Constitution of India.

13. <u>Dept cannot refuse to release goods & conveyance if appellant compiles with Section 129(1)(c)</u>

Case Name : VTS Steels Vs Assistant State Tax Officer
Appeal Number : WP (C) No. 33537 of 2022
Date of Judgment/Order : 21/10/2022
Courts : Kerala High Court

Kerala High Court held that if petitioner complies with provision of Section 129 (1)(c) of CGST Act, 2017, there is no reason for Assistant State Tax Officer to refuse the release of the goods and the conveyance, pending finalization of the proceedings issued under Section 129.

14. <u>GST: Section 129 can be invoked by department with regard to goods in transit: HC</u>
Case Name : Bharti Airtel Ltd. Vs State of U.P.

The contention of the counsel for the petitioner is that the order imposing tax liability as well as the appellate order are bad in law and contrary to the mandate of the provisions of the CGST Act. He argues that from the plain reading of the section 129 of the Act, it is clear that on the goods being detained, the same are to be released on the owner of the goods or any other person coming forward and offering to pay the amount as indicated in clause-a, clause-b and clause-c of Section 129(1) of the Act. He argues that to determine the amount which is liable to be paid under clause-a, clause-b and clause-c of Section 129 (1), the proper officer is empowered to specify the penalty payable. He argues that although the proper officer is empowered to specify the penalty which should be paid or offered to be paid under clause-a, clause-b or clause-c of Section 129(1) of the Act, there is no power to determine the penalty payable which can be done only in terms of the mandate of Section 122 of the CGST Act.

He further argues that admittedly no proceedings for determination of the penalty or for determination of the tax outstanding have been initiated either under section 73 or 74 of the CGST Act or under section 122 of the CGST Act. He further argues that in any event there was never any dispute that the tax which is required to be paid for transport of the goods was not paid and thus, the demand as well as the imposition of the penalty is neither justified nor proper exercise of the power. He further argues that no proceedings under section 73, 74 or 75 of the Act have also been initiated against the petitioner for determination of the tax liability.

Thus, in short the submission of the counsel for the petitioner is that in terms of the mandate of section 129, the proper officer is neither authorized nor justified in determining the tax or imposing the penalty as has been done by means of the impugned orders and thus, the impugned orders are liable to be set aside and the amount deposited by the petitioner is liable to be refunded. Thus, in the Act in question, the power of inspection, search and seizure can be carried out under Chapter XIV or in case of goods in transit under section 129. Section 129, on the plain reading, can be equated with an alternative dispute redressal mechanism and provides an opportunity to the owner of the goods or any other person to pay amounts as specified under section 129 (1)(a) or (b) or (c) of the said Act.

On a plain reading of clause 129(1)(a) of the Act, which provides for payment of penalty equal to 200% of the tax payable on such goods or penalty equal to 50% of the value of the goods, further incorporates provisions for determination of quantum of penalty under section 129(3). Thus, under the scheme of the Act, the procedure for

determination of tax and penalty is contained in Chapter XV read with section 122, 123, 125, 126, 127 and 128 of the Act and a parallel procedure is prescribed under section 129 of the Act in case of goods, which are in transit.

Section 129, can be invoked by the department with regard to the goods in transit and the goods can be released only in the event the owner of the goods comes forward for payment of penalty as specified in clause (a) or (b) or (c) of Section 129 (1) of the Act and on payment of the said amount, the intent is to give quietus to the litigation.

The question that arises here is that what happened the owner of the goods or the person does not volunteer to pay the penalty as prescribed under clause (a), (b), (c) of Section 129 (1) of the Act. In the said case, the department is will equipped to initiate proceedings by taking recourse to Section 73, 74, 75 of the Act read with section 122 for determination of tax and the penalty leviable which, subject to the appeal would govern the issues in between the department and the assessee.

In the present case, the department has proceeded to determine the tax liability as well as penalty only under the provisions of Section 129 of the Act, which is not contemplated or intended. On a plain reading of Section 129, there is no provision under section 129 for determination of tax due, which can be done only by taking recourse to the provisions of Section 73 or 74 of the CGST Act, as the case may be.

As the proceedings have been initiated and concluded only under section 129 and the owner of the goods has not come forward for payment of such penalty as has been determined, the entire action of determining the tax and penalty under section 129(1) as has been done by means of the impugned order and upheld in the appellate proceedings, impugned before this Court, I have no hesitation in holding that the order passed on 17.10.2018 and as upheld by the order dated 31.10.2020 are not legally substitutable and are accordingly set aside. The amount paid by the petitioner for release of the goods shall be refunded to the petitioner with all expedition preferably within a period of two months from today.

15. <u>GST registration cancelled due to inadvertent error – HC allows manual Restoration Application</u>

Case Name : S.S.G. Apparels Vs Deputy Assistant Commissioner GST (Central Taxes)
Appeal Number : WP.No.17918 of 2020
Date of Judgment/Order : 17/10/2022
Courts : All High Courts Madras High Court

The petitioner challenges an order dated 30.09.2020 cancelling its registration under the provisions of Central Goods and Services Tax Act, 2017 (in short 'Act').

2. While filling in the form for registration, the factory address of the petitioner being 'No.8/829, Vigneshwara Nagar, Kanakkanthottam, Tirupur' had been included twice under the column 'additional places of business in the state'. The petitioner, wishing to rectify the error, had attempted to submit an application for amendment of the registration certificate. However, while filling the application Online, the Accountant had selected 'cancellation' from the drop down menu instead of 'modification'. It is thus that the impugned order has come to be passed cancelling the registration with effect from 01.05.2020.

3. The only reason cited at paragraph 4 of the counter objecting to the prayer sought, is that the cancellation was effected only at the request of the petitioner. Hence it is for the petitioner to seek revocation of the same, in terms of the revisional remedies available. The counter does not dispute the explanation put forth by the petitioner or state that the error was not caused on account of an inadvertent mistake.

4. In light of the aforesaid and in the interests of substantial justice, I accept the explanation tendered by the petitioner and hold that the request for cancellation was only a simple and inadvertent error. The impugned order is set aside and the petitioner is permitted to make an application seeking restoration of registration, setting out the correct details of the principal and additional places of business.

5. Since the petitioner states that it will not be granted access online to file an application in view of the cancellation of registration, it is permitted to make the application manually before R1/Deputy Commissioner, GST (Central Taxes), who shall restore the registration within a period of two (2) weeks from date of receipt of the application.

6. This writ petition is allowed as above. No costs. Connected miscellaneous petitions are closed.

16. <u>Bail allowed to GST Accused for fraudulent availing of Input Tax Credit amounted to Rs 10.71 Cr</u>

Case Name : Varun Rakesh Bansal Vs State of Gujarat
Appeal Number : Criminal Misc. Application No. 15878 of 2022
Date of Judgment/Order : 04/10/2022
Courts : Gujarat High Court

Gujarat High Court had recently, while deciding upon an application filed under section 439 of the Code of Criminal Procedure, granted bail to a GST accused for fraudulently availing input tax credit worth Rs 10.71 crores, in respect of fiction transactions amounting to Rs 59.55 cores as the department already had sufficient time to investigate their claim and to gather evidence, which they had alleged were in connection with fraudulent claim of Input Tax Credit and alleged evasion. The

department had already attached the property under section 83 which was valued as Rs.6,17,21,463/-. Further the amount of Rs.50 Lakhs had been paid by the applicant and if necessary under subsection (1) of section 138, the Commissioner would have all the authority to compound the offence on payment being made by the alleged accused.

17. <u>No penalty if only a minor part of Transitional Credit claim disallowed</u>
Case Name : Green Valliey Industries Ltd. Vs Union of India
Appeal Number : WP (C) No. 287/2022
Date of Judgment/Order : 19/10/2022
Courts : Meghalaya High Court

The petitioning assessee relies on a judgment of this Court delivered on May 19, 2022 in WP (C) No.86 of 2022 (The Commissioner of GST v. Amrit Cement Limited) to assail an appellate order of July 14, 2021 passed in connection with a show-cause notice dated July 31, 2019.

2. The matter pertains to the transitional period of switching over from the previous sales tax regime to the GST regime. In the discussion in Amrit Cement Limited, Section 140 of the Central Goods and Services Tax Act, 2017 fell for consideration and the cenvat credit claimed by the assessee was allowed in terms of the appellate order upon noticing, inter alia, Rule 117 of the Central Goods and Services Tax Rules, 2017 pertaining to “eligible duties and taxes”.

3. On behalf of the Department, it is submitted that the impugned appellate order dealt with the entire claim of Rs.6,86,73,062/- in two parts: the first pertained to the cenvat credit of Rs.6,55,99,154/- and the second pertained to a credit of Rs.30,73,908/- that had been availed through TRAN-1. The Department submits, in particular, that the sum of Rs.30,73,908/- claimed by way of TRAN-1 was completely impermissible and there is no error in the adjudication in such regard reflected at paragraph 11 of the impugned appellate order.

4. As to the remainder of the claim of the cenvat credit of Rs.6,55,99,154/-, the Department does not admit that the petitioning assessee is entitled to the same, but puts forth the same grounds as noticed in Amrit Cement Limited to resist such part of the claim. Since the entirety of the Department’s argument was recorded in detail in such regard in Amrit Cement Limited and repelled, the Department’s submission in this case that the cenvat credit limit claimed by the assessee to the extent of Rs.6,55,99,154/- has been rightly negated by the appellate order, cannot be accepted. Accordingly, the petitioner herein is found entitled to the cenvat credit limit of Rs.6,55,99,154/-.

5. As to the claim of Rs.30,73,908/-, paragraph 3.5 of the show-cause notice of July 31, 2019 claimed that out of the total credit of Rs.6,86,73,064/- on account of the reverse charge mechanism availed by the assessee in its return of June, 2017, the admissible credit was Rs.30,73,908/-, which was the payment made by the assessee in June, 2017.

The show-cause notice went on to reason that since the refund claim made by the assessee for the month of June, 2017 was to the extent of Rs.2,17,30,566/- and not the balance amount of Rs.30,73,908/- that was also available, in terms of the exemption notification No.20/2007 issued by the Central Excise authorities on April 25, 2007, the assessee was deemed to have abandoned such part of the claim. Indeed, the Department points out that the refund claim of Rs.2,17,30,566/- was honoured and the assessee has no grievance in such regard.

6. Section 140 of the Act of 2017 permits a cenvat credit to be carried forward except in three situations which are expressly indicated in the provision. These three situations are covered by the proviso to the substantive provision. The credit would not be available when it is not admissible as per the input tax credit under the Act or where returns have not been furnished within time or where the amount of credit relates to good manufactured and cleared under any exemption notification as may have been notified.

7. In this case, it is the admitted position that in terms of the exemption notification of April 25, 2007, the entirety of the credit available to an assessee ought to have been availed and the refund claim ought to have been restricted to the additional amount paid in cash, if excise duty was exempted. Thus, on a reading of the relevant notification, it would be apparent that no credit could be carried forward after making a refund claim as the entirety of the credit would have been adjusted in course of making the claim for refund.

8. This is exactly what the appellate authority held at paragraph 11 of the impugned order of July 14, 2021.

9. The appellate authority noticed that the assessee had sought a cash refund of Rs.2,17,30,566/- for the month of June, 2017 and had obtained the same. The appellate authority observed that the mandatory pre-condition of the notification of April 25, 2007 was that “the assessee first exhaust the entire credit available to them and discharge their remaining duty liability by cash and subsequently avail the benefit of exemption by way of refund of the amount paid in cash only pertaining to the period to which the refund relates”.

10. Clearly, the petitioning assessee in this case ought to have included in its refund claim of June, 2017, the additional amount of Rs.30,73,908/- which it subsequently sought to carry forward in its TRAN-1. When an exemption is granted, it is to be seen as an exception to the general rule. Exemptions may be granted hedged with conditions. Since it is a benefit which is specially conferred to a person or a class of persons, the benefit has to be taken with the conditions and not severed therefrom. The benefit of exemption in this case was that the entirety of the credit available would first be adjusted before the balance paid by way of cash and refund sought only of the cash payment. In the assessee not availing of the entirety of the credit due to it on June 30, 2017, it was not entitled to make a further claim in such regard and is deemed in law to have abandoned such available credit.

11. As a consequence, the amount of Rs.30,73,908/- could no longer be carried forward in the TRAN-1 that was submitted at a subsequent stage.

12. There is no doubt that the assessee did not avail of the credit amounting to Rs.30,73,908/- and in equity may be entitled to the same. However, equitable principles do not come into play when it is an exemption provision that is sought to be enforced, particularly when the conditions attached to the exemption are not adhered to.

13. The assessees claim for the amount of Rs.30,73,908/- cannot be accepted and, to such extent, the show-cause notice and the impugned appellate order are found to be in order and unassailable.

14. However, the assessee submits that since the larger part of the claim has been allowed following the dictum in Amrit Cement Limited, the 100 per cent penalty imposed by the Department should also go.

15. There is no doubt that since the larger part of the claim in excess of Rs.6 crores has been upheld in favor of the assessee, the imposition of penalty for the corresponding amount will no longer apply. But the issue now arises as to whether the 100 per cent penalty imposed for the remainder of the claim, to the extent of Rs.30,73,908/-, should also be interfered with.

16. The assessee refers to Sections 73 and 74 of the Act of 2017. The assessee brings out the distinction between Section 73 and the strict applicability of Section 74 when there is an attempt by the assessee to defraud the revenue by making any misrepresentation or by suppression of material facts. The assessee submits that apart from the fact than an amount in excess of Rs.30 lakh would be a loss to the assessee, there was no attempt by the assessee to mislead the Department or suppress any material facts in making the claim for the amount of Rs.30,73,908/- in the TRAN-1 filed by the assessee. The assessee suggests that since it was a huge sum which had been lost to the assessee, the assessee merely invoked the discretion of the Department in allowing the claim at a later stage since the assessee had not availed of it, whether by mistake or oversight, at the time of claiming refund for the month of June, 2017.

17. Though the Department vehemently objects to the conduct of the assessee to not be regarded as fraudulent, in this case, it appears that the assessee has been seriously hurt in losing a sum of Rs.30,73,908/- that it was otherwise legitimately entitled to receive. It is not necessary to go into the circumstances in which such claim had not been made, once it is evident that if the claim for refund had not being made at the appropriate time, it could not be carried forward. However, nothing in the subsequent act of the assessee in incorporating the amount in TRAN-1 would amount to the element of mens read on its part that is the underlying essence of Section 74 of the Act of 2017.

18. Since the claim of the assessee to the extent of Rs.6,55,99,154/-has been upheld, no question arises of any penalty or interest or other charge being imposed in respect of such amount. The penalty on the balance amount would not be covered under Section 74 of the Act since there was no attempt to defraud the revenue or mislead it or any

suppression of material facts. Indeed, since there is no failure to pay any amount, in the strict sense, in this case as the show-cause notice only pertained to a claim that had been made to which the assessee was not entitled, this would not be an appropriate case for imposing any penalty.

19. Nonetheless, to the extent that the claim was made and the claim could not have been made in terms of the notification of April 25, 2007 in respect of the sum of Rs.30,73,908/-, the interest imposed by the appellate order limited to such sum is not interfered with.

20. If, as a consequence of this order, any money is payable by the assessee to the Department in respect of the matters covered herein, such payment should be made within 30 days from date, failing which the consequences will follow in accordance with law. It is recorded that the assessee claims that no further payment is required to be made.

21. Accordingly, WP (C) No.287 of 2022 is allowed by setting aside the appellate order dated July 14, 2021 to the extent that it disallowed the petitioning assessee's claim of Rs.6,55,99,154/- and by upholding the appellate order to the extent that it rejected the balance claim of Rs.30,73,908/-. Further, the penalty imposed by the appellate order is set aside in its entirety.

22. MC (WPC) No.139 of 2022 is disposed of.

18. <u>Department Circular cannot alter the statutory provisions to the detriment to the assessee: Gujarat HC</u>

Case Name : Chromotolab And Biotech Solutions Vs Union of India
Appeal Number : R/Special Civil Application No. 16308 of 2020
Date of Judgment/Order : 21/10/2022
Courts : Gujarat High Court

Hon'ble Gujarat High Court held that the date of filing of the application by the petitioner on common portal would be liable to be treated as date of filing claim for refund to the satisfaction of requirement of Section 54 of the CGST Act and Rule 89 of the CGST Rules. The procedure evolved in Circular dated 15.11.2017 cannot operate as delimiting condition on the applicability of statutory provisions.

19. <u>HC Quashed GST order passed without applying mind & considering records</u>

Case Name : Lakha Ram Vs Union of India
Appeal Number : Writ Petition No. 12063 of 2022
Date of Judgment/Order : 10/10/2022
Courts : Bombay High Court

1. Raichandani on instructions states that petition has been served sometime in December 2021 and undertakes to file affidavit of service within one week from today. None present for respondents.

2. Petitioner is impugning an order in original dated 30th June 2021 on the grounds that the observations of Respondent No.2 that petitioner has not submitted any reply to the charges leveled in the impugned show cause notice is erroneous in as much as petitioner had filed a reply dated 9th December 2019. Prior to the issuance of the show cause notice petitioner had received a letter from Respondent No.2 for verification of service tax payment vide letter dated 11th October 2019 to which petitioner had field reply by letter dated 9th December 2019. To the said letter were also annexed various documents. Subsequently, petitioner received show cause notice dated 30th December 2020 but strangely signed on 24th December 2020 to which petitioner had replied vide letter dated 29th December 2020 reiterating the contents of letter dated 9th December 2019. When petitioner received a notice for personal hearing from Respondent No.2, petitioner replied by letter dated 18th June 2021 and brought to the notice of respondent that petitioner has already given a detailed reply and enclosed copy thereof to the said letter dated 18th June 2021. Notwithstanding this respondent has issued impugned order dated 30th June 2021 issued on 6th July 2021 by observing that there has been no reply from petitioner. A copy of reply is also annexed to the petition and there is no denial by way of affidavit in reply. According to Mr. Raichandani, it is petitioner's case that tax if any was payable on reverse charge basis and that has not been considered at all in the impugned order.

3. We have considered the petition with the documents annexed thereto with the assistance of Mr. Raichandani. We are satisfied that petitioner had responded to the show cause notice and the same should have been considered and dealt with in the impugned order dated 6th July 2021. Respondent No.2 not having done that, impugned order requires to be quashed and set aside, which we hereby do. The matter is remanded for denovo consideration. Before passing any order, which shall be within eight weeks from today, petitioner shall be given a personal hearing, notice whereof shall be given at least seven working days in advance. If petitioner wish to file any written submissions, petitioner may do so within three working days of the personal hearing.

4. Before we part, we have to note that this is one more case where respondents have passed such order without applying its mind and without considering the records.

5. We clarify that we have not made any observations on the merits of the matter.

6. Petition disposed.

20. <u>GSTIN linking cannot be denied merely for providing information in FORM GST REG-29 instead of FORM GST REG-16</u>

Case Name : A.H. Marble Crafts, Through Proprietor Mohammad Afzal Vs Commissioner Tax
Appeal Number : Civil Writ Petition No. 16147/2019
Date of Judgment/Order : 11/10/2022
Courts : Rajasthan High Court

The petitioner firm has approached this Court by way of this writ petition seeking to assail the inaction of the respondent No.4 in opening the portal qua the petitioner so as to allow it to complete the tax liability under Section 93 of the CGST Act, 2017.

Brief facts relevant and germane for disposal of the writ petition are noted herein below :-

The erstwhile proprietor of the firm Shri Abdul Hameed Bhati, father of the present proprietor Shri Mohammad Afzal, expired on 31.01.2018 whereupon, an intimation was forwarded to the respondent CGST Department through a letter in hard copy. The CGST Act provides a procedure for cancellation and thereafter, transfer of registration of the dealer pursuant to the death of the proprietor of the firm. However, such process is permissible if the information regarding death of the proprietor is uploaded on common portal in FORM GST REG-16. It appears that the information regarding the death of the sole proprietor was not forwarded to the CGST Department electronically and in prescribed FORM GST REG-16 and thus, further attempts made on behalf of the firm to file the GST returns were blocked. In the meantime, a fresh registration has been acquired by the petitioner.

Being aggrieved by the non-acceptance of the prayer for cancellation and transfer of the GST registration, and the inaction of the respondent No.4 in opening the portal so as to complete the tax liability as provided under Section 93 of the CGST Act, the instant writ petition has been preferred.

The respondents have submitted a reply wherein, the averments made by the petitioner are controverted on the ground that the application for cancellation of registration was made in FORM GST REG-29 and not in FORM GST REG-16 and thus, the system did not link the GSTIN of Shri Abdul Hameed Bhati (the deceased proprietor of the firm) to the GSTIN of the petitioner herein.

Learned counsel Shri Lokesh Mathur representing the petitioner, vehemently submitted that the hyper technical stance taken by the respondents has created an unnecessary hurdle in the way of the petitioner in clearing the tax liabilities qua the firm.

He urged that information regarding death of the proprietor was forwarded to the respondents albeit in a wrong Performa and merely on this technical ground, the respondents have not acted upon the same. Reference is made to circular No.96/15/2019-GST dated 28.03.2019 issued by CBIT and the clause 3(b) thereof, which reads as below:-

> "3. (b) Cancellation of registration on account of death of the proprietor: Clause (a) of sub-section (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee."

in support of the contention that the legal heirs of the sole proprietor of a business can file an application for cancellation of registration electronically on common portal on account of transfer of business for any reasons including the death of the proprietor. Thereafter, the GSTIN of the transferee to whom the business had been transferred can be linked with the GSTIN of the transferor. He thus urges that the necessary direction deserves to be issued to the respondents to open the common portal so that the petitioner can upload the requisite information in the FORM GST REG-16 and get the two accounts linked so as to facilitate the clearance of the tax liability and to avoid the anomalies.

Learned counsel Shri Kuldeep Vaishnav appearing for the respondents, is not in a position to the dispute the fact that the GSTIN of the transferee and the transferor were not linked only on account of the information not being provided electronically on the common portal in FORM GST REG-16.

We feel that this absolute hyper-technical ground cannot be considered valid so as to deny the petitioner from the opportunity to link the GSTIN of his father's firm with the new GSTIN number of the firm. As a matter of fact, the petitioner gave the intimation about the death of the proprietor of the firm which fact establishes his bonafides that he is desirous of removing the anomalies and clearing off the tax liability.

In wake of the discussion made herein above, the respondents are directed to activate the common portal and allow the petitioner to upload the appropriate information in FORM REG-16 within next 30 days. As soon as the information is provided, the GSTIN number of the transferee and the transferor shall be linked as per clause 3(b) of the Circular dated 28.03.2019.

The writ petition is allowed in these terms.