AIFTP

ETHICS EDUCATION EXCELLENCE

INDIRECT TAX & CORPORATE LAWS JOURNAL

Volume-4 | Part-6 | June-2023

LATEST GST CASES DIGEST

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President's Message

Friends,

The Educational Programmes of AIFTP being conducted by various Zones are continuing and almost on every weekend we are having Seminar / Conference at the various cities in India. Large participation of Members in the Seminar/ Conferences is being seen and it is encouraging for all of us that such events are highly successful, and they are also spreading the awareness about AIFTP and educational Programmes being conducted by AIFTP throughout Country.

This year we have completed 70 programmes up to the end of May 2023 and the programmes are continuing. The enthusiasm is such that all weekends almost till December are already booked and even sometimes on weekdays we are organizing Webinars/ Seminars / NTC. It is the co-operation and support from all Zones and the management team of all Zone that programmes are being organized regularly. We are also sending representations to the Government regularly on the topic of importance and certain issues which are being raised by the Members. The representations on the provisions relating to Income Tax and GST has been sent to the Union Finance Minister and Chairman CBDT and CBIC.

In continuation of the programme held earlier and reported in the last communique the Mega Tax Conference was held at Bhilwara on 20th May, 2023 in Rajasthan. The Conference was the first event of the AIFTP in Bhilwara and it was huge success with over 270 participants. I was present there as the Chief Guest and the Technical Sessions were addressed by the Tax Legends namely Ms. Jamuna Shukla from Varanasi, Mr. Paras Kochar from Kolkata and Ms. Aanchal Kapoor from Amritsar. Mr. M.L. Patodi, Past President, Mr. Anil Mathur, National Vice President (CZ) and Mr. Rajesh B.Doshi from Raipur was the Chairman of Technical Sessions. Mr. G.P. Singhal was given the life time achievement award for the services rendered to the profession and AIFTP by the AIFTP (CZ). Special thanks to Mr. Naveen Vagrecha, Mr. Ashok Jathiya, Mr. K. C. Tater and Mr. Dinesh Agal for all the efforts to make the programme a huge success.

Thereafter, a series of webinar in collaboration with the BCAS and other Associations was organized by AIFTP CZ. The important topic under the Income Tax Act was discussed in the webinar and it was a huge success with participation of over 600 delegates. Special thanks to Mr. Deepak Shah for being the main person to co-ordinate this event for AIFTP.

A different programme from Tax i.e. spiritual RRC was organized from 27–29th May, 2023 at Brahmakumaries Gyan Sarovar at Mount Abu. The inaugural

session was organized on 27th May, 2023 and Hon'ble Mr. Justice B.R. Sarangi, Judge, High Court of Orissa was the Chief Guest. Other judges were also present in the Inaugural Session. It was an event with AIFTP and Brahmakumaries and it was attended by 550 persons from all over India. The three days RRC was unique as spiritual courses and sessions were attended by all delegates. Special thanks to Mr. Sandeep Agarwal, Chairman, CZ for organizing and working excellently for this RRC.

The International Study Tour to Vietnam was organized from 2nd – 10th June, 2023 and was attended by over 90 participants from all over India. We visited Hanoi, Halong Bay, Danang and Hoi-an during the visit. It was a remarkable tour and everybody enjoyed it. Special thanks to Mr. Santosh Gupta, Chairman, International Study Tour and Mr. Nitin Gautam for the excellent working and taking care of all the delegates. My appreciation for Mr. Chirag Parekh for all the support extended by him.

In the month of June we are having Webinar by different Zone on various topics and we are having Mega Tax Conference at Thane being organized jointly by WZ, NZ and EZ. Thereafter, we are having the NEC Meeting and Conference at Tirupati on 23rd – 24thJune, 2023 being organized by Southern Zone. Thereafter, we are having Mega Tax Conference being organized by AIFTP CZ on 24th June, at Kota. Again Central Zone is organizing National Conference at Raipur on 30th June, 2023.

In the first fortnight of July, 2023 we are having National Tax Conference at Chennai on 7th and 8th July, 2023 and thereafter NEC and National Tax Conference on 15th – 16th July, 2023 at Amritsar being organized by AIFTP North Zone.

Friends, we have seen that the information of the Members is incomplete and therefore we are working on updating our records and the Directory. We are getting the datas' from the Members by calling them and we had also devised way and sending mail directly to Members with their Data to verify the same. Support is requested from the Members to see the mail and to verify the Data, so that we may be in regular touch with you.

We look forward to active participation of the Members and also request. In case Members are having suggestions then the same may kindly be informed by sending mail at aiftpho@gmail.com or WhatsApp to the undersigned.

Regards,

PANKAJ GHIYA
National President, 2023
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CHIEF-EDITOR'S COMMUNIQUE

"प्रज्ञां लब्ध्वा सुधार्मानं, विज्ञानेन च निर्मितम्।

योगेन च विपुलं सिद्धिं, संस्कृतेन च यशस्विनाम्॥"

"Attain wisdom to acquire virtuous conduct,
build knowledge to create accomplishments,
Achieve greatness through practice,
and garner fame through scholarly pursuits."

Our Esteemed Readers,

Welcome to the June edition of the Indirect Taxes and Corporate Law Journal! As we step into the middle of the year, we find ourselves amidst a rapidly evolving legal landscape, with significant implications for the corporate sector and the realm of indirect taxes. As we unveil the June edition, let us remember the essence of this quotation. It reminds us that wisdom and virtuous conduct are integral to our professional endeavours. By acquiring knowledge and applying it diligently, we can achieve remarkable accomplishments. Through dedicated practice and scholarly pursuits, we can earn recognition and leave a lasting impact. In this issue, we delve into crucial topics and bring you insightful perspectives from experts in the field.

In our pursuit of excellence, the Indirect Taxes and Corporate Law Journal strives to provide you with the most up-to-date and insightful information to fuel your professional growth. Our commitment to delivering cutting-edge research, expert analysis, and practical perspectives remains unwavering. I extend my heartfelt gratitude to everyone for all the love and support. The Journal has been applauded by the Professionals and it has received wide acceptance.

One of the focal points of this edition is the ever-changing Indirect Tax law landscape. Indirect taxes play a vital role in any economy, and understanding their nuances is essential for businesses to navigate the complex web of compliance and optimize their tax positions. Our esteemed authors shed light on the latest case laws, legislative changes, and practical insights to help our readers make informed decisions and ensure tax compliance in an ever-evolving tax landscape. In addition to the insightful articles, we are excited to present exclusive case digest on the current challenges and issues faced in relation to indirect taxes. These case laws provide a unique and valuable opportunity to gain firsthand insights from Judgments.

Furthermore, we have dedicated a substantial portion of this issue to the intricacies of Corporate Laws. We explore recent developments and emerging trends that are shaping the way businesses operate and adapt to new regulations. Our articles provide comprehensive analyses to keep you up to date with the latest legal

developments affecting corporate entities.

As always, we strive to deliver exceptional content that caters to the diverse interests and needs of our readership. In this issue, we have curated articles covering a wide range of topics, including all the timelines, amendments, judgments, recent changes and latest updates, and much more. We hope that our content resonates with your professional interests and contributes to your understanding of the dynamic legal environment.

I also request you all to renew your subscription, if due and circulate the information of subscription to all the professionals and friends in all the Whats app groups/ Facebook posts or twitter handler, so that we may get more subscription for this Journal.

We extend our heartfelt gratitude to our authors for their remarkable contributions and dedication to advancing knowledge in the field of corporate law and indirect taxes. Their expertise and passion enable us to maintain the high standards of academic rigor and practical relevance that define our publication. We also invite you to stay engaged with us and send your articles/editorials, important judgments or updates for publishing in the journal at the mail Id aiftpjournal@gmail.com.

Finally, we would like to express our sincere appreciation to our readers, whose unwavering support and enthusiasm continue to inspire us. Your feedback and engagement are invaluable to us, and we encourage you to reach out with your thoughts, suggestions, and contributions.

We hope that this issue of the Journal of Corporate Law and Indirect Taxes proves to be an engaging and informative resource for legal practitioners, academics, and professionals in the corporate sector. May the knowledge shared within these pages empower you to navigate the complex legal terrain and make sound decisions for your organizations/clients.

Thank you for your continued trust and confidence in our publication. We look forward to bringing you more thought-provoking content in the coming months. Together, let us embark on this journey of knowledge, growth, and transformation.

Regards,

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TIMELINE - GST

Adv. Abhay Singla

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summary GST Return	GSTR-3B		
	(a) Regular Taxpayers		June, 2023	20th July 2023
			July, 2023	20th Augest 2023
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	June, 2023 (IFF)	13th July 2023
	(a) QRMP		Apr-June, 2023	13th Augest 2023
	(b) Monthly Filing	GSTR-1	June, 2023	11th July 2023
			July, 2023	11th Augest 2023
(iii)	Payment of Tax under QRMP	PMT-06	By 25th of next month	
(iv)	Quarterly return for Composite taxable persons	CMP-08	April-June 2023	18th July 2023
(v)	Return for Non-resident taxable person	GSTR-5	Non-resident taxpayers have to file GSTR-5 by 20th of next month.	
(vi)	Details of supplies of OIDAR Services by a person located outside India to Non-taxable person in India	GSTR-5A	Those non-resident taxpayers who provide OIDAR services have to file GSTR-5A by 20th of next month.	
(vii)	Details of ITC received by an Input Service Distributor and distribution of ITC.	GSTR-6	The input service distributors have to file GSTR-6 by 13th of next month.	
(viii)	Return to be filed by the persons who are required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	June, 2023	10th July 2023
			July, 2023	10th Augest 2023
(ix)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	June, 2023	10th July 2023
			July, 2023	10th Augest 2023

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RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Deepak Garg

NOTIFICATIONS – CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
24.05.2023	13/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
24.05.2023	12/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-3B for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
24.05.2023	11/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-1 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
10.05.2023	10/2023-Central Tax	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr from 01 st August 2023.

NOTIFICATIONS – CENTRAL TAX (RATE)

DATE	NOTIFICATION NO.	REMARKS
09.05.2023	05/2023-Central Tax (Rate)	Seeks to amend notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 so as to to extend last date for exercise of option by GTA to pay GST under forward charge.

INSTRUCTIONS

DATE	INSTRUCTION NO.	REMARKS
14.06.2023	03/2023-GST	Guidelines for processing of applications for registration.
26.05.2023	02/2023-GST	Standard Operating Procedure for Scrutiny of Returns for FY 2019-20 onwards
04.05.2023	01/2023-GST	Guidelines for Special All-India Drive against fake registrations –regarding

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INTRICACIES UNDER DEPARTMENTAL AUDIT AND ISSUANCE OF SCN U/S 73 OF GST LAWS – PART 2

CA Siddeshwar Yelamali
CA Mukesh Shah

Preamble

In the first part of this topic, we discussed certain intricacies around Audit under section 65 and 66 with relevant other provisions of the CGST Act, 2017 (the Act). The scope, objectives, limitation, jurisdiction and culmination of audit were covered in the Part 1. This time, attempt has been made to analyse the rights and responsibilities of the registered taxable person (in short, 'RTP') and Proper Officer, the outcome of audit para resulting in Notice u/s 73 or 74 of the Act.

Audit Observations – Bona fide 'Mistake' or 'errors'

Before we dwell into the bona fide 'errors' or mala fide 'intentions', it should be clear in mind that 'evasion of tax' is absent in Section 73 of the Act. Matters involving 'evasion of tax' are covered in Section 74 of the Act. This clears the implication in one's mind about whether Section 73 of the Act can be invoked in cases of bona fide 'mistakes' or 'errors', the answer will be yes. 'Evasion of tax' has to be proved by the Proper Officer, and Audit Evidence can help him in this regard, to issue notice under Section 74 of the Act. This doesn't mean that by not giving 'audit evidence', the RTP can restrict the Proper Officer from taking recourse to Section 74 of the Act, he can always discharge the burden of proof negatively.

Now, coming to the analysis of 'mistake' or 'error' resulting in short payment of taxes or overclaim of input tax credit (in short 'ITC'). The fine difference between these terms can be summarised as under:

Error	Mistake
An error is any deviation from the standard or course of right, truth, justice, or accuracy, which is not intentional	A mistake can be defined as a misguided or wrong judgment, opinion or act - committed under a misapprehension or misconception of the matter.
An error may be from the absence of knowledge.	A mistake is from insufficiency or false observation.
An error may be overlooked or atone for.	a mistake may be rectified.

Considering the above elements of the term 'mistake' or 'error', one thing is clear that there is absence of 'intention' when a mistake or error is committed.It is quite possible that the mistake or errors are brought to the notice of the RTP during Departmental Audit. By default, the allegations will be made that the RTP has intentionally engaged in evasion of tax. The primary reason of such audit para to invoke Section 74 will be, "*in absence of such audit, this issue would have gone unnoticed and the auditee would have continued to enjoy the benefits thereof – the auditee is not a new assessee and had been registered with department and well aware of the statutory provisions to be complied with – in this era of self-assessment, they ought to have conducted their activity in compliance with the statutory provisions, this it is evident that they failed to comply with the provisions resulting in short payment of tax."*By no stretch of imagination, these statements can be called as 'findings' or can be accepted as a valid argument to invoke extended period of limitation, much less to prove the allegation of 'intention of evading tax'.

The RTP must consider the elements of 'mistake' or 'error' discussed *supra*and demonstrate his bona fide belief. Section 73(5) of the Act will assist the RTP in due course of litigation, if he voluntarily discharges the tax and interest within the stipulated timelines, even if the Proper Officer proceeds with Section 74 of the Act. The mistakes or errors rectified prior to it's observation by the Proper Officer should always get shelter under 73(5) of the Act and no penalty can be levied except as provided under Section 73 (11) of the Act.

To illustrate:

1. Omission of a digit or of an invoice while reporting turnover, in GSTR-3B resulting in short payment of tax for a particular month. If the error is corrected in subsequent returns (Circular 26/26/2017-GST dt 29-12-2017) or reported correct turnover in GSTR-9 and 9C with payment of tax and interest, then such Audit Para should be concluded without issuance of notice.
2. Tax position taken withfavourable judicial precedence during the period involved, but subsequently the decisions are overruled or reversed.

Proper officer notices non-cooperation, or any fraudulent business practice or activity

The proper officer can invoke provisions of Section 67 of the Act, once he gathers sufficient information to form a 'reason to believe' that the RTP has indulged in tax

evasion, and initiate approval of officer not below the rank of Joint Commissioner to search RTP's premises in order to safeguard the interest of revenue. Implication of proceedings under Section 67 of the Actis not covered in this article, however, it is to be noted it is well within the power of the Proper Officer to switch the proceedings under appropriate section once he finds sufficient information.

As discussed in previous para, refraining from providing information to the Audit Officer or non-cooperation during audit will not assist the RTP in any case. The Audit Officer may form his opinion based on records available, as he is time bound to complete the audit. Moreover, the Audit Officer can invoke provisions of Section 122 or 125 of the Act to levy penalty, in cases where the RTP fails to furnish documents called for by the Audit Officer, or false information is furnished, or any other non-compliance observed during the Audit.

Central Repository of Audit Outcomes

Model All India GST Audit Manual 2023 gives an insight into an important aspect of Departmental Audit. Audit paras are discussed by Monitoring Committee on monthly basis. Over a period there will be a central repository of audit outcomes, which will serve as a knowledge bank.Eventually, it will fine tune the process of identifyingaudit para and assist in focused audit with better outcomes. This will benefit the RTPs also as the time and effort spent on the settled issues should reduce.

Pre- Show Cause Notice consultation – Disagreed Audit Observations

Upon culmination of audit, the Audit Officer issues FORM GST ADT-02 as prescribed under Rule 101(5) of the CGST Rules, 2017 and uploads the file containing audit observations on the portal. The Audit proceedings conclude as soon as the ADT-02 is issued, the RTP need not venture out to file detailed submissions against the ADT-02, rather RTP may prepare for the next step by authorities.

Short payment of tax, interest and penalties is summarised in the Form and a direction is given to the RTP to discharge the statutory liability, failing which proceedings as deemed fit may be initiated under the relevant provisions of the Act. It is to be noted that ADT-02 is not a Show Cause Notice, and, there is no concept of 'spot recovery' just based on the audit findings and also no appeal can be preferred against ADT-02.

The next step for the disputed audit findings will be initiation of proceedings under

the Chapter XV of Demand and Recovery, i.e., Notice under section 73 of the Act or section 74 of the Act, read with Rule 142. The sub rule (1A) of Rule 142 as inserted by NT-49/2019 dated 09-OCT-2019 prescribes that the Proper Officer **may**before service of notice to the Auditee towards tax, interest and penalty, communicate the details in para A of the **Form GST DRC-01A**. Section 73(5) of the Act and 74(5) of the Act also prescribes that a statement under section 73(3) or 74(3)**may** be issued to the RTP to pay the amount of tax, interest and penalty, and inform the Proper Officer in writing of such payment in Form GST DRC-03. This is a very crucial and important stage in the process, and it can't be given a pass. Audit report as such is ***not*** a pre-notice consultation opportunity. Honourable SC[1] has held that in the interest of serving principles of natural justice, pre-notice consultation is necessary in addition to the audit report before issuance of a show cause notice.

The RTP shall respond in **FORM GST DRC-01A part B**. The objective of these provisions is to provide an opportunity to the RTP to pay the amount of tax, interest and penalty, if any, before issuance of notice, and conclude the proceedings against the disagreed audit findings. Also, as the notice is not issued, the RTP can still avail the concession of penalty.

In author's view, it is recommended that the RTP avails the concession, in cases where the aggressive tax positions were taken and cost of litigation may outweigh the benefits, as this is the last chance of saving penalty cost.

Based on the reply filed in Part B of the FORM DRC-01A, if the proper officer is satisfied, he may conclude the proceedings, but it is not clear whether the conclusion should be by issuing an order FORM DRC-05?It is erroneous to assume that a disputed audit finding, which has travelled this far, will be dropped by the Proper officer just based on a repeated submission made during the Audit Observation reply, unless additional evidenceare unearthed in the meantime by the RTP which can satisfy to favourably conclude of Audit Finding. The proceedings may be dropped only if the amount of tax, interest and penalty is paid, to the satisfaction of the proper officer.

The pre-notice consultation is a setting up of the stage for premeditated notice in FORM GST DRC-01. The RTP can file his submissions / representations in Form GST DRC-06.

[1] Yaduka Agrotech Pvt Ltd 2022 (66) GSTL 385 (SC)

Audit conducted under existing laws - Service Tax or Excise

The proceedings initiated before or after July 01,2017 in the form of Audit of the registered persons in the erstwhile regime of Excise or Service Tax or State VAT (existing laws), can be concluded in accordance with the provisions of respective legislation. The culmination of those audit must follow the mechanism of issuance of notice under the respective legislation within the period of limitation prescribed there under.Notice can't be issued under Section 73 or 74of the Act for the audit findings pertaining to existing laws.

Section 142(8) of the Act mandates that the machinery provisions of adjudication should culminate under the existing laws, only the unrecovered amount of tax, interest, fine or penalty can be recovered under the CGST Act, 2017. Rule 142A as inserted vide NT-06/2018 dated 30-OCT-2018 provides mechanism of recovery of dues under existing laws by issuance of Form GST DRC-07A electronically on the portal.The amount so recovered under the CGST Act is not eligible as input tax credit under the Act. Recovery is permissible under the CGST Act, but refund of any amount due under existing laws to the RTP must be processed under the existing laws only.

The Proper Officers appointed under the GST regime lacks jurisdiction to assess or adjudicate any matter relating to output tax liability or eligibility of input tax pertaining to existing laws.

SCN – Jurisdiction – territorial and monetary limit

Circular 35/05.2018-GST dated 09-FEB-2018 prescribes the designation of proper officers who can issue notices, keeping in mind the optimal distribution of work. It prescribes the monetary limit upto which adjudication of notices can be done by Superintendent, Deputy Commissioner and Additional / Joint Commissioner of Central Tax.

RTPs mapped to Central Commissionerate during registration are audited by the Proper Officers of Central Tax Commissionerate, and vice versa for State Tax Commissionerate if the RTP is mapped as such. The issuance of notice as a culmination of the Audit proceeding will follow the same territorial jurisdiction, as the Executive Commissionerate takes over the proceedings post issuance of notice and adjudicate the matter afresh. The RTP must also verify the monetary limit prescribed under the circular referred supra, apart from the territorial jurisdiction to confirm the validity of notice on the grounds of jurisdiction. Needless to say, the

first ground in the reply should question the fact of jurisdiction.

Document Identification Number – applicability and exemption

The Central Board of Indirect Taxes and Customs has directed[2] that electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of **all communications (including e-mails)** sent to tax payers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs (CBIC) across the country. Any communication issued without the DIN shall be treated as invalid and shall be deemed to have never been issued. However, there are certain exceptions (reasons to be recorded in writing) to this direction,

(i) when there are technical difficulties in generating the electronic DIN, or

(ii) when communication regarding investigation/enquiry, verification etc. is required to issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.

The circular further provides that, any communication issued without an electronically generated DIN in the exigencies mentioned above shall be regularized within 15 working days of its issuance, by:

(i) obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;

(ii) mandatorily electronically generating the DIN after post facto approval; and

(iii) printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file.

The circular is applicable to all Central Tax Commissionerate across the country. It is not mandatory for State Tax Commissionerate to comply with these directions. DIN addressesthe matter of transparency and accountability in the administration process, it is understood that many State Tax Commissionerate have also started the process of implementing similar mechanism.

[2]CIR-122/41/2019-GST dt 05-NOV-2019 and CIR-128/47/2019-GST dt 23-DEC-2019

As far as the proceedings under Section 65 of the Act is concerned, each communication by Central Tax Officer should contain DIN, right from the notice of conducting Audit to the Notice under section 73 of the Act after culmination of Audit. The RTP must keep in mind that the defect of DIN can be regularised, hence, over relying on the technical discrepancy may not hold much water.

This article is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion. The views written in this article is as on14.06.2023.

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IMPORT OF GOODS AND SERVICES IN GST REGIME

M.G. Kodandaram, Adv.
IRS, Assistant Director (Retd.)

Need for Global Trade

India, being a dynamic and progressive economy, the role of exports and imports are of greater importance as they play a vital role in the development of stable financial and supply chain system of a country. To meet the domestic needs, it is inevitable to trade with other countries for import of such essential commodities and services. Similarly, to earn revenue and to balance the payment for imports, export of goods and services are essential. It is true that as a Nation, one must look forward for reducing the imports and make efforts to increase exports out of India so that we are comfortable with trade balance. For the global trade to prosper, free flow of exports and imports are a priority. But the free flow should not affect the economy or come in the way of security and protection of fauna and flora of the Nation. Therefore, planned and weighed control over imports and exports are essential to reduce the cost of transaction and to increase profits. Further to ease the doing of business, the global trade laws and procedures should synchronise with domestic laws and procedures. An attempt is made here to deliberate in brief on the key legal issues involved during global imports in the GST regime.

Constitutional Provisions

Article 246 of Indian Constitution which provides for distribution of powers to make laws, between the Union Government and State Governments, mandates exclusive powers to Parliament to make laws in respect of items indicated in the Union List (called as List I). Among them, '*Item No. 41 -Trade and commerce with foreign countries; import and export across customs frontiers; definition of frontiers',* and Item No. 83 – '*Duties of customs including export duties'*, are relevant for our deliberations. In this article the legal aspects relating to item no 41 and 83, namely (i) The Foreign Trade (Development and Regulation) Act, 1992(FTDR Act) – the laws relating to Foreign Trade Policy and (ii) Customs Act 1962 – laws for management of imports and export of goods, levy, and collection of customs duties in the international import business scenario, along with appropriate GST laws are discussed in brief.

The Goods and Services Tax (GST), the largest tax reform undertaken since Independence, is principally a trust-based regime, along with ease of doing business embedded and uniform approach in law, procedures, levy, and compliances. We are steadily moving towards a self-regulated and transparent GST Regime. As per Article 269A, (as amended by 101 Constitutional (Amendment) Act, 2016) the GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Union Government and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the GST Council. The supply of Goods or Services or Both during imports into the territory of India shall be deemed to be supply in the course of inter-State trade or commerce and are liable to levy under integrated GST and compensation cess, wherever imposed by Integrated GST Act 2017 and GST (compensation to States) Act 2017(Cess). Parliament may, by law, formulate the principles for determining the place of supply in respect of imports and exports of goods and services.

FTDR Act and Imports

In India, exports, and imports [also known as "international trade" or "external trade"] are regulated by Foreign Trade (Development and Regulation) Act, 1992. 'Foreign Trade' involves the export and import of capital (investments), goods, and services across countries or territories. The primary goal of **FTDR Act, 1992** is to improve the law of overseas exchange through facilitating imports into the country, taking measures to grow exports from India and other associated matters. In terms of Section 5 FTDR Act, the Union government makes provisions to fulfil the objectives by way of formulation of the Export and Import Policy. The Union Minister of Commerce and Industry, Consumer Affairs, Food and Public Distribution and Textiles, launched the Foreign Trade Policy (FTP) 2023 on 31/03/2023. The policy and incentives for global trade are administered by the DGFT.

As per Section 7 of the FTDR Act, it is essential for an importer or exporter to obtain Importer-exporter Code Number (IEC) by duly registering with the Directorate General of Foreign Trade (DGFT), Ministry of Commerce, GOI, before engaging in international trade. The IEC, like GST Number (GSTIN), is a key business identifier for the entities engaged in global trade. No person shall make any import or export except under an IEC Number granted by the DGFT. For more details visit https://www.dgft.gov.in/CP/

As per section 2(e) of the "import" and "export" means,'*(I)in relation to goods, bringing into, or taking out of, India any goods by land, sea or air. (II) in relation to services or technology,- (i) supplying, services or technology— (A) from the territory of another country into the territory of India; (B) in the territory of another country to an Indian service consumer; (C) by a service supplier of another country, through commercial presence in India; (D) by a service supplier of another country, through presence of their natural persons in India; (ii) supplying, services or technology - (A) from India into the territory of any other country; (B) in India to the service consumer of any other country; (C) by a service supplier of India, through commercial presence in the territory of any other country*;. Further as per the FTDR Act, 'import' means bringing of goods or services into India from outside India. It must be noted that this provision is applicable to import of goods and import of services.

As per para 2.01 of FTP 2023, the activities export and import of goods and services are categorised as (i) 'Prohibited'- where no person is allowed to do trade (ii)'Restricted' – where due licence for imports and exports are pre-condition (iii) trade restricted to 'State Trading Enterprises (STEs)' and (iv) 'Free' – where every person holding IEC code do trade. The updated category of items can be viewed at https://dgft.gov.in. Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force, which are explained under the provisions of Customs act.

Salient Features of Customs Act

Central Board of Indirect taxes and Customs (CBIC), Ministry of Finance, GOI deals with the formulation of policy concerning levy and administration of Customs duties, Central Excise duties, GST and allied Acts including FTDR Act. Section 12(1) of the Customs Act, 1962 provides for imposition of a duty called Customs duty levied as per the customs Tariff act 1975, or any other law for the time being in force **on the goods imported into India or exported out of India.** The objects of Customs Act are: (i) To regulate imports and exports. (ii) To protect domestic industries from dumping. (iii) To collect revenue in the form of customs duty and indirect tax. (iv) To assist allied legislations such as FTDR and FEMA.

Section 11 of the Customs Act 1962 gives powers to Union government to prohibit import or export of goods. Section 2 (33) of the Customs Act defines the prohibited goods as any goods, the import or export of which is subject to any prohibition

under this act or any other law for time being in force. Therefore, the prohibition under Customs Act applies to prohibition under any other law in India. Some examples are a) Ancient Monument Prevention Act prohibits/ restricts antiquities b) Arms and ammunition cannot be imported or exported without licensee. c) Wildlife Act prohibits certain exports- red sander wood d) Environment Protection Act prohibits export of some items. Similarly, prohibition on import of goods under FTDR Act are implemented by the customs at the economic borders.

The provisions of Customs act are applicable to import and export of goods only as the "GOODS" under Customs act have been defined to include "(a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property (Section 2 (22) of CA). Import, export, or supply of services are neither covered nor taxable under Customs Act. The other important terms defined in customs act, are similar to that are in IGST Act:

(i) Section 2 (23) - "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

(ii) Section 2 (25) - "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

(iii) Section 2 (26) - "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

The provision of customs Act extends up to "Indian customs waters", which means the waters extending into the sea up to the limit of contiguous zone of India (under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976) and includes any bay, gulf, harbour, creek or tidal river. This definition is in tune with the definition of 'India' in GST (Section 2(56) of CGST Act, 2017).

GST Provisions Relating to Imports

The Constitution (101st) Amendment Act, 2016 allows both the centre and states to levy the Goods and Services Tax (GST). Under the GST framework the centre will levy the Integrated GST (IGST) on inter-state supply (which includes imports

and exports) of goods and services. The IGST Act,2017 among others, provide for provisions relating to (i) levy of tax on goods imported into India, (ii) levy of tax on import of **services on a reverse charge basis** (iii) grant exemptions on the recommendation of the GST Council; (iv) determination of nature of supply (intra-State or inter-State) and place of supply (v) payment of tax by a supplier of Online Information and Database Access or Retrieval Services (OIDAR); (vi) apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Government and Union Territory;(vii) for application of certain provisions of the CGST Act, 2017 to the extent relevant for the purposes of this Act.

As per section 7 of the CGST Act 'Supply' includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Further the import of services for a consideration, whether or not in the course or furtherance of business are also treated as supply under the Act. Sections 9 / 9/ 5 of the CGST/SGST / IGST Act respectively provide that all intra-state/Inter-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption, would be liable to CGST /SGST /IGST at rate recommended by the Council and notified subject to a ceiling rate of 20%/ 40% advalorem. The value for the purposes of levy of CGST/SGST are to be determined under section 15 of the C/SGST Act. This provision is comparable to the provision under section 7 of the UTGST Act and section 11 of the GST (Compensation to States) Act, 2017.

In terms of section 2(24) of the IGST Act, any words or expression which are used in this Act but are not defined should be assigned the meaning as given to such words or expressions in the CGST Act, the UTGST Act, and the GST (Compensation to States) Act. The meaning of 'supply', 'goods', 'services' and 'taxable person' etc., should be borrowed from the CGST Act. It is to be further noted that certain provisions of the CGST Act have been made applicable to IGST by virtue of Section 20 of the IGST Act. Similar provisions exist in GST (Compensation to states) Act, 2017 (GST Cess) also. The integrated tax / GST cess shall be payable by a 'taxable person' as defined under section 2(107) read with section 22 and section 24 of the CGST Act. The provisions relating to reverse charge mechanism / notified e-commerce operators under section 9(3),9(4) and

9(5) of CGST/SGST Act and section 5(3),5(4) and 5(5) of IGST Act are equally applicable for import of good and services.

Customs Frontier

As per section 2 *(10) of the IGST Act 2017, "import of goods", means 'bringing goods into India from a place outside India'.* Supplies made by an importer after the goods have crossed the 'customs frontier' of India would be liable to IGST/ GST cess. The term customs frontier has been defined in section 2(4) of the IGST Act to mean 'the limits of a customs area as defined in section 2 of the Customs Act, 1962'. The reading of the relevant provisions in the customs act imply that the customs frontiers of India include the following: (a) Customs Port; (b) Customs Airport; (c) International Courier Terminal; (d) Foreign Post Office; (e) Land Customs Station; (f) Area in which imported goods or goods meant for export are ordinarily kept before clearance by Customs Authorities. The Bonded Warehouses are covered under this definition. A person importing goods into the territory of India from an overseas exporter would be liable to pay IGST on such supply of goods. Where a transfer of documents of title takes place during import, the question of payment of tax by the importer would not arise since the documents of title would be transferred before the goods cross the customs frontier of India. It has been clarified vide *Circular No. 33/2017-Cus dated 1-Aug-17,* that IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. This has been further emphasised in the schedule III of the CGST Act details of which are discussed in the further part.

The following aspects needed to be noted in respect of import of goods:

(i) The place of supply of goods in case of imports would be the location of the importer. E.g.: If goods are imported at Chennai port but the importer is at Bangalore, the place of supply shall be Bangalore.

(ii) The integrated tax and GST cess wherever notified would be levied on the value of goods as determined under Customs law (CIF Value) in addition to the custom duties levied on such imports.

(iii) The time at which the customs duties are levied on import of goods would also be the time when integrated tax / Cess is levied.

(iv) The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability.

(v) Merchant Trading Transactions i.e., where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

(vi) The Schedule III of Central Goods and Services Act 2017 lists the Activities or Transactions which shall be treated neither as a Supply of Goods nor a Supply of Service and are not to be subjected to levy under GST laws. Vide *CGST (Amendment) Act, 2018 dated 29.08.2018* (effective from 01.02.2019) the following entries have been added:

"*7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.*

8. (a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Explanation 2.-For the purposes of paragraph 8, the expression ¯warehoused goods shall have the same meaning as assigned to it in the Customs Act, 1962." This further emphasizes that, (1) Goods that do not enter the territory of India are not to be subjected to levy under GST laws. (2) Goods are not to be charged to IGST / GST cess till they leave the customs frontier, which includes bonded warehouses declared under customs Act.

Levy of IGST and GST Cess

As per section 7 and 8 of the IGST act, import and export transactions in goods and services are deemed to be interstate transactions, and accordingly are subjected to Levy of IGST. The following table would help in understanding the distinction between intra-state and inter-state supplies of goods or services more clearly:

Intra-state supply	Interstate supply
• Supply of goods within the same state or union territory. • Supply of services within the same state or union territory	• Supply of goods and services from one state or union territory to another state or union territory. • Import of goods till they cross customs frontier • Import of services. • Export of goods or services. • Supply of goods or services to/by SEZ or SEZ developer.

As per section 5 of IGST Act " *(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated GST on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the CGST Act and at such rates, not exceeding 40%, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

Provided that the integrated tax on goods *imported into India shall be levied and collected in accordance with the provisions of* ***section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act*** *at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962."*

Section 3(7) of the customs tariff Act, 1975(CTA) mandates, *"(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable under section 5 of the IGST Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8)or sub-section (8A), as the case may be*". Such taxes are to be collected at the time of import, at the point when customs duties are levied under the provisions of customs law on the value determined under customs Act. IGST would be payable on Transaction value plus Basic customs duty, and any other taxes payable.

Similarly, GST Cess would be levied and collected under Section 3(9) of the CTA. The GST Cess would be payable on Customs Transaction value plus basic customs duty, and any other taxes payable. Note that IGST would not be included for computing the compensation cess. Bill of entry will continue to be the valid document

for taking credit of IGST and GST Cess paid on imported goods. However, the credit of IGST can be utilised for payment of IGST only and the credit of GST Cess credit can be utilised for payment of GST Cess only.

Classification of Goods and Services

The classification of goods, at present, adopted in GST regime is based on the HS of Nomenclature, which is already in force in respect of international trade under Customs act 1962 in the form of The Customs Tariff act 1975. Import and export of goods are required to be assessed to customs duty as well as GST levy. For this purpose, it is necessary to determine the classification of the goods, which means the categorization of the goods in a specific heading of the Schedules to the CTA. Schedule I of CTA lists the goods in HS form with unit quantity code, indicating duties /taxes /cess levied during import of goods.

In the Tariff Schedule, commodities/products are arranged in a legal and logical pattern with the duty/tax rates specified against each of them. The Indian Customs Tariff has 21 Sections and 98 Chapters. Section is a group consisting of a number of Chapters which codify a particular class of goods. The Section notes explain the scope of chapters / headings, *etc*. The Chapters consist of chapter notes, brief description of commodities arranged at four-digit, six digit and eight-digit levels. Every four-digit code is called a "heading" and every six-digit code is called a "subheading" and 8-digit code is called a "Tariff Item". The classifications of goods must be determined after following the General Rules of Interpretation, which is also a part of Customs Tariff act.

To the said HS Tariff [the Customs Tariff], which consists of exclusive principles for classification in respect of movable goods, an additional chapter, namely chapter 99, detailing the classification of the services has been inserted for the purposes of classification of services in GST regime. While mandating the classification of services, the following explanations have been added: "Explanatory Notes to the Scheme of Classification of Services – 'where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description'. For more details visit https://gstcouncil.gov.in/sites/default/files/Explanatory_notes.pdf

Valuation of imported Goods

As per CGST Rule 34, the rate of exchange of currency, other than Indian rupees, to be considered for determination of value during imports for payment of IGST/

GST Cess shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

In respect of certain goods, under Section 14(2) of the Customs Act, 1962, the Board is empowered to fix values called 'Tariff Values'. If the tariff values are fixed for any goods, ad valorem duties thereon are to be calculated with reference to such tariff values only. Tariff values have presently been fixed in respect of import of Crude Palm Oil, RBD Palm Oil, Other Palm Oils, Crude Palmolein, RBD Palmolein, Other Palmoleins, Crude Soyabean Oil, Areca nuts, Brass Scrap (all grades) and Poppy Seeds. Gold / silver, in any form (where the benefit of entries at serial number 356 /357 of the Notification No. 50/2017-Customs dated 30.06.2017 have been availed) Medallions and silver coins having 99.9% silver content, gold bars, Gold coins are also covered under Tariff Value (Refer recent Notification No.38/2023-Cus. (NT), dated 31-05-2023). The same value must be adopted for the purposes of IGST and compensation Cess also. In other cases, other than the above commodities, the 'Transaction value' of the imported goods are to be determined as per section 14(1) of the Customs Act, 1962.

The Section 14(1) states that when a duty of customs is chargeable on any goods by reference to their value, (for the valuation of both imported goods and export goods) the value of such goods shall be deemed to be: *"The price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale".* As provided in Section 14(1), the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007have been framed for valuation of imported goods. On customs classification of goods and valuation, another article will follow in due course as it requires detailed discussions.

Further, goods imported by SEZ also do not attract liability to IGST as the goods are 'not yet' liable to be assessed to customs duty. Section 53 of the SEZ Act states that: *"Section 53(1). A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations."*

Import Documents

On import of goods an importer files one of the following types of Bills of entry depending upon his requirements.

(1) Bill of entry for home consumption: Importer wherever needs to clear the goods on payment of duty for domestic use may file this category of Bill of entry with customs. In such cases the CIF value declared to the customs to be adopted and all customs duties plus expenses up to the clearance are to be considered for the purposes of discharging the IGST and GST cess. In these cases, CIF value shall be adopted as the basis for levy of various Customs duties, and the customs CIF value plus all the customs duties are to be considered for levy of IGST/ GST cess.

(2) Warehousing Bill of Entry (Into Bond Bill of Entry): Under this provision, importers who do not require goods for immediate use are allowed to deposit the goods in the customs Bonded warehouse under the supervision of the Authorities. In this scenario neither the customs duties nor the IGST and GST cess are leviable.

(3) Ex-bond Bill of Entry: This is filed by the importer when he desires to co clear the above warehoused goods for home consumption, beyond the customs frontiers. This requires him to discharge all duties/ taxes before clearance from customs. As per section 3(8)/(8A) and section 3(10)/(10A) of the customs tariff act,1975 the IGST and GST cess shall be paid on the value: *'(1)(a)the value of the imported article determined under section 14 (1) of the Customs Act, 1962 or (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 and any sum chargeable on that article under any law or (2) the transaction value of such warehoused goods, whichever is higher'*.

Import Of Services

As per Sec 7(4) of CGST Act, supply of services imported into the territory of India shall be treated to be supply of services in course of inter-state trade or commerce. The import of services as defined in section 2 (11) of IGST act covers all such supplies where: (a) The supplier is located outside India, (b) The recipient is located in India and (c) Place of supply is in India. The following aspects are to be noted for understanding the compliances pertaining to import of services.

1) Under Schedule I to Section 7 of the CGST Act, it has been clarified that import of services by a taxable person from a related person in the course furtherance of business shall be treated as supply, even if it is made without any consideration.
2) Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration, will be a supply.
3) Supplies, where the supplier and recipient are mere establishments of a person, would also qualify as "import of service".
4) The importer will be liable to pay integrated tax on a reverse charge basis and the same must be discharged by cash only.
5) Import of service made for a consideration alone would be taxable, whether or not in the course of business. Therefore, import of service for personal consumption for a consideration would qualify as 'supply' and would be liable to integrated tax. However, import of services from related persons or establishments located outside India without consideration also would be liable to integrated tax as per Schedule I of the CGST Act, 2017.
6) The threshold limits for registration would not apply and the importer would be required to obtain registration irrespective of his turnover.
7) Imports of Services are not managed by the Customs department.
8) In view of the provisions contained in Section 14 of the IGST Act, 2017, explained in the further part of this article, import of free services from Google and Facebook by Indians, without any consideration, are not considered as supply.
9) Import (Downloading) of a song for consideration for personal use would be a service, even though the same are not in the course or furtherance of business.
10) As per Notification No. 10/2017 -Integrated Tax(Rate)dated 28thJune, 2017, the central government has notified that IGST in respect of the following import of services are to be paid by the recipient of the services (Under section 5(3) of the IGST Act. Accordingly, 'Any service supplied by any person who is located in a non-taxable territory to any person

other the non-taxable online recipient, shall be paid by any person located in the taxable territory (recipient) other than non-taxable online recipient. Means the registered person receiving such services has to discharge IGST.

11) Section 13 of the IGST Act, 2017 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. Thus, this section provides the place of supply in relation to international or cross-border supply of services.

12) As per Rule 34 of CGST Rules,2017, the rate of exchange of currency, other than Indian rupees, for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act. The customs notified exchange rates applicable for import of goods are not applicable to import of services.

Online Information Data Base Access and Retrieval (OIDAR) Services

As per section 14*(1) of IGST act 'On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services'.* As the name suggests, the services in these cases are provided by the supplier of services through the medium of internet and the recipient will download the same in India.

OIDAR Services have been defined in Section 2(17) of the IGST Act 2017as *"online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—(i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music and the like); (vi) digital data storage; and (vi) online gaming;* OIDAR

Services are taxed in India in order to promote/protect the home-grown industries. If the service provider is not India, then there will not be taxes for which the recipient of services has to pay there by making it more economical and it is seen clearly in case of B2C Segment. To provide a level playing field taxation of OIDAR services has been introduced in India. In case of B2B supplies, they will be eligible to take input tax credit and will not have much impact on the landed cost but in case of B2C there will be remarkable difference to the tune of 18% which is the generic rate for services in GST. Now let's examine the impact of ODIAR Services taxability in India and also the GST compliance requirements.

The nature of OIDAR services are such that it can be provided online from a remote location outside the taxable territory. A similar service provided by an Indian Service Provider, from within the taxable territory, to recipients in India would be taxable. Further, such services received by a registered entity in India would also be taxable under reverse charge. The overseas suppliers of such services would have an unfair tax advantage should the services provided by them be left out of the tax net. At the same time, since the service provider is located overseas and may not be having a presence in India, the compliance verification mechanism become difficult. It is in such circumstances, that the government has to come out with a simplified scheme of registration for such service providers located outside. The "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

For such cases the IGST Act provides that on supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services. The OIDAR Service providers from any part of the globe must be register with GSTN by using the Form GST REG – 10. The supplier shall take registration at Principal Commissioner of Central Tax, Bengaluru West who has been the designated for grant registration in such cases.

The time of supply for OIDAR services will be for the time of supply of services. In case if the supplier of services collects advance and then delivers the service, a receipt voucher must be issued on the collection of Advance and tax has to be

remitted. In case if the tax invoice is issued immediately then tax invoice must be issued. The taxes to be collected on forward charge or reverse charge is determined based on the status of the recipient in GST. As per the provisions of the GST Act, the tax is payable on the transaction value.

The service provider who has taken registration as OIDAR services cannot claim input tax credit in the returns he filed at periodic intervals. Input tax credit can be availed only in case of registered taxpayers and if they are eligible to take credit. If the taxes are paid on reverse charge basis, then the taxpayer is eligible to take credit only after the taxes have been paid in cash.

In terms of Rule 64 of CGST Rules, 2017, every registered person providing OIDAR services from a place outside India to a person in India other than a registered person shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

From the above it is clear that the GST laws in synchronisation with Customs Act and FTDR act.

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CASE DIGEST ON LATEST JUDGEMENTS IN GST REGIME

Compiled by CA (Dr.) Arpit Haldia, CA Akhash Phophalia

Section 5

1. **Petitioner needs to participate in the summon proceedings to know that whether State Authority are prosecuting the petitioner once again on the same matter on which Central Authority had already initiated action against the petitioner**

   In this writ petition impugned Summons were challenged on the ground that both Central and State Authorities do not have powers to initiate proceedings against the petitioner simultaneously under the respective GST Acts regarding the same subject matter. The petitioner stated that he was already facing proceedings initiated by the Central Authority and therefore, the question of the State Authority initiating proceedings against the petitioner will not arise as per Section 6(2)(b) of the GST Act, 2017.

   The High Court observed that truth will come out only when the petitioner appears before the State Authority pursuant to the Summons received by him and not otherwise. If it is the same subject matter, the State Authority cannot prosecute the petitioner once again as the Central Authority had already initiated action against the petitioner in respect of the very same subject matter. The petitioner had sent a detailed reply on 27.10.2022 to the impugned Summons dated 18.10.2022 and even without allowing the same to be considered by the State authority on merits, the petitioner approached the Court prematurely by filing this Writ Petition.

   The High Court held that the petitioner would have to participate in the personal hearing and state all his objections with regard to the action launched by the State Authority and then State Authority shall consider the petitioner's objections on merits and in accordance with law and thereafter, decide as to whether the petitioner can be prosecuted once again under the TNGST Act, 2017 when the Central Authority has already prosecuted him under the CGST Act, 2017.

   Tvl Metal Trade Incorporationv. Special Secretary [2023] 151 taxmann.com 36 (Madras)

2. Refund of IGST paid on Ocean Freight

The High Court held that since Entry No.10 of Notification No.10/2017- IGST (Rate) dated 28.6.2017 has already been declared ultravires by Hon'ble Apex Court, therefore amount of Rs. 6,98,00,420/- paid by the petitioner as IGST on ocean freight of goods imported during July, 2017 to December, 2019 be refunded alongwith the statutory rate of interest.

Case Referred- ADI Enterprises v. UOI being Misc. Civil Application No. 1 of 2020 in Special Civil Application No. 10479 of 2019

Krishak Bharati Co-operative Ltd.v. Union of India [2023] 151 taxmann.com 42 (Gujarat)

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Etc Agro Processing (India) (P.) Ltd.v. UOI [2023] 150 taxmann.com 376 (Gujarat)

Section 7

4. Allotment of Car Parking Space not a composite Supply

The Authority observed that a sanctioned plan may have open parking spaces but the appellant has no right to transfer ownership or lease out or allow right to use of the said spaces to allottees. The owners' association on joint agreement of its members may lease out the open parking space on rent at a future date. A customer of a flat may avail car parking facility even after the issuance of completion certificate of the project. A customer may choose to opt or not opt for car parking at the time of purchase/booking of an apartment.

Therefore, Authority held that it is evident that sale/right to use car parking service and construction services are separate services which are not dependent on sale and purchase of each other. The amount charged by the appellant for right to use of car/two-wheeler vehicle parking space, though not permissible

as per RERA, constitutes a separate supply under GST Act and appellant is liable to pay tax @ 18% on such supply

Eden Real Estates (P.) Ltd [2023] 150 taxmann.com 517 (AAAR-WEST BENGAL)

5. Manpower supplied to Central/State Government for housekeeping, cleaning, security data, entry operator not exempt.

The appellant contended that the manpower services provided by them to the Government authorities/ entities are exempted supplies as they are provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.

It was held that if the intention of the legislature was to exempt all the services provided to Central Government, State Government or Union Territory or Local authority then there was no need to specify activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Even though the appellant is providing services to the Government offices concerned, but they are in no way related to the function entrusted to a Panchayat under article 243G of the Constitution or function entrusted to a Municipality under article 243 W of the Constitution which is carried out by the Government concerned.

[2023] 150 taxmann.com 507 (AAAR-GUJARAT)Sankalp Facilities and Management Services (P.) Ltd

6. Diesel Reimbursement to form part of Vehicle Hire Charges

The Authority held that without fuel the motor vehicle does not operate (run) and without running i.e. moving from one place to another, the act of motor vehicle hire services does not happen. The motor vehicle hire services have the integral component of running/ operating the vehicle from one place to another for transportation. Therefore, to claim to provide the said services, actual transportation has to take place and without fuel this cannot happen. The contract entered between the applicant and the provider of services is for motor vehicle hire services, wherein the liability to arrange fuel and the maintenance of the vehicle, so deployed lies with the service provider and is a

comprehensive contract with the consideration which varies depending upon the kilometer travelled. Therefore, reimbursement of expenses for providing said services, under any head is nothing but the additional consideration for the provision of said services and attracts GST on the total value.

Cases Referred- M/s. Goodwill Auto's, Hubbali; Dharwad (Karnataka AAR), M/s Vinayak Air Products Pvt. Ltd (Uttarakhand AAR), M/s Gurjinder Singh Sandhu (Uttarakhan AAR), M/s Tara Genset Engineers (Uttarakhand AAR).

Uttarakhand Public Financial Strengthening Project [2023] 151 taxmann.com 5 (AAR-UTTARAKHAND)

7. Supply of Work contract services by appellant to BSNL which in turn are being provided by BSNL to Navy are eligible for rate under Entry 3(vi) of n.no. 11/2017-CTR Dated 28/06/2017

Entry 3(vi) inserted in N. No.11/2017 vide notification No. 24/2017- CTR dt. 21.09.2017 primarily amongst other conditions state that works contract services supplied to Government Entity are eligible for concessional rate provided it should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or a local authority, as the case may be.

In the instant case, AAR held that supply of Work contract services by appellant to BSNL which in turn are being provided by BSNL to the Navy (Under the Ministry of Defence) are eligible for the concessional rate up till 31st December 2021.

Sterlite Technologies Ltd [2023] 151 taxmann.com 33 (AAAR-MAHARASHTRA)

Section 9

8. To bear GST Burden in case of Pre and Post GST Contracts wherein impact of GST was not considered while preparing BOQ

The matter in the instant petition was to give by way of direction upon the respondent authority concerned to bear the additional tax liability for execution of subsisting Government contracts either awarded in the pre-GST regime or in the post GST regime without updating the Schedule of Rates (SOR) incorporating the applicable GST while preparing Bill of Quantities (BOQ) for inviting the bids.

The High Court disposed of the writ petition by giving liberty to the petitioner to file appropriate representations in the aforesaid regard before the Additional Chief Secretary, Finance Department, Government of West Bengal within four weeks from date. On receipt of such representations the Additional Chief Secretary, Finance Department was directed to take a final decision within four months from the date of receipt of such representation after consulting with all other relevant departments concerned.

[2023] 151 taxmann.com 11 (Calcutta)Benay Bhusan Palit Memorial Education Society v. State of West Bengal

9. Stay Petition on GST on Mining Royalty dismissed

The High Court observed that the counsel for the petitioner was not in a position to dispute the fact that the issue regarding demand of GST on royalty paid to the respondent - Mining Department towards mining lease has already been decided by the Court in Sudershan Lal Gupta's and Shree Basant Bhandar Int Udyog's case. In view of the above, high court dismissed the writ petition in terms of the orders passed by the Court in Sudershan Lal Gupta's case and Shree Basant Bhandar Int Udyog's case). The stay petition was also dismissed.

Case Referred- Shree Basant Bhandar Int Udyog v. Union of India & Ors. (D.B. Civil Writ Petition No.5678/2022) and Sudershan Lal Gupta v. Union of India & Ors. (D.B. Civil Writ Petition No.8109/2022)

Rajasthan Granite Mining Associationv. Union of India [2023] 150 axmann.com 501 (Rajasthan)

10. General Power Attorney Holder is liable to get registered and pay tax on rent as they are involved in the act of leasing of property and receives and retains, income from property, including rent.

The applicant being a non-resident Indian, residing at California, USA, owned a commercial property in Bengaluru and rented the said premises from which is in receipt of rental income. The owner i.e. applicant has given General Power of Attorney ("GPA" to his mother Smt. Prabhavathi quoting that he is working outside India and thus unable to take care of said commercial property owned by him).

The AAR observed reading through the provisions of GPA, that the act of

leasing of immoveable property was taken up by the GPA holder and as per GPA, the incomes from the property, including the rent were received and retained by the GPA holder. Thus, the GPA holder is the supplier of service of leasing of the building for commercial purposes and thus liable to be registered and required to pay tax on supply of Renting of Immovable Property service of the commercial building.

Nagabhushana Narayana [2023] 150 taxmann.com 304 (AAR - KARNATAKA)-

Section 15

11. Activity of Gold Jewellery being melted into gold lumps, not eligible to avail the benefits of Rule 32(5) of CGST Rules, 2017

Authority held that when applicant melts the gold jewellery into gold lumps, the nature of goods changes in as much as the characteristics of the articles and the classification changes. Since the processing done by the applicant changes the nature of goods, they are not eligible to avail the benefits of Rule 32(5) of CGST Rules, 2017. The HSN Code for Old Gold Jewellery is 7113 and after melting into gold lumps or irregular shapes of gold the HSN Code is 7108.

White Gold Bullion (P.) Ltd. [2023] 151 taxmann.com 45 (AAR - KARNATAKA)

Section 17

12. Input Tax Credit not allowed for Pre-Fabricated Sheds as it is an immovable Property

Applicant is constructing a Pre-fabricated shed ('PFS') on land and it is intended to be used as a permanent structure for the purpose of conducting business, which has beneficial enjoyment of the land on which it is being built. The applicant intends to use technology, for the construction of the 'PFS', which involves the application of pre-fabricated structures and also civil work for supporting the pre-fabricated structure and developing the RCC platform of the 'PFS'. If not for the purpose of beneficial enjoyment by way of conducting business on the RCC platform, the 'PFS' has no separate existence. The 'PFS' being constructed is, therefore, an immovable property and the input tax credit is not admissible on the inward supplies, which may include Works contract

services, for its construction, as the credit of such tax comes under category of blocked credits as per section 17(5)(d) and section 17(5)(c) of the CGST/ TGST Act'2017.

Cases Referred-Solid & Correct Engineering Works (2010) 252 ELT 481 (SC), Sirpur Paper Mills Ltd 97 ELT 3 (SC), Triveni Engineering & Industries Ltd. & Anr. V. Commissioner of Central Excise 2000 (120) ELT 273 (SC), Quality Steel Tubes (P) Ltd. V. CCE, U.P. 1995 (75) ELT 17 (SC), Mittal Engineering Works (P) Ltd. V. CCE, Meerut 1996 (88) ELT 622 (SC), Circular No. 58/1/ 2002-CX dated 15/01/2002.

[2023] 150 taxmann.com 506 (AAR- TELANGANA)Sanghi Enterprises

Section 29

13. Penalty/Late Fee for delay in filing of Return cannot be levied upon Taxpayer when the application for revocation of cancellation of registration was rejected without any valid Show cause notice and reason.

The High Court observed that the order dated 14.12.2020, rejecting the petitioner's application for revocation of cancellation of GSTIN registration was unsustainable. It provided no reason as to why the petitioner's application was rejected. The only reason was that the petitioner had not responded to the Show Cause Notice dated 27.10.2020. It was hard to accept that there could be any meaningful response to the said Show Cause Notice. It provided no reason at all for proposing to reject the petitioner's application for revocation of cancellation.

The petitioner's principal contention was that it had already complied with the requirement of filing the returns on the date when the order cancelling its registration was passed and, therefore, the said order was unsustainable.

The High Court was thus of the view that from the date of the petitioner filing an application for revocation of its cancellation, that is, 16.10.2020, the petitioner cannot be held responsible for not filing its returns during the period when the registration stood cancelled. Thus, for the purpose of calculating any penalty for the late filing of the returns, the period, 16.10.2020 to 22.04.2022, is liable to be excluded

Ishwar Chand Proprietor of Bhagwati Trading Co. v. Union of India [2023] 150 taxmann.com 294 (Delhi)

14. Cancellation of Registration-Restoration of Proceedings to be considered afresh considering High Courts observation.

The registration of the taxpayer was cancelled for failure to file returns. The petitioner at the time of filing of first appeal stated that he filed response but could not appear for personal hearing because he was suffering from lungs disease and was advised bed rest which had a cascading effect on his business including the failure to file monthly returns. The petitioner's appeal was rejected on the ground of limitation.

The High Court held that if the petitioner can demonstrate bonafides, there would be no need to take a pedantic approach. The reasons assigned by the petitioner could be bonafide and the petitioner must have another opportunity of hearing to establish the same. The third respondent was therefore directed to extend an opportunity and consider the circumstances that are relied upon by the petitioner

Rangappa Krishnappa v. Commissioner of Central Tax (Appeals - 1) [2023] 150 taxmann.com 518 (Karnataka)

15. Decision of Appellate Authority on issues neither part of Show Cause Notice and nor part of Order.

The High Court held that the order dated 01.12.2020 fell short of the requirement of Article 14 of the Constitution of India and the appellate order dated 30.12.2021 clearly exceeds the power conferred upon the appellate authority as it decides the appeal on the issues which were neither a part of the show-cause notice nor was a consideration when the order dated 01.12.2020 was passed.

Cases Referred- M/s Chandra Sain, v. U.O.I & Ors. (Writ Tax No.147 of 2022) decided on 22.09.2022 as well as M/S Precitech Engineeers v. State of U.P. & Ors. (Writ Tax No.1583 of 2022) decided on 14.03.2023.

Ajay Building Material v. State of U.P.[2023] 151 taxmann.com 6 (Allahabad)

16. Petitioner directed to file application for revocation of Cancellation of Registration as per notification no. 3/2023-CTdt 31-3-23.

The High Court observed that the notification dated 31.03.2023 has been issued

providing for revocation of cancellation of the registration. Since the cancellation was under the provisions of Section 29(2) of the CGST Act and such cancellation was before 31.12.2022, and an application for revocation was not filed, the High Court stated that application be submitted that in terms of this notification.

Anandkumar Ramdeo Singh v. Commissioner (Appeals-I) GST and Central Tax [2023] 151 taxmann.com 13 (Karnataka)

17. Principle of Natural Justice not followed before cancellation of registration

The petitioner was aggrieved by the first respondent's order dated 30.11.2022. It was contended by the petitioner that when he was still in custody, department cancelled the GST registration on 30.11.2022 recording that on examination of the petitioner's case against cancellation they were of the opinion that it should be cancelled. If the petitioner was in custody from 16.11.2022 until 08.12.2022 when he was admitted to bail and released, the petitioner could not have been served with Show Cause Notice dated 17.11.2022 and he could not have issued any response, but the GST registration was cancelled based on the said Show Cause Notice holding that petitioner's response was considered.

The High Court observed that the department has recorded what appears to be a stereotype opinion because in the circumstances of the case it cannot even be argued that the petitioner could have issued response. Therefore, the Court interfered with the impugned order on the ground of arbitrariness and allowed petitioner to furnish the returns for the period for which the returns were not filed as a condition for revocation of the cancellation as against a cancellation by this order without any condition.

S.P. Metals v. Assistant Commissioner of Commercial Taxes [2023] 150 taxmann.com 498 (Karnataka)

18. SCN being cryptic, one liner and not containing any fact or reasoning

SCN dated 26.8.2022 was issued in Form GST REG-17/31 stating that "in case, registration has been obtained by means of fraud, willful misstatement or suppression of facts." The petitioner challenged it on the ground that SCN is in one line cryptic notice, principles of natural justice has not been followed by not giving of any opportunity of being heard and SCN does not contain any reasoning and does not record any details any details and facts relating to the allegations.

The High Court directed the authority to undertake fresh exercise and pass fresh order and impugned notice dated 28.6.2022 was set aside.

Rathod Enterprisev. State of Gujarat[2023] 151 taxmann.com 37 (Gujarat)

19. Appeal filed before Appellate Authority rejected on account of limitation period; High Courts remands back for fresh consideration as registration was suo-motu cancelled

In the instant case, appellate authority rejected the appeal as it was filed beyond the period of extended limitation.

The High Court observed that though the lower appellate authority may be right in holding that while it may allow filing of an appeal beyond the limitation of three months for a further period of one month, but the delay beyond the extended period of one month cannot be condoned, however, such a stand may adversely affect the petitioner. This is more so because registration was suo-motu cancelled on the ground of non-filing of returns and as GST Tribunal has not been constituted under Section 109 of the CGST Act, petitioner would be left without any remedy. The High Court thus remanded the entire matter back to reconsider the case of the petitioner and thereafter to pass appropriate order in accordance with law.

Narayanpet Municipalityv. Superintendent of Central Tax [2023] 150 taxmann.com 303 (TELANGANA)

20. Cancellation of registration of the recipient for wrongful availment of ITC as the supplier did not deposit the tax

The registration of the petitioner was cancelled on account of the allegation that they have availed excess credit than the ITC accrued in GSTR-2A/2B in violation of Provisions of Section 16. It was contended by the petitioner that they had duly paid the amount to the supplier but supplier neither filed the return and nor filed GSTR-1.

The High Court observed that the claim of the petitioner than they have paid the entire amount to the supplier neds verification that whether at all the entire amount being paid by them was towards the invoices raised by the supplier. The High Court directed that in case the verification exercise reveals that even after due payment to the supplier, the same has not been deposited, it

would be open for the competent authority to take appropriate decision.

Electro Steel Corporation v.State of Jharkhand [2023] 150 taxmann.com 407 (Jharkhand)

Section 30

21. Appellant directed to avail benefit of N. No. 03/2023-CT Dt. 31.03.2023 for Revocation of cancelled registration

The cancellation of GST Registration was ordered on the ground that the tax payer had not filed GST returns for more than six months and that the tax payer has not responded by filing such returns. The Assistant Government Pleader produced copy of the Notification No. 03/2023-Central Tax Dated 31.03.2023 issued under Section 148 of the Central Goods and Service Tax Act, 2017 before the High Court.

The High Court thus held that Clause (c) of the Notification would apply to the facts of this case for which there is no dispute. As the Notification would indisputably apply to the facts of this case, the petitioner was directed to approach the competent authority to avail the benefit of the Notification and seek revocation of the cancellation of registration.

[2023] 150 taxmann.com 341 (Gujarat) Radhe Packaging v. Union of India

Section 54

22. RFD-08 being issued for issues to be covered by RFD-03 and opportunity of hearing not given as file contemplated to be attached with Notice was never provided to the assessee.

The High Court observed that in the present case Petitioner had applied for a refund. The Petitioner received an acknowledgment under Form GST RFD-02 with a Nil remark, meaning, thereby, the application for refund was acknowledged. There were no lacunae pointed out under the said acknowledgment. No deficiency was pointed out; neither deficiency memo, as contemplated under Rule 90 (3) of the CGST Rules of 2017 in Form GST RFD-03, was issued to the Petitioner. The Petitioner directly received Form GST RFD-08 under Rule 92 (3) of the CGST Rules of 2017 for rejection of the application for refund. There were no reasons given in the said Form GST RFD-08, and it was stated that the Exports Defects Memo Knowledge Capital-

pdf.pdf is a file that is attached. However, the said file was not annexed to the reply affidavit.

The High Court observed that the deficiencies ought to have been communicated to the Petitioner under Form GST RFD -03 as per Rule 90 (3) of the CGST Rules of 2017. Instead, these deficiencies were made a ground to issue a show cause notice for rejection of the refund. Thereafter, application was rejected on the ground that no reply was received to the show cause notice. There was no opportunity given to the Petitioner to rectify lacunae, and the deficiencies which were to be informed through Form GST RFD-03 were sent in a file attached in Form GST RFD08. This deprived the Petitioner to submit a fresh refund application as contemplated under Rule 90 (3) of the CGST Rules of 2017. there was nonadherence with the procedure envisaged under the Rules to use the correct Forms prescribed. Not only Form GST RFD-03 was not issued, but a file is sought to be attached to Form GST RFD-08, which has a different Form. The matter was remanded by the High Court to decide afresh directing that if there are deficiencies in the Petitioner's application, the same may be informed to the Petitioner as per Form-GST-RFD-03, and if not, the application be processed as per law.

[2023] 150 taxmann.com 515 (Bombay)KnowledgeCapital Services (P.) Ltd. v. Union of India

23. Rule 89(4) is not applicable in case of refund on account of export of services with payment of tax.

The proper officer had rejected petitioner's claim of refund on account of export of services without payment of tax by referring to Sub-clause (D) of Rule 89(4) of the Rules on the ground that the turnover reflected for the month of October, 2018 ought to be considered as the turnover for the month of November, 2018 when the remittances were received. The petitioner appealed against the decision of proper officer rejecting the refund contending Rule 89(4) of the Rules does not apply. The petitioner submitted that Rule 89(4) of the Rules applied only for refund in respect to exports made without payment of integrated tax. The petitioner pointed out that it was not seeking refund of accumulated ITC but integrated tax as paid by him and that there was no dispute that the petitioner had discharged his liability of payment of integrated tax.

The High Court held that the opening sentence of Rule 89(4) of the Rules makes it amply clear that it applies only in cases of zero-rated supply of goods or services, without payment of tax under bond or letter of undertaking and thus Rule 89(4) of the Rules is inapplicable to cases of refund of integrated tax paid on zero rated supply.

OHMI Industries Asia (P.) Ltd. v.Assistant Commissioner, Central Goods and Services Tax [2023] 150 taxmann.com 497 (Delhi)

Section 65

24. Rectification of Audit Report

The petitioner was aggrieved with the audit report issued under section 65(6) and the non-consideration of the rectification application filed the petitioner under Section 161 of the Act.

The High Court observed that re-examination of the Audit Report by application under section 161 is not a permissible exercise. The Assessing Officer had rightly found that there was no error apparent on the face of the record, which could be rectified under section 161 and that in any event, section 73 proceedings had been initiated based on the final audit report. The Assessing Officer has also noted that submission if any made by the tax payer would be taken on record. The Proper Officer has looked at the audit report and has recorded his satisfaction in the show-cause notice on items raised in the audit report and which enables assessee to raise objections against the same.

Therefore, the High Court was of the opinion that there was no reason why writ petition should be entertained when the rectification application, on which basis the proceedings under section 73 is sought to be kept in abeyance. If the Assessing Officer has not completed the proceedings, the petitioner would be entitled to file his objections and seek for consideration of the same before the Assessing Officer.

Singh Caterers and Vendors v.Union of India[2023] 151 taxmann.com 3 (Patna)

Section 69

25. Bail granted as petitioner had faced incarceration for more than 1½ years, complaint still at summon stage, other accused extended benefit of bail.

The High Court observed that the quantum of amount which the petitioner was involved was yet to be decided at the time of trial. The petitioner had already faced incarceration for more than 1½ years. The complaint is still at the summoning stage. The other two accused had already been extended the benefit of default bail and one more co-accused was granted regular bail by the Court who is stated to be at parity with the present petitioner.

Thus, the High Court considering the aforesaid facts and circumstances and also considering the total custody of the petitioner which was more than 1½ years, this Court deems it fit and proper to grant regular bail to the petitioner.

Kawaljot Singh v. Superintendent Preventive, CGST[2023] 151 taxmann.com 4 (Punjab & Haryana)

26. Rejection of Anticipatory Bail

The Supreme Court held that looking to the role attributed to the petitioner(s) and the observations made by the High Court that the GST number, name of the firm were fabricated and other details were found to be non-existent, there was no case for anticipatory bail. The Special Leave Petitions were thus dismissed.

[2023] 151 taxmann.com 9 (SC) Sheetal Mittal v. State of Rajasthan

27. Grant of Bail on deposit of amount and execution of personal bond

The High Court observed that petitioner was arrested on 04.11.2022 and since then, he was in judicial custody. The challan of the case had already been presented and no investigation was pending.

Taking into consideration the investigation and evidence so collected, in the opinion of the High Court, the trial would take considerable time and it may happen, if denied bail, the judicial custody be prolonged beyond the statutory period of punishment which was for five years. The High Court granted bail to the accused petitioner under Section 439 Cr.P.C with a condition to deposit Rs. 3 crores by the petitioner before the respondent Department under protest and execution of a personal bond in a sum of Rs.2,00,000/- with two sureties of Rs.1,00,000/- each to the satisfaction of learned trial court.

Case Referred- Vinay Kant Ameta v. UOI (Criminal Appeal No. 60/2022) decided on 10.01.2022 (SC)

[2023] 151 taxmann.com 44 (Rajasthan)Gaurav Kakkarv. Directorate

General of GST Intelligence, Jaipur Zonal Unit

Section 73

28. Second Officer cannot initiate proceedings by issuing DRC-01 and passing the order on the same matter which is already seized by the first officer by issuing DRC-01A

In the instant case, the issue before the High Court was whether an officer (referred as "second officer") could have initiated fresh proceedings by issue of DRC-01 and passing order thereafter, when another officer (referred as "first officer") was seized of the matter and intimation in Form GSTDRC-01A dated 05.03.2021 was issued to which the appellants had submitted their reply dated 08.03.2021 and the said reply was neither considered nor rejected and the matter was kept pending. The case of the appellant was that he was not aware of the said notice for being uploaded in the portal and they came to know of the same only after the sum of Rs. 1,84,930/- was paid from their electronic credit ledger and immediately thereafter, the appellants applied for a copy of the order and thereafter preferred the appeal but by then the period of limitation for filing the appeal had expired.

The High Court observed that the option which was available to the first officer was to consider the representation/reply and if not satisfied, could have proceeded to issue SCN under Section 74(1) of the Act which option the first officer did not exercise and the matter was left to linger. Thus, the preliminary proceedings could not have been initiated by the second officer when proceeding initiated by the first officer for the very same amount on the very same allegation was not taken to the logical end. It was further observed that when the statutory appeal for the order passed by the second officer was pending before the appellate authority, the first officer had dropped the proceedings. From the final report of the first officer, it was seen that the proceedings were closed by the first officer only on 24.01.2023. Thus, for all purposes, it was deemed that the proceedings initiated by the first officer pursuant to intimation dated 05.03.2021 had attained finality and on the said date, the appeal as against the proceedings initiated by the second officer was already pending before the appellate authority.

Thus, the High Court considering peculiar facts and circumstances held that the appeal should not be treated to be as time barred.

Section 74

29. A vague notice is violation of provision in Section 75 since the Statute itself prescribes for affording reasonable opportunity and any deficiency in that regard vitiates the result.

The High Court observed that even though the petitioner had not specifically raised the said ground before the appellate authority but the fact remained that mandatory provisions of Section 74 of GST Act make it incumbent upon the Revenue to ensure the show cause notice to be speaking enough to enable the assessee to respond to the same. However, SCN revealed that it neither contained the material and information nor the statement containing details of ITC transaction under question. It was further observed that Section 75 of GST Act is a complete Code which prescribes for various stages for determination of wrongful utilization of ITC while following the concept of reasonable opportunity of being heard to the assessee. Since the Statute itself prescribes for affording reasonable opportunity, it is incumbent upon the Revenue to afford the same and any deficiency in that regard vitiates the result. The High Court held that it had no manner of doubt that the very initiation of the proceedings by way of show cause notice was vitiated for the same being vague.

Case Referred- Sidhi Vinayak Enterprises v. The State of Jharkhand & ors) including WP(T) No.745/2021 14thth, September 2022.

[2023] 151 taxmann.com 12 (Madhya Pradesh)Balaji Electricalsv. Appellate Authority & Joint Commissioner State Tax

30. Once the appellate authority considers the entire documents on record in case of an ex-parte assessment, then there is no need to interfere in the order passed by the appellate authority

The petitioner's premises were inspected by the Special Investigation Branch on 06.12.2017. On the basis of the report submitted by the Special Investigation Branch, the notice under Section 74 of UPGST Act, 2017 was issued to petitioner demanding Rs.48,96,000/- amount of tax penalty and interest. Since petitioner neither replied to the SCN and nor did it produce relevant documents for assessing the correct tax from July, 2017 to March, 2018, ex-parte order dated 11.11.2021 considering the turnover as one crore was assessed.

The Appellate Authority, from the entries, as found in the diary recovered by the Special Investigation Branch, noticed that the petitioner had received much more advance i.e. Rs.17,95,000/- than it was shown in the returns i.e. Rs. 3,73,983.05/- however, Appellate Authority based upon the records reduced amount from Rs 48,96,000 by Rs 38,56,680/-.

The High Court on the appeal of the petitioner held that it does not find any substance in the submission of the learned counsel for the petitioner that the assessment order is based on presumption. The appellate authority had examined each and every document submitted by the petitioner as well as the documents recovered by the Special Investigation Branch.

Jalsa Resorts v.State of U.P. [2023] 150 taxmann.com 306 (Allahabad)

31. A vague notice is violation of provision in Section 75 since the Statute itself prescribes for affording reasonable opportunity and any deficiency in that regard vitiates the result

The petitioner contended that SCN was vague to the extent of not communicating the relevant information and material thereby disabling the petitioner to respond to the same, and therefore, all consequential actions of passing of order and dismissal of appeal are vitiated in law.

The High Court observed that even though the petitioner had not specifically raised the said ground before the appellate authority but the fact remained that mandatory provisions of Section 74 of GST Act make it incumbent upon the Revenue to ensure the show cause notice to be speaking enough to enable the assessee to respond to the same. However, SCN revealed that it neither contained the material and information nor the statement containing details of ITC transaction under question. It was further observed that Section 75 of GST Act is a complete Code which prescribes for various stages for determination of wrongful utilization of ITC while following the concept of reasonable opportunity of being heard to the assessee. Since the Statute itself prescribes for affording reasonable opportunity, it is incumbent upon the Revenue to afford the same and any deficiency in that regard vitiates the result. The High Court held that it had no manner of doubt that the very initiation of the proceedings by way of show cause notice was vitiated for the same being vague.

Case Referred- Sidhi Vinayak Enterprises v. The State of Jharkhand & ors) including WP(T) No.745/2021 14thth, September 2022

Durge Metals v.Appellate Authority and Joint Commissioner State Tax [2023] 150 taxmann.com 333 (Madhya Pradesh)

32. Ex-Parte order passed in violation of principle of natural justice is illegal and is a fit case for interference by the High Court

In the instant case, ITC claim of the petitioner was rejected and tax, including interest and penalty, had been imposed, without providing any further notice to the petitioner.

The High Court observed that notwithstanding the statutory remedy, it was not precluded from interfering where, ex facie, the order was bad in law on account of the two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed ex parte in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, ex parte in nature, passed in violation of the principles of natural justice, entails civil consequences. The matter was thus remanded back.

Lucky Traders v. State of Bihar [2023] 150 taxmann.com 338 (Patna)

33. Assessment order based upon amount mentioned in eway bill being different from Invoice quashed considering the human error in generating Eway Bill

In the case, petitioner had generated a tax invoice for an amount of Rs.1,97,047.86. As, he did not have the computer, the same was a self-generated document. Further an e-Way Bill was prepared, wherein the total taxable amount was shown to be Rs.19,70,47,086.00. This figure was a typographical mistake. Therefore, though the figure is tallying but the paise has been entered in rupees, which has created difficulty on the part of the petitioner, because he is a small dealer and cannot have taxable amount of Rs.19,70,47,086.00

The department contended that the assessment order had been passed by the assessing authority under Section 74 of the OGST Act with intimation through DRC-01A for the cause of less filing of return for the period of 2019-20, as per the information under possession of the authority, and whereas, no response received against the above-mentioned intimation for which online notice in DRC-01 was issued and, as such, no response was received on above.

The High Court held there was a palpable error in the way bill, which may be construed to be a human error. If this fact was to be brought to the notice of the assessing authority, the same could be considered in accordance with law and fresh assessment order could be passed. Thus, the High Court quashed the order and matter was remitted back to the assessing authority for reconsideration in accordance with law.

Jena Trading and Co. v. CT and GST Officer [2023] 150 taxmann.com 339 (Orissa)

34. SCN requiring the assessee to appear for personal hearing on the "date, time and venue, if mentioned in table below", but no date, time and venue for personal hearing shown in the notice.

The petitioner contended that SCN under Section 74 was issued making mention about personal hearing to the effect that "you may appear before the undersigned for personal hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below", but no date, time and venue for personal hearing was shown in the notice.

The High Court held that in the table given, captioned as "Details of personal hearing etc.", no Date, Time and Venue of personal hearing was shown and in front of columns 3,4&5 of Date, Time and Venue, NA was mentioned, which was sufficient to infer that no personal hearing was given to the petitioner before passing the impugned order dated 24.08.2022. The High Court further observed that it is well settled that when due opportunity of hearing, as required under the law, has not been afforded and principle of natural justice has not been followed, then the question of availability of alternative remedy does not come in the way for exercising jurisdiction under Article 226 of the Constitution of India. The impugned order was held to be not sustainable and was quashed and remitted back.

Case Referred- Bharat Mint & Allied Chemicals Vs. Commissioner of Commercial Tax, 2022 (59) G.S.T.L. 394 (All.)

Concord Tieup (P.) Ltd. v. State of Madhya Pradesh [2023] 151 taxmann.com 41 (Madhya Pradesh)

Section 83

35. Operation of order provisionally attaching bank account ceases to be operative after expiry of one year

The High Court held that it is clear from Section 83(2) of the CGST Act that the operation of an order provisionally attaching the bank account would cease to be operative after the expiry of the statutory period of one year. In the aforesaid circumstances, the impugned order dated 13.01.2021 was declared to be ceased to be operative and thus it was held that no orders were required for setting aside the same.

Merlin Facilities (P.) Ltd. v. Union of India [2023] 150 taxmann.com 373 (Delhi)

Section 98

36. Decision of AAR is void-abinitio when the fact regarding pendency of proceedings was not brought before the AAR.

Applicant had obtained advance ruling when proceedings were pending against it. IT did not disclose pendency of proceedings at any stage of advance ruling. Therefore, the question before the court was whether its application for advance ruling was maintainable when proceedings were pending against it. Section 98(2) of the CGST/TGST Act, 2017 states that Authority for Advance Ruling shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act. Therefore, the application was liable to be rejected under Section 98(2) of the CGST/TGST Act, 2017. Taxpayer has not brought the issue to the notice of the Authority for Advance Ruling at any stage of the Advance Ruling proceedings including at the time of the personal hearing dated 28.06.2022. Therefore, the applicant has obtained the Advance Ruling by suppressing the facts and hence the Order issued in the reference 5th cited is liable to be declared as void ab initio.

Srico Projects (P.) Ltd. [2023] 150 taxmann.com 295 (AAR-TELANGANA)

Section 99

37. Architectural Services provided to Local Authority for purposes referred in 2nd Schedule of Article 243W of Constitution of India.

'Architectural Consultancy Service' provided by the applicant to Surat Municipal Corporation [SMC] for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. l212017-Central (Rate) dated 28.6.2017 & thus is exempt from GST.

If the applicant provides sub contract of pure services to another contractor of the SMC the supply would not fall within the ambit of entry no. 3 of the notification No. l212017-Central (Rate) dated28.6.2017 and would be leviable to GST

Ajit Babubhai Jariwala [2023] 150 taxmann.com 292 (AAR - GUJARAT)

Section 100

38. Extension of the limitation period for filing Appeal before AAAR beyond the period allowed for condonation of delay in the Statute

The High Court held that since the appeal was filed before the AAAR on 14.02.2020, which was beyond the period of sixty days from the date on which the petitioner received the order dated 28.06.2019 or from the date it became aware of the constitution of the Appellate Authority, the delay was in excess of the period that could be condoned by the appellant. In view of the above, High Court held that they were unable to find fault with the decision of the Appellate Authority in declining to entertain the petitioner's appeal under Section 100 of the Act.

Case Referred-State of Goa v. Western Builders: (2006) 6 SCC 239 and Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and Ors.: 2010 (5) SCC 23.

Indian Institute of Corporate Affairsv. Delhi Appellate Authority for Advance Ruling [2023] 150 taxmann.com 505 (Delhi)

Section 107

39. No power to entertain the application for condonation of delay beyond permissible period provided

The High Court held that there is no power to entertain the application for condonation of delay beyond permissible period provided under the Act of 2017. The High Court further held that petitioner has wrongly contended that the period of delay has wrongly been assessed by Appellate Authority in the

light of the order of Hon'ble Supreme Court in case of Re-cognizance for extension of limitation (Supra), the matter be remitted back to the First Appellate Authority as even after excluding period between 15.03.2020 to 28.02.2022, filing of an appeal would not come within extended period of limitation as ordered by Hon'ble Supreme Court and therefore, said exercise would serve no purpose.

Cases Referred-Nandan Steels And Power Limited Vs. State of Chhattisgarh & Ors. in W.A. No. 104 of 2021, decided on 10.08.2022.

Farhat Constructionv. State of Chhattisgarh [2023] 150 taxmann.com 334 (Chhattisgarh)

Section 112

40. Status of Recovery of demand on account of non-constitution of Tribunal

The High Court held that subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

Case Referred- AJ Food Products Pvt. Ltd. v. The State of Bihar & Others in C.W.J.C. No. 15465 of 2022

Flipkart India (P.) Ltd. v. Additional Commissioner of State Tax (Appeal) [2023] 151 taxmann.com 10 (Patna)

41. Status of Recovery of demand on account of non-constitution of Tribunal

The High Court held that subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of

balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

Case Referred- Angel Engicon Private Limited v. the State of Bihar & Anr. passed in C.W.J.C No. 1920 of 2023

SAJ Food Products (P.) Ltd.v.State of Bihar [2023] 151 taxmann.com 34 (Patna)

42. Status of Recovery of demand on account of non-constitution of Tribunal

The High Court held that subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

Case Referred-SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others in C.W.J.C. No. 15465 of 2022

Ritesh Infratech (P.) Ltd. v. Union of India [2023] 150 taxmann.com 340 (Patna)

Section 129

43. Transporter can seek release of the conveyance on deposit of specified amount under Section 129(6)

The High Court held that Section 129 provides for various situations where release of conveyance and goods may be sought and Section 129(6) being specific to a transporter, thus enables a transporter to seek release of the conveyance in the circumstances mentioned therein, being, upon payment of penalty under sub-section (3) or a sum of Rs.1.00 lakh, whichever is less.

Lodha Roadways v. Deputy State Tax Officer, Inspection Cell-4 [2023] 150 taxmann.com 375 (Madras)

44. Exercise of powers under Section 129 and thereafter switching over to Section 130 and passing order thereunder without availing the petitioner the benefits of release of goods under Section 129

The petitioner contended that when the goods were in transit, the authorities intercepted the goods and confiscated them. In other words, authorities sought to derive their powers for taking possession of the goods of the petitioner which were in transit under Section 129 of the Act. It was submitted that the said Section begins with non obstante clause and it is a provision independent of Section 130. In that context, it was submitted that exercise of powers under Section 129 and thereafter switching over to Section 130 and passing order thereunder without availing the petitioner the benefits of release of the goods under Section 129, could be said to be without jurisdiction.

The High Court, by way of interim relief, directed that the goods of the petitioner as well as vehicle shall be released upon satisfaction of conditions and admitted the petition and also directed the same to be listed with Special Civil Application No.8353 of 2022.

Rohit Companyv. Union of India [2023] 150 taxmann.com 379 (Gujarat)

45. Once order is stayed, officer can release the goods subject to such other safeguards that may be imposed by the appellate authorities under the respective Acts

An order of detention in Form GST MOV-06 was issued. Petitioner filed appeal under Section 107 of the CGST Act, 2017 before the Appellate Authority and paid 25% of the disputed penalty, whereas, respondents had imposed penalty equivalent to 100% value of goods that was detained. It was submitted that once there was a pre-deposit of the amount in terms of Section 107(6), the respondents ought to have released the goods.

The High Court held that once order is stayed, the respondents can release the goods subject to such other safeguards that may be imposed by the appellate authorities under the respective Acts. The very purpose of fixing the mandatory pre-deposit is to do away with the procedure of granting stay after hearing, which was delaying the disposal of the appeal earlier. The Officer who detained the goods becomes functus officio, once there is a mandatory pre-deposit, the order has no force and all further recovery proceedings will be subject to the final outcome of the appeal. The High court directed the petitioner to deposit the maximum penalty of 200% of the tax to safeguard the interest of the revenue.

Cases Referred- TCI Freight v. Assistant Commissioner (ST) [2022] 143 taxmann.com 115 (Madras)

Haresh Kumarv. Assistant Commissioner (ST) [2023] 150 taxmann.com 380 (Madras)

Section 130

46. Conveyance to be released on deposit of Rs 1,00,000/- and a bond equal to fine levied in lieu of conveyance

In the instant case, goods which were confiscated were auctioned and amount was recovered through auction. The petitioner contended that since the goods been auctioned by authority, in such circumstances of the case, conveyance may be released and the petitioner is ready and willing to give sufficient amount of bond for the remaining amount of fine in lieu of conveyance. The respondents counsel submitted that the goods which have been auctioned had not fetched the full amount of tax, fine and penalty and also submitted that the major chunk of tax, fine and penalty was yet to be recovered.

The High Court held that once the bond is furnished towards fine of Rs.25,86,486/- in lieu of confiscation of conveyance and the amount of Rs.1,00,000/- is deposited with the respondent authority, the respondent concern may release the conveyance immediately.

Tanmit SinghV.State of Gujarat [2023] 150 taxmann.com 332 (Gujarat)

47. Order being passed in the name of driver does not preclude cosignor or the consignee to challenge the confiscation of goods along with supporting documents evidencing their ownership

It was contended by the petitioner that since the impugned order was passed against the driver, it would not be open for the cosignor or the consignee to challenge such order before the appropriate forum. It is otherwise not disputed that the impugned order is appealable under the statute.

The High Court observed that the cosignor or the consignee were always at liberty to challenge the confiscation of goods along with the supporting documents evidencing their ownership and merely because the order had been addressed to the driver of the vehicle would not be to the prejudice of the rights and contentions of the cosigner or the consignee and thus court was not inclined to entertain the challenge to the order impugned directly in the writ petition.

Delhivery Limitedv. State of U.P. [2023] 151 taxmann.com 43 (Allahabad)

Section 140

48. Unadjusted VAT TDS allowed to be carried forward to the GST regime

The High Court not observed that the order was a non-speaking order as no reasons had been given for rejecting the petitioner's request for carrying forward of the unadjusted VAT TDS to the GST regime that too when the law was well settled by the decision of the learned Single Judge, which also had attained finality as no Appeal had been filed against the said order as fairly admitted by the learned Government Advocate appearing for the respondents. The impugned order was thus quashed.

Case Referred- M/s. DMR Constructions v. Assistant Commissioner, Commercial Tax Department, Rasipuram, Namakkal District reported [2021] 125 taxmann.com 252 (Mad.)/[2021] 86 GST 82 (Mad.)

P & C Projects (P.) Ltd. v.Assistant Commissioner of (ST)(FAC) [2023] 151 axmann.com 46 (Madras)

Section 142

49. Condition as per N. No. 27/12-CE(NT) dt. 18.06.12 regarding debit of CENVAT Account for claim of refund is incorrect and eligible refund of pre-GST Regime applied in Post GST Regime cannot be denied on this condition.

The petitioner had credit of CENVAT of a sum of Rs.10 lakh (approx) for the months of April, May, June, 2017. The law entitled assessee to seek refund of CENVAT credit within a period of one year from the date of export. It all started with an application dated 25.10.2017 where the petitioner sought refund of CENVAT credit under Rule 5. With the onset of GST, the petitioner was required to make a debit to the CENVAT credit account at the time of effecting the claim but the same was disabled and thus the assessee could not apply for the refund. The petitioner thereafter filed an application for refund under Section 54 of the Act on 17.01.2019. The claim was rejected as against which a first appeal was filed which also came to be rejected on 30.07.2020. The reasoning set out in the order of the appellate authority was based on the provisions of Section 54 and the second proviso to Section 142(4) of the Act as well as a circular issued by the Board on 15.03.2018. The petitioner while not challenging the order of the Appellate Commissioner, made a further representation on

28.08.2020. The impugned order had been passed on 03.11.2010 on the sole ground that, as the order of the first appellate authority dated 30.07.2020 has attained finality, the question of refund does not arise.

The High Court held that the eligibility of the petitioner to refund on a substantive basis has itself, never been questioned. The denial was based solely on a technical basis. That apart, the fact that Notification No.27/12 (which propounded credit to be debited from Cenvat Account) had been held to propound an incorrect condition by the High Court as well as by the CESTAT ought to have merited consideration with the authority. Instead he does not advert to this aspect of the matter at all. Further, the claim was fully supported by the provisions of Section 142(3) of the Act. Thus, impugned order was held to wholly incorrect in law and wad held liable to be set aside.

Section 174

50. GAIL cannot be asked to pay amount to DGGSTI since GAIL did not owe any amount to other party

Petition was filed against the order dated 08.03.2018 issued by DGGSTI under Section 87(b) of Chapter-V of the Finance Act, 1994 read with Section 174(2)(e) of the 'CGST Act' calling upon GAIL to pay a sum of Rs. 13,13,07,485/- which, DGGSTI believes, is owed by GAIL to the other party.

The High Court held that there was no material to show that any such amount was due and payable by GAIL. GAIL and DGGSTI are ad-idem that the only amount that GAIL was required to pay was approximately Rs. 6.54 crores after the other party has issued the invoice of Rs. 1.01 crores. In view of the above, the impugned order was set aside and GAIL was however restrained from making any payments to other party for a period of four weeks.

Gail (India) Ltd.v. Directorate General of GST Intelligence [2023] 150 taxmann.com 335 (Delhi)

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GUIDELINES FOR PROCESSING OF APPLICATIONS FOR REGISTRATION

Government of India Ministry of Finance Department of Revenue
Central Board Indirect Taxes & Customs, GST Policy Wing

To,

All the Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /Commissioners of Central Tax

All the Principal Directors General/ Directors General of Central Tax

Madam/Sir,

Subject: Guidelines for processing of applications for registration - regarding.

Instances have come to notice regarding unscrupulous elements obtaining fake/ bogus registration under GST and defrauding the Government exchequer. Such fake/ non-genuine registrations are being used to fraudulently pass on input tax credit to unscrupulous recipients by issuing invoices without any underlying supply of goods or services or both. This menace of fake registrations and issuance of bogus invoices for passing of fake ITC has become a serious problem, wherein fraudulent people engage in dubious and complex transactions, causing revenue loss to the government.

2. Various modus operandi of obtaining such fake registrations have been detected by Central and State Tax administrations. In some cases, identities of other persons like PAN, Aadhaar, etc. have been misused without their knowledge to obtain GST registration. Forged documents, such as forged electricity bills, property tax receipts, rent agreements, etc. are also being used as proof of principal place of business to obtain GST registration. In some cases, forged identities have been created by using same photo of a person on different Aadhaar cards under different names. In one of the cases detected recently, it has been found that a few fraudsters have obtained fake GST registrations on the basis of PAN and Aadhaar number of persons from economically weaker sections by fraudulently modifying the phone number on the Aadhaar cards of these persons by taking these persons to the Aadhaar Seva

Kendra by giving a nominal cash amount under guise of a government

scheme and getting their Aadhaar Cards linked to dummy mobile numbers by using their thumb impression.

3. To address this problem of fake registration and fake input tax credit, Instruction No. 01/2023-GST dated 04.05.2023 has been issued for concerted and coordinated action on a mission mode by Central and State tax authorities in the form of a Special All-India Drive against fake registrations.

4. In this context, it is further felt that verification of applications for registration by the proper officers is one of the most crucial steps in the direction of preventing the menace of fake or bogus registrations. While numerous initiatives have been/ are being undertaken on the policy and systems level, it is pertinent to strengthen the process of scrutiny and verification of such applications for registration at the end of tax officers.

5. Accordingly, the following guidelines are issued for strengthening the process of verification of applications for registration at the end of tax officers in a uniform manner:

5.1 Immediately on receipt of the application for the registration in the Task List of the concerned officer on ACES-GST application, the officer shall initiate the process of scrutiny and verification of the details filled by the applicant in the application for registration in **FORM GST REG-01** and the documents uploaded by the applicant along with the said application.

5.2 FORM GST REG-01 prescribes a list of documents to be uploaded by the applicant in respect of photograph, constitution of business, principal place of business, bank account, etc. The proper officer shall carefully scrutinize the said documents to ensure that the documents are legible, complete and relevant. Further, the details or information furnished by the applicant in the application should also be carefully examined by the proper officer to check completeness of the same, to correlate and cross-verify the same with the uploaded documents and to check the authenticity of the applicant. The details of the address of principal and additional places of business and the corresponding documents uploaded with the application as proof of address may be closely scrutinised to verify completeness and correctness of address of such places of business. Further, to the extent possible, the authenticity of the documents furnished as proof of address may be cross-verified from the publicly available sources, such as websites of the concerned authorities

such as land registry, electricity distribution companies, municipalities, and local bodies, etc.

5.3 In order to facilitate targeted approach in verification and processing of registration applications, the Directorate General of Analytics and Risk Management (DGARM), in coordination with GSTN, is conducting risk rating of the applications for registration in form of High, Medium and Low risk rating for each application for registration (ARN), based on data analytics and risk parameters, and making the same available to the CGST field formations in the form of Report Series 400 on DDM portal on regular basis. Accordingly, the proper officer shall check the said risk rating made available by the DGARM in respect of the concerned ARN and take the same into consideration while verifying and processing the said application. Special attention needs to be paid to the cases where "High" risk rating has been assigned to an ARN.

5.4 The proper officer may also check as to whether the registration(s) has been obtained on the same PAN earlier, either within the same State or other State(s). In such cases, the status of the said PAN as well as the compliance record of the said GSTINs may also be checked from the portal. The proper officer may also give due consideration and special attention to the cases involving *inter alia* the following circumstances:

(i) where any registration obtained on the PAN of the applicant has been cancelled previously;

(ii) where any registration obtained on the PAN of the applicant is suspended at the time of verification of a new application of registration;

(iii) whether any application for registration on the PAN of the applicant has been rejected previously;

(iv) whether the place of business of the applicant appears to be risky based on local risk parameters;

(v) whether the proof of address of place(s) of business prima facie appear to be suspicious/ doubtful on the basis of scrutiny of the application and the documents.

5.5 Where the application is found to be deficient, either in terms of any information or any requisite document or where the proper officer requires

any clarification with regard to any information provided in the application or documents furnished therewith or in respect of any other fact, he shall issue a notice to the applicant electronically in **FORM GST REG-03** within the prescribed time limit.

5.6 Without prejudice to the facts of the case, the proper officer may seek clarification or information or document(s) *inter alia* in the following cases:

(i) where any document is incomplete or not legible, the proper officer may seek complete or legible copy of the same.

(ii) where the address of place of business does not match with the document uploaded by the applicant, or where such uploaded document does not appear to be a valid proof of the address of the said place of business, the proper officer may seek additional documents to confirm the address details.

(iii) where the address of place of business is incomplete or vague, the proper officer may seek complete and unambiguous details of the address along with the corresponding documentary proof.

(iv) where any GSTIN linked to the PAN of the applicant is found cancelled or suspended, the proper officer may seek clarification or reasons for the same from the applicant, if required.

5.7 The proper officer shall carefully examine the clarification, information or documents furnished by the applicant in **FORM GST REG-04** in response to the notice issued in **FORM GST REG-03.** Where the proper officer is satisfied with the reply furnished by the applicant in **FORM GST REG-04,** he may approve the grant of registration to the applicant within the prescribed time period. However, where the proper officer is not satisfied with the clarification, information or documents furnished, he may, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05** within the prescribed time period. Besides, where no reply is furnished by the applicant in response to the notice issued under in **FORM GST REG-03,** within the prescribed time period, the proper officer may, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05.**

5.8 The proper officer must ensure that the said notice in **FORM GST REG-**

03, wherever required, is issued electronically within a period of seven working days from the date of submission of the application in cases where the applicant has undergone authentication of Aadhaar number and within a period of thirty days in cases specified in proviso to sub-rule (1) of rule 9 of CGST Rules, 2017.

5.9 Where the applicant has either failed to undergo authentication of Aadhaar number or has not opted for authentication of Aadhaar number, the proper officer shall immediately initiate the process for physical verification of the place of business in accordance with provisions of rule 9 of CGST Rules read with rule 25 thereof.

5.10 In this regard, the concerned officer must also ensure that the physical verification report along with the other documents, including photographs, is uploaded on the system in **FORM GST REG-30** sufficiently in advance of the prescribed time limit.

5.11 Further, even in cases where the applicant has undergone authentication of Aadhaar number, if the proper officer, based on the scrutiny of the application for registration and the uploaded documents, is of the opinion that physical verification of the place of business is essential to check the authenticity of the applicant, the proper officer may get such physical verification conducted in a time bound manner. Till the time a functionality for marking an application of registration for physical verification in Aadhaar authenticated cases is made available on the portal/ ACES-GST application, the concerned Centralized Processing Centre (CPC) officer may, where ever considered essential, get physical verification of the place of business conducted through the jurisdictional officers of the concerned Division/ Commissionerate. For this purpose, till the time a functionality is available on the portal/ ACES-GST application, the concerned zones may devise a suitable mechanism at the local level so as to ensure that physical verification is conducted in a timely manner in respect of such essential cases and the concerned applications for registration are disposed of within the time limit prescribed in rule 9 of CGST Rules, 2017.

6. While processing the applications for registration, including in those cases where physical verification is to be conducted, it will be ensured by the proper officer that the application is either rejected or accepted or relevant query is raised

within the prescribed time limit and no application for grant of registration is approved on deemed basis for want of timely action on the part of tax officers. Strict view may be taken where any gross negligence is observed on part of the concerned officer(s).

7. Further, where ever the registration is granted on deemed approval basis or where registration is granted by the proper officer in cases covered under the parameters referred in para 5.4 as well in cases where "High" risk rating has been assigned to an application for registration (ARN) in DGARM Report Series 400, and where physical verification of the place of business was not conducted before grant of such registration, the CPC officer shall communicate the details of such cases to the concerned jurisdictional Commissionerate immediately after registration and physical verification of the place of business shall be got conducted by the concerned Commissionerate within 15 days of such registration, in the manner prescribed in rule 25 of CGST Rules, 2017. Besides, the concerned Commissionerate may get such physical verification of the place of business got conducted in other cases also, where ever required, based *inter alia* on various risk parameters and risk ratings as per tools available in ADVAIT/ BIFA or as per reports provided by DGARM, so as to verify authenticity of such registrations. Wherever the registered person is found to be non-existent or fictitious, subsequent remedial action(s) may be taken without any delay.

8. The Principal Chief Commissioner/ Chief Commissioner of the CGST Zones may closely supervise the status of processing of the applications of registration, including physical verifications, within their zones. Wherever it is noticed that the application for registration has been granted deemed approval, the reasons for the same may be got examined by the Principal Chief Commissioner/ Chief Commissioner for taking subsequent remedial action, if any, in a time bound manner.

9. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

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CASE LAWS AND NOTIFICATIONS/CIRCULARS ON REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

CA Sanjay Ghiya

CAAshish Ghiya

CASE LAWS

MAHARASHTRA REAL ESTATE APPEALLATE TRIBUNAL

Mrs. Nehal Nikhilkumar Thakkar & Mr. Nikhilkumar Thakkar V/s Viva Winner Venture Realtors LLP

Gist of the case: Since, the appellants did not challenge the interest awarded by A.O., the relief they sought in the complaint and in this application cannot be considered.

The captioned Misc. Application filed under Section 39 of RERA seeks rectification of order dated 25,02.2021 passed by this Tribunal in the Appeal filed by Appellants herein.

As per brief facts of the matter, the Appellants who booked a flat in the project of Respondent filed complaint with MahaRERA (the Authority) to seek refund of the amount paid towards consideration, stamp duty and another amount on withdrawing from the project. The learned Adjudicating Officer (AO) passed the order dated 19.11.2019 thereby granting refund with amount of Rs.24,36,237/- with interest @ 10.40 % towards consideration but did not consider and granted inter alia the amounts of Rs.1,72,500/- and Rs.42,7181- paid towards the stamp duty and owner's contribution respectively. Appellants therefore filed the Appeal inter alia seeking refund of the aforesaid amounts with interest.

Tribunal after considering the rival contentions of the parties passed the order dated 25.02.2021 thereby directing the Respondent to refund the above mentioned amounts with interest @ 10.40% from the date of payment till final realisation. Now Appellants have filed the present Misc. Application to seek rectification of the said order passed in Appeal seeking grant of interest @ 20% instead of interest granted therein @ 10.40%. **Appellants have further prayed for considering the refund of the entire amount with interest @ 20% i.e. including the amount already directed to be refunded in the impugned order by A.O. @**

10.40%. The only reason that is assigned for rectification and to award interest @ 20% is that the Respondent has charged the Appellants an interest @20% for delayed payments made by them.

It is therefore argued that as provided in the definition under Section 2 (za) of RERA, equal rate of interest shall be chargeable both by Allottee and Promoter from each other in case of any default in discharging their respective obligations. Appellants accordingly sought rectification of the order and prayed for awarding the interest @20% which was charged by Promoter to the Appellants instead of the interest granted @10.40%.

Considered the submissions of both the sides, perused the record including the complaint filed by Appellants, the order impugned in the Appeal, the reliefs as prayed for in the Appeal and the order passed therein by this Tribunal which is sought to be rectified. It is observed that neither in the complaint nor in the Appeal, the Appellants had sought the relief of granting refund with interest @ 20%. As mentioned hereinabove, the A.O. passed the impugned order by granting refund @10.40% only and not 20%.

In the relief clause of the Appeal filed to impugn the said order, Appellants had simply prayed to grant refund of the amounts mentioned in the Appeal with interest as the same were not included in the amounts directed to the Respondent in the impugned order. **No change or modification in the interest rate of 10.40% as awarded by A.O, was however sought by Appellants in the prayer clause of the Appeal.**

After hearing both parties, the Tribunal issued an order on 25.02.2021 stating that the requested refund should be granted with interest at the same rate as awarded by the A.O. There was no challenge to the interest rate awarded by the A.O. in the impugned order, and since the order under rectification is in favour of the appellants only, relief different from what was sought in the complaint and appeal cannot be considered.

The interest rate awarded in the order that is being sought to be rectified is in compliance with the Rules set out under RERA, so it cannot be modified based on a different rate agreed upon by the parties. **Additionally, the Tribunal agrees with the Respondent that Section 39 of RERA, under which rectification is being sought, does not fall within its jurisdiction, and thus the rectification Application is not legally sustainable.**

In view of the above observations, tribunal found no merits in the Misc. Application under consideration for rectification. Accordingly the Application is dismissed without any further consideration.

HARYANA REAL ESTATE APPEALLATE TRIBUNAL

M/s GLS Infratech Private Limited. V/s Sunita Upadhyay w/o Abhilash Shukla

Gist of Case:Even on suo-moto cancellation of unit by allottee, Promoter could not charge heavy amount as cancellation charges.

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), by the appellant/promoter, against the order dated 29.07.2022, passed by learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), whereby complaint No.160/2021, filed by respondent/allottee was disposed of with the following directions: -

"i) The respondent/promoter is directed to forfeit an amount not exceeding Rs.1,26,473/- i.e. 25,000/- plus 5% of cost of the flat as per Affordable Housing Policy and refund the balance amount of Rs.18,66,319.32/- to the complainant along with interest at the rate of 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation till actual date of refund of the deposited amount.

ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow."

As per the averments in the complaint, the respondent/allottee was allotted unit bearing No.T11-906, 9th floor, Tower-011, measuring 467.80 sq.ft. in the project of the appellant namely 'Arawali Homes' Sector-4, Gurugram, vide allotment letter dated 08.08.2019, under Affordable Housing Policy 2013 and obtained loan from the ICICI bank under 'Pradhan Mantri Awas Yojna' Scheme (hereinafter called 'PMAY Scheme'). A 'Flat Buyer's Agreement' (for brevity 'the agreement') dated 26.09.2019, was executed between the parties. **As per Clause 5.1.1 of the agreement, the possession of the unit was to be handed over to the respondent/allottee within a period of 48 months from the commencement date.As per Clause 1.10 of the agreement, the commencement date is to be considered as the date of approval of the building plans or the date of**

obtaining the environmental clearance, whichever is later. The building plans were approved on 01.10.2014 and the environmental clearance was obtained on 12.04.2016 and **thus the due date of possession comes to be 12.04.2020.** The offer of possession of the unit was issued by the appellant on 12.06.2020.

It was pleaded by the respondent/allottee that she has paid an amount of Rs.19,92,792.32 against the total sale consideration of Rs.20,29,472/- up to the date of filing of complaint i.e. up to 05.02.2021. She pleaded that on surrender of the unit vide her letter dated 18.09.2020, the appellant/promoter intimated through its email about deduction of cancellation charges which included interest on delay in payment and also included Tax reversal amount of Rs.1,44,050/-. It was pleaded that the above said deductions were not in accordance with Affordable Housing Policy 2013 issued by the Town and Planning Department under which the unit was allotted to her.

Aggrieved with the said deduction, the respondent/allottee had filed complaint before the learned Authority seeking following relief:-

i. **Direct the respondent to withdraw the unwarranted cancellation charges and release the amount due towards the complaint that is approximately Rs.19,92,792.32 (less cancellation charges) along with interest @ 24% p.a.**

ii. **Direct the respondent to pay Rs.5,00,000/- for mental agony and harassment along with interest Rs.2,00,000/- for negligence and delay on part of respondent along with interest and litigation charges to the tune of Rs.50,000/-**

The complaint was resisted by the appellant on some technical grounds. It was also pleaded that the appellant is entitled to charge the cancellation charges, outstanding interest, and 5% of the flat cost along with statutory amount of Rs.25000/- with applicable taxes as cancellation charges according to notification dated 05.07.2019 amending the Affordable Housing Policy, 2013.The appellant after controverting all the pleas raised by the respondent/allottee, sought dismissal of the complaint being without any merits.

The learned Authority after considering the pleadings of the parties and appreciating the material on record, passed the impugned order dated 29.07.2022, the relevant part of which is already reproduced above in paragraph no.1 of this order.

At the very outset, learned counsel for the appellant contended that it was the respondent/allottee who surrendered the unit. On surrender of the unit by the respondent/allottee, the appellant informed her vide email dated 23.11.2020 that she was entitled for a total refund of an amount of Rs.16,48,204/-. Calculations are explained in Table no. 1 shown below.

He further stressed that the appellant is entitled to recover the above said deductible amounts, total of the which comes out to be Rs.3,44,588/-, from the total amount paid by the respondent/ allottee as mandated by the policy of 2013 applicable in the present case. He further contended that the appellant is obliged to charge Goods and Service Tax on surrender of the flat @ 18% as GST on the said amount of Rs.25000/- and 5% of the flat cost. He submitted that the previously paid taxes could not be made to be borne by the appellant and if the applicant does not deduct Rs.1,44,050/- from the amount paid the same shall be loss of the appellant without any of its fault. He contended that the appellant is also entitled to levy the interest on outstanding payments and the same cannot be waived of in case of surrender of the unit. If that be so, the appellant would suffer prejudicially and the same shall give wrong signal to the allottees to withdraw from the project and avoid late payment charges.

With these contentions, it was asserted that the present appeal may be allowed. The appellant may be allowed to deduct an amount of Rs.3, 44,588.20 on account of the reasons, as explained above, from the total amount paid by the respondent/allottee and the impugned order may be modified accordingly.

Per contra, the respondent/allottee has argued that these deductions from the total amount paid by her, as is being sought by the appellant, are not in accordance with the Haryana Govt. policy for Affordable Housing Policy 2013 under which the allotment was made to her. She asserted that the impugned order of the learned authority is just and fair and there is no merit in the appeal filed by the appellant and the same may be dismissed.

Undisputedly, the respondent/allottee was allotted unit bearing No.T11-906, in the project being developed by the appellant namely 'Arawali Homes' Sector-4, Gurugram, vide allotment letter dated 08.08.2019, under the Affordable Housing Policy 2013, issued by the department of Town and Country Planning, Government of Haryana. The agreement between the parties was executed on 26.09.2019. All

the details as per clauses of agreements is agreed by authority and thus, due date of possession comes out to be 12.04.2020.As per the impugned order, the learned Authority has granted a period of six months due to COVID and calculated the due date of possession as 12.10.2020 and the same is also not under challenge in this appeal.

The offer of possession of the unit was issued by the appellant on12.06.2020. The respondent /allottee has paid an amount of Rs.19,92,792.32 against the total sale consideration of Rs.20,29,472/- up to the date of filing of complaint i.e. up to 05.02.2021. The respondent/ allottee surrendered the unit vide her letter dated 18.09.2020.

The only contention of the appellant in this appeal is that the respondent allottee has surrendered the unit of her own and therefore, the appellant may be allowed to recover the following charges:-

Total Paid	Rs.19,99,792.32
Less:	
Cancellation Charges	Rs. 25,000/-
18% GST on cancellation charges	Rs. 4500/-
5% of the total flat cost	Rs. 86,157/-
18% GST on 5% of the total flat cost.	Rs. 15,508.26
Interest accrued till Cancellation date	Rs.64235/-
Tax @ 8% on interest accrued	Rs. 5138.80
Tax Reversal	Rs. 144050/-
Total Deduction	Rs. 3,44,588/-
Net refundable	Rs.19,92,792.32 - 344588.20 =Rs.16,48,204.12

The clause 5(iii) (h) of Affordable Housing Policy 2013 of the Government of Haryana, Town and Country Planning Department, as amended vide notification dated 05.07.2019 reads as under:

> *"On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs.25,000/-shall not exceed the following."*
>
> *Note: the cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time."*

Sr.No.	*Particulars*	*Amount To be forfeited*
(a)	*In case of surrender of flat before commencement of project.*	*Nil*
(b)	*Up to 1 year from the date of commencement of the project:*	*1% of the cost of flat*
(c)	*Up to 2 years from the date of commencement of the project:*	*3% of the cost of flat*
(d)	*After 2 years from the date of commencement of the project*	*5% of the cost of flat*

Since the respondent/ allottee has surrendered the unit in the year 2020, therefore the amendment vide notification dated 05.07.2019 to the Affordable Housing Policy 2013 shall be applicable. Thus, the appellant can forfeit an amount @ 5% of the flat cost of Rs.20,29,472/- in addition to Rs.25,000/- from the total amount of Rs.19,99,792.32/- paid by respondent/ allottee and return an amount of Rs.18,66,319.32/-Moreover, tribunal was unable to understand that how the GST would beapplicable on the amount being deducted by the appellant from the total amount paid by the allottee. The appellant has not given any logic or reasoning as to how he is seeking tax reversal amount of Rs.1,44,050/- from the respondent/ allottee as the appellant might have taken the credit against its output liabilities. The appellant has also not given any logic or reasoning as to how the 'interest accrued till cancellation' or on which amount or on what account 'interest accrued till cancellation' and tax over the said interest accrued, is being claimed.

In the given set of circumstances, tribunal is not inclined to allow any deduction, more than what is permissible under the above said Affordable Housing Policy 2013 as amended vide notification dated 05.07.2019 by the Government of Haryana, from the total amount paid by the respondent allottee.

In view of the aforesaid findings, the present appeal filed by the appellant/promoter has no merit and is accordingly dismissed. The following order is passed:

The amount deposited by the appellant/promoter i.e. Rs.22,62,700/- with this Tribunal to comply with the proviso to Section 43(5) of the Real Estate

(Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondent/allottee subject to tax liability, if any, as per law and rules.

NOTIFICATION

MAHARASTHRA REAL ESTATE REGULATORY AUTHORITY

No. MahaRERA/Secy /File No.27/ 200/ 2023 Dated: 10.02.2023

Subject : In the matter of de-registration of real estate projects or part of a real estate of project.

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2017.

And whereas, the Government of Maharashtra vide Notification No. 23 dated 08.03.2017 has established the Maharashtra Real Estate Regulatory Authority, hereinafter referred to as "MahaRERA" or as the Authority".

And whereas, the Government of Maharashtra has notified the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 (the Rules) for carrying out the provisions of the Act.

And whereas, the Authority has notified the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (the Regulations) to carry out the purposes of the Act.

And whereas, the Authority under Section 37 of the Act and Regulation 38 of the Regulations is vested with the powers to issue directions to the promoters, real estate agents and allottees from time to time as it may consider necessary.

And whereas, Chairperson, MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of MahaRERA under Section 25 of the Act.

Whereas, under Section 34 of the Act, one of the functions of the Authority is to register and regulate real estate projects and real estate agents registered under the Act.

And whereas, there are instances where promoters who have registered their real estate projects are unable to commence and complete the construction of the

same or having commenced the construction are not in a position to complete the construction of the real estate project due to various reasons (illustrations not exhaustive) such as, lack of funds, projects economically not viable, litigations filed, inter se disputes / family disputes, change in planning, Government/ Planning Authority Notifications and accordingly are desirous of discontinuing the said real estate project. In such cases, keeping these real estate projects as a project registered with MahaRERA will serve no fruitful purpose, nor would the same be beneficial to any stakeholders.

In such cases, on receiving an application from promoters and on evaluating / scrutiny of the same, MahaRERA may allow for de-registration of such real estate projects. The procedure for the same shall be as follows:

A. Firstly,

Pre-requisites for de-registration of a real estate project

i. Only those real estate projects which have zero allottees i.e. the real estate projects where there are no bookings shall be considered for de-registration.

ii. Provided that, where part of a registered real estate project is sought to be de-registered then there should be zero allottees in that part of the real estate project.

iii. Provided further that in real estate projects where there are bookings, application for de-registration shall be entertained subject to the rights of such allottees being settled by the promoter and documents in that regard being submitted for verification along with the application for de-registration.

iv. Provided also that when de-registration of part portion of a real estate affects the rights of rest of the allottees in the balance part of such real estate project then 2/ 3rd consent of such allottees need to be submitted along with the application for de-registration.

B. Secondly,

Submission of application for de-registration of a real estate project:

i. The promoter shall submit an application to Secretary, MahaRERA, at secy@maharera.mahaonline.gov.inuntil an online procedure is

established in the format as prescribed in Annexure-A along with Notarized Declaration-Cum-Undertaking in the format as prescribed in Annexure –B.

ii. On receipt of such application, Secretary, MahaRERA, shall initiate action through the legal wing, MahaRERA and place the matter before the Authority for appropriate orders including scheduling a hearing if necessary.

C. Thirdly,

Filing of complaints:

i. Any aggrieved person may file a complaint in the matter of deregistration of the real estate project.

ii. Such complaints shall be heard after due notice to the promoter and decided by the Authority expeditiously.

iii. The terms and conditions as may be imposed by the Authority in the order passed in the complaint shall be binding upon the promoter.

*****

HIGH COURT AT CALCUTTA

WPA 1009 of 2022

Date: 12.06.2023

M/s Gargo Traders

Vs

The Joint Commissioner, Commercial Taxes (State Tax) & Ors.

For the Petitioner: Ms. Jagriti Mishra, Mr. Subham Gupta, Ms. Mrinmoyee Das, Mr. Reshab Kumar

For the State: Mr. Subir Kumar Saha, Ld. A.G.P, Mr. Bikramaditya Ghoshs

CORAM

The Hon'ble Justice Krishna Rao

GST - Denial of input tax credit - Cancellation of registration of supplier with retrospective effect covering the transaction period of the petitioner - Disallowance of input tax credit on purchase from supplier alleged to be fake and non-existing and the bank accounts open by the supplier is on the basis of fake document - Revenue case that the petitioner has not verified the genuineness and identity of the supplier - HELD - Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash - It is not the case of the respondents that there is a collusion between the petitioner and supplier with regard to the transaction - in the absence of proper verification, it cannot be said that there was any failure on the part of the petitioner in compliance of any obligation required under the statute before entering into the transactions in question - The respondent authorities only relied on cancellation of registration of the supplier with retrospective effect to rejected the claim of the petitioner without considering the documents relied by the petitioner - The respondent is directed to consider the grievance of the petitioner afresh by taking into consideration of the documents which the petitioner intends to rely in support of his claim - The respondent shall dispose of the claim of the petitioner by passing a reasoned and speaking order after giving an

opportunity of hearing - the impugned orders are set aside and petition is allowed by remand

Krishna Rao, J.:

1. The petitioner has filed the present writ application challenging the order passed by Joint Commissioner, State Tax, West Bengal, Siliguri Circle dated 13th April, 2022 wherein the appeal preferred by the petitioner is rejected and the order passed by the Adjudicating Authority is withheld.
2. The petitioner being the registered taxable person (RTP) claimed credit of input tax against supply made from a supplier. As per the ledger account of the petitioner for the period from 01.04.2018 to 31.03.2019, the total purchase credit was Rs. 13,04,586/-. The petitioner has filed a tax invoice cum chalan reflecting a purchase of Rs. 11,31,513.00 from Global Bitumen. The debit note issued in the name of the transporter i.e. the International Transport Corporation for an amount of Rs. 1,73,073.00/-. The petitioner has made payment to Global Bitumen from the account of the petitioner through bank.
3. The petitioner is aggrieved by the impugned order issued by the respondent authorities for not allowing the petitioner, who is the purchaser of goods in question and refusing to grant the benefit of Input Tax Credit (ITC) on purchase from supplier and also asking the petitioner to pay penalty and interest under the relevant provisions of GST Act.
4. The case of the respondents that on inquiry, they came to know that the supplier from whom the petitioner claimed to have purchased the goods in question are all fake and non-existing and the bank accounts open by the supplier is on the basis of fake document and the claim of the petitioner of Input Tax Credit are not supported by any relevant document. It is the further case of the respondent that the petitioner has not verified the genuineness and identity of the supplier whether is a registered taxable person (RTP) before entering into any transaction with the supplier.
5. It is the further case of the respondents that the registration of the supplier in question has already been cancelled with retrospective effect covering the transaction period of the petitioner.
6. The petitioner has filed supplementary affidavit by enclosing tax invoice cum challan dated 12th November, 2018, debit note dated 12th November, 2018, e-

Way Bill dated 12th November, 2018, transportation bill dated 12th November, 2018 and statement of bank account of HDFC Bank of the petitioner showing the transaction made by the petitioner in favour of the supplier.

7. Learned Counsel for the petitioner relying upon the said documents and submits that the authorities have not considered the said documents and from the said documents, it is crystal clear that the petitioner has purchased the goods from the supplier and had transported the said goods and also transferred the amount through bank in the account of the supplier.

8. Learned Counsel for the petitioner relied upon unreported judgment passed by the Principal Bench of this Court in WPA 23512 of 2019 **(M/s. LGW Industries Limited & Ors. -vs- Union of India & Ors.)** dated 13th December, 2021 and the Judgment reported in 2023 SCC Online Del 1412 **(Balaji Exim -vs- Commissioner, CGST & Ors.)** EL and submitted that the allegation of fake credit availed by Global Bitumen cannot be a ground for rejecting the petitioner's refund application unless it is established that the petitioner has not received the goods or paid for them.

9. Per contra, Learned Counsel for the respondents submits that the transaction relied by the petitioner with Global Bitumen is of November, 2018 but the authorities have cancelled the registration of the supplier of the petitioner with effect from 13.10.2018 and the said cancellation has been accepted by the supplier.

10. Learned Counsel for the respondents submits that the judgments relied by the petitioner is distinguishable from the present case as in the present case, the cancellation of the supplier has been given retrospective effect and the supplier has accepted the same and thus the judgment relied by the petitioner is not applicable in the present case.

11. Considered the submissions made by the Counsels for the respective parties, perused the materials on record and the judgment relied by the petitioner.

12. The main contention of the petitioner that the transactions in question are genuine and valid and relying upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction.

13. Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash.

14. It is not the case of the respondents that there is a collusion between the petitioner and supplier with regard to the transaction.

15. This Court finds that without proper verification, it cannot be said that there was any failure on the part of the petitioner in compliance of any obligation required under the statute before entering into the transactions in question.

16. The respondent authorities only taking into consideration of the cancellation of registration of the supplier with retrospective effect have rejected the claim of the petitioner without considering the documents relied by the petitioner.

17. The unreported judgment passed in the case of ***M/s Law Industries Limited & Ors. (supra)*** is squarely applicable in the present case.

18. In view of the above, the impugned orders are set aside. The respondent no. 1 is directed to consider the grievance of the petitioner afresh by taking into consideration of the documents which the petitioner intends to rely in support of his claim.

19. The respondent no. 1 shall dispose of the claim of the petitioner by passing a reasoned and speaking order after giving an opportunity of hearing to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

20. **WPA No. 1009 of 2022** is thus **disposed of.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

*****

COMMERCIAL NEWS

CA RIBHAV GHIYA

GST Council may approve process changes to plug fake ITC claims in July 11 meet: Officials

Fake invoicing means invoices are issued even when there is no real supply of goods or services.

The Goods and Services Tax (GST) Council in its upcoming meeting on July 11 is likely to discuss and approve changes in the process to plug fake input tax credit (ITC) claims. The changes will entail listing out parameters for risk profiling of entities followed by physical verification, senior government officials said.

"Process changes will require GST Council's approval. Changes in verifications and process streams will be discussed by the Council in the next meeting to check fake ITC claims. Process changes will include risk profiling of entities based on parameters followed by physical verification of risky ones," a senior government official told Moneycontrol.

With the process change, using part technology and part enforcement the impact will be seen over FY24 as a lot of gaps will be filled, the official said.

The 2023-24 Union Budget has projected a 12 percent growth in GST revenue for the Center at Rs 9.56 lakh crore from the previous fiscal mop-up of Rs 8.54 lakh crore.

Fake invoicing means invoices are issued even when there is no real supply of goods or services. These invoices are then used to avail of input tax credit (ITC). Entities even obtain fake registrations under GST to obtain ITC, which causes revenue loss to the government.

The Council in its meeting will decide on the parameters to be applied online based on which physical verification will be done. The parameters will be industry and location-specific, for example, certain industries are not possible in certain areas.

The government is looking at effectively using data analytics for the clean-up of the registered entities to red flag the risky entities based on these parameters. The entities, which are flagged as risky will undergo mandatory physical verification to ensure physical infrastructure is there.

"This year, the average monthly GST collection target for states and Centre combined could be Rs 1.6-1.7 lakh crore for which some things will have to be done differently," the official said.

The Central Board of Indirect Tax and Customs has already identified 60,000 entities for physical verification. It has found fake input tax credit claims of Rs 15,000 crore in a special drive that they are undertaking to identify bogus entities, its Chairman Vivek Johri had said earlier.

"So far, physical verification has been done for 43,000 entities of which 10,000 were found non-existent and bogus, which have claimed Rs 15,000 crore of ITC," Johri had said.

Fake invoicing cases have been detected wherein metal scrap and agricultural items are used for industrial use, another senior government official had told Moneycontrol earlier.

GST Council to discuss measures to curb evasion, GoM report on online gaming in July 11 meet

The GST Council on July 11 will discuss some more measures to tighten the noose on fake registration and fraudulent generation of input tax credit (ITC) as it looks to check tax evasion, a top official said on Friday.

"We are thinking of some other measures and we will take them through the due process of the law committee and GST council," Central Board of Indirect Taxes and Customs Chairman Vivek Johri told reporters.

The 50th meeting of the GST Council is scheduled on July 11.

The Council will also discuss the GoM report on online gaming, casinos and horse racing and will circulate it to the states soon. The GoM submitted its report to the Council in December last year, but the Council has not taken it up for discussion.

Further, the Council will also decide on a convenor for the Group of Ministers (GoM) on rate rationalisation.

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Northern	0	1478	21	2	1501
Southern	1	2331	23	4	2359
Western	5	2911	38	3	2957
Total	**12**	**10203**	**144**	**9**	**10368**

FORTH COMING PROGRAMMES

Date & Month	Programme	Place
23th June, 2023	National Executive Committee Meeting	Tirupathi
23th June, 2023	National Tax Conference (Southern Zone)	Tirupathi
25th June, 2023	Full Day Conference (Central Zone)	Kota
30th June, 2023	National Tax Conference (Central Zone)	Raipur
7th & 8th July, 2023	National Tax Conference (Southern Zone)	Chennai
15th & 16th July, 2023	National Tax Conference (Northern Zone)	Amritsar
4th August, 2023	National Executive Committee Meeting	Bengaluru
4th,5th& 6th Aug.,2023	National Tax Conference (Southern Zone)	Bengaluru

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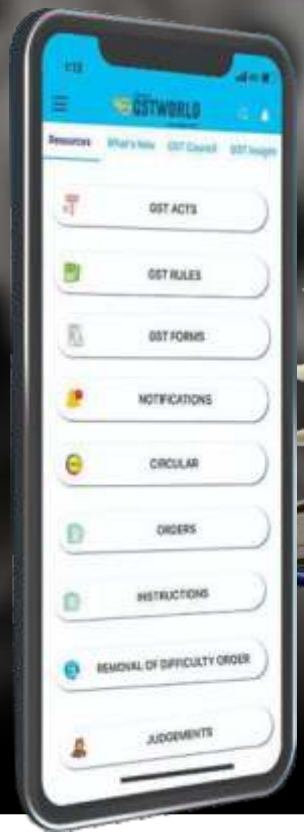

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Printed by : Pankaj Ghiya, Published by : Pankaj Ghiya on behalf of All India Federation of Tax Practitioners (name of owner) & Printed at Pinkcity Offset, Sansar Chand Road, Jaipur (Name of the Printing Press & Address) and Published at All India Federation of Tax Practitioners, Jaipur • Editor : Deepak Khandelwal • **PUBLISHED ON 25TH EVERY MONTH.**

All India Federation of Tax Practitioners
C/o Panjak Ghiya Advocate, National President, AIFTP Indirect Tax & Corporate Law Journal
10, Ganesh Colony, Bhairav Path, J.L.N. Marg, Jaipur-302004 M : 9829013626 • Email : aiftpjournal@gmail.com