PANIPAT BRANCH
OF NIRC OF ICAI

OCTOBER 2023

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THE ICAI MOTTO

Ya esa suptesu jagarti kamam kamam Puruso nirmimanah | Tadeva sukram tad brahma tadevamrtamucyate | Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat | |	य एष सुप्तेषु जागर्ति कामं कामं पुरूषो निर्मिमाण :। तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते । तस्मिंल्लोका: श्रिता: सर्वे तदु नात्येति कश्चन । एतद् वै तत् ।।

That Person who is awake in those that sleep, shaping desire after desire, that, indeed is pure.
That is Brahman, that, indeed, is called the immortal. In it, all the worlds rest and no one ever goes beyond it.
This, verily, is that, kamam kamam: desire after desire, really objects of desire.
Even dream objects like objects of waking consciousness are due to the Supreme Person.
Even dream consciousness is proof of the existence of the self.
No one ever goes beyond it: of Eckhart: 'On reaching God all progress ends.'

Source: Kathopanishad

PANIPAT BRANCH OF NIRC OF ICAI

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MANAGING COMMITTEE 2023-2024

CA Mitesh Malhotra CHAIRMAN

9896560500

mitesh2k5@yahoo.com

CA Ravinder Singh VICE-CHAIRMAN

9518183000

caravindersingh@rediffmail.com

CA Jagdish Dhamija SECRETARY

9812687796

cajagdishdhamija@yahoo.com

CA Sonu Goel TREASURER

9896353388

goyalsonuca0705@gmail.com

CA Ankur Bansal NICASA (PANIPAT) CHAIRMAN

9416300005

caankurbansal@gmail.com

CA Bhupinder Dixit CPE CHAIRMAN

9034942049

dixitbhupi@gmail.com

EVENTS

(OCTOBER)

HELD IN

PANIPAT BRANCH

OF

NIRC OF ICAI

GST CASE LAW COMPENDIUM – OCTOBER 2023 EDITION

CA. Ritesh Arora

Partner, Ritesh Arora & Associates

Author

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1. **Whether the pre-deposit can be made through E-Credit Ledger?**

Yes, The Honorable Orissa High Court in **M/s. Kiran Motors v. Addl. Commissioner of CT & GST [W.P (C) No.22817 of 2023 dated August 10, 2023]** set aside the appeal rejection order passed by the First Appellate Authority and held that a pre-deposit under GST can be made through electronic credit Ledger (**"ECL"**).
The Honorable Orissa High Court noted that the CBIC vide circular dated July 06, 2022, clarified that payment of pre-deposit can be made by using the electronic credit Ledger and opined that the Petitioner has already made the pre-deposit using the electronic credit Ledger, which will now be accepted by the Revenue Department and Set aside the Impugned Order.

Author's Comments:-

This kind of order by the First Appellate Authority shakes the confidence of the taxpayers in the administration. The CBIC vide circular No. 172/04/2022 dated July 06, 2022, clearly clarified that the Electronic credit ledger can be used to pay Pre–deposit required to prefer an appeal. Moreover, circulars issued under section 168 are binding on the Proper Officer. Circulars are issued to avoid administrative anarchy where divergent treatment is extended by different officers.
There was no reason to reject the appeal on such grounds and force the taxpayer to knock on the doors of the Honorable High Court. The Honorable Court must have taken strict action against such erring officers to set an example.

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2. **Whether the Adjudicating Authority passes an order without offering the opportunity to be heard?**

No, The Honorable Allahabad High Court in **B.L. Pahariya Medical Store v. State of U.P [Writ Tax No. 981 of 2023 dated August 22, 2023]** set aside the demand order passed by the Adjudicating Authority and held that the assessee is not required to request for opportunity of personal hearing, and it remained mandatory upon Adjudicating Authority to afford such opportunity before passing an adverse order.
The Honorable Allahabad High Court noted that the stand of the Petitioner may remain unclear unless a minimal opportunity of hearing is first granted and directed to issue a fresh SCN to the Petitioner within two weeks. The Honorable Court relied upon the Judgment of **Bharat Mint & Allied Chemicals v. Commissioner Commercial Tax & 2 Ors. [(2022) 48 VLJ 325]** wherein the Honorable Allahabad High Court held that the Adjudicating Authority was bound to afford the opportunity of a personal hearing to the Petitioner before he may have passed an adverse assessment order.
The Honorable Court held that a principle of law is laid down that the Petitioner is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Adjudicating Authority to afford such opportunity before passing an adverse order.

Author's Comments:-

This is a welcome decision by the Honorable Allahabad High Court and it comes to the rescue of the taxpayer once again the Rule of Land stands tall against the over-passionate administration.
The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.
Section 75(4) clearly states that "an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person".
A similar judgment was passed in the case of **Mohini Traders v. State of U.P. [WRIT TAX No. 551 of 2023 dated May 3, 2023].**

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3. Whether the Superintendent has the power to issue a notice under Section 83 of the CGST Act to attach the bank Account?

No, The Honorable Delhi High Court in **M/s Vikas Enterprises v. Commissioner of Central Tax (GST), Delhi North & Anr. [W.P.(C) 9495 of 2023 dated July 31, 2023]** set aside the letter issued by the Superintendent instructing to freeze the bank account of the assessee and held that the power to issue an order of attachment of bank accounts under the Central Goods and Services Tax Act, 2017 **("the CGST Act")** is only with the Commissioner and not below the rank of Commissioner can pass such order. Further, imposed the cost of INR 5,000 on the Superintendent who issued such an order.
The Honorable Delhi High Court directed that the Revenue Department is required to act by the statutory provisions and relied upon the Judgment of **Radha Krishan Industries v. State of Himachal Pradesh &Ors. [(2021) 6 SCC 771]** wherein the Honorable Supreme Court held that the power under Section 83 of the CGST Act can be exercised only subject to the conditions, as specified therein, being fully satisfied. No order under Section 83 of the CGST Act can be passed by any officer other than the Commissioner and this can be done only if he is satisfied that it is necessary to pass such an order for protecting the interest of Revenue.

Author's Comments:-

A similar Judgment was passed by the Honorable Delhi High Court in the case of **Sakshibahl vs. Principal Additional Director General [W.P.(C) No. 3986 OF 2023]** dated March 29, 2023, where it was held that attaching a bank account can only be done in case conditions specified u/s83 of the CGST Act are fulfilled and one of the prime condition is the formation of the opinion by the commissioner, not by any officer below the rank of Commissioner.
Such an extra legislative exercise of the power by the officers of the Anti-Evasion is Draconian in nature.

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4. Can the GST registration be canceled without specifying any reason?

No, The Honorable Delhi High Court in **Singla Exports v. Central Board of Indirect Taxes and Customs &Ors [W.P.(C) 2732 of 2023 dated August 09, 2023]** quashed the GST registration cancellation order by holding that the auto-generated order which does not specify reason for cancellation cannot be sustained. The Honorable Court noted that since the show cause notice issued for cancellation of registration did not provide any clue as to which provisions of the GST Act or GST Rules were allegedly violated by the assessee, the order for cancellation of the assessee's registration based on such show cause notice was to be set aside.

Author's Comments:-

This is a welcome decision by the Honorable High Court of Delhi and it comes to the rescue of the taxpayer and once again the Rule of Land stands tall against the over-passionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.
A similar judgment was passed in the case of **Rishiraj Aluminium Pvt. Ltd. v. Goods and Services Tax Officer [W.P.(C) No. 4125 of 2023 dated April 17, 2023]**

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5. Whether the taxpayer's ITC can be denied solely based on the ground that the transaction is not reflected in GSTR-2A?

No, the Honorable Kerala High Court in **Diya Agencies v. The State Tax Officer [WP(C) No. 29769 of 2023 dated September 12, 2023]** held that if the taxpayer can prove that tax amount is paid to the seller and the Input Tax Credit claim is bonafide so the Input Tax Credit cannot be denied merely on non-reflection of transaction in GSTR-2A.
The Petitioner relied upon the judgment of **Suncraft Energy Private Limited and Another v. The Assistant Commissioner, State Tax [MAT 1218 of 2023 dated August 02, 2023]** wherein the Honorable Calcutta High court held that, before reverting the ITC by the assessee, the Adjudicating Authority should take action against the selling dealer if it is found that he has not deposited the tax paid by the assessee. Unless the collusion between the assessee and the seller dealer is proved, the ITC is not to be denied if the assessee has genuinely paid the tax to the seller dealer.
The Petitioner contended that it has fulfilled all the conditions stated under Section 16(2) of the Central Goods and Services Tax Act, 2017 **("the CGST Act")**.
The Petitioner further contended that the Central Board of Indirect Tax and Customs (CBIC) had issued a press release dated October 18, 2018, clarifying that Form GSTR-2A is the facility to view the details furnished by the supplier in GSTR-1 and cannot impact the ability of the recipient to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the CGST Act.
The Honorable Kerala High Court observed that the Petitioner's claim for ITC has been denied only on the ground that the said amount was not mentioned in GSTR 2A. Further noted that if the supplier has not remitted the said amount paid by the Petitioner to him, the Petitioner cannot be held responsible and directed the Adjudicating Authority to give opportunity to the Petitioner to claim for ITC. The Honorable Court also considered the CBIC press release dated 18 October 2018 which clarified that GSTR-2A is like facilitation and does not impact the ability of the taxpayer to avail ITC on the self-assessment basis as per Section 16 of the CGST Act.
The Honorable Court held that merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the ITC.

Author's Comments:-

There is an urgent need to understand that if one figure is not matching with another figure, it does not mean non-payment of taxes. SCN based on GSTR-2A vs. GSTR-3B mismatch is demand based on the presumption that the supplier has defaulted in payment of tax on supplies to the recipient (notice). There is no scope for presumption or conjecture to create demand under the GST Law.

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6. Whether the Petitioner approach the writ Court directly without filing an appeal before the Appellate Authority?

No, The Honorable Patna High Court in **M/s. Narayani Industry v. State of Bihar [Civil Writ Jurisdiction No.11333 of 2023 dated August 11, 2023]** held that there is no jurisdictional error or violation of principles of natural justice or abuse of process of law averred or argued by the Petitioner in the above writ petition and relied upon the Judgment of **State of H.P &Ors. v. Gujarat Ambuja Cement Limited &Anr [(2005) 6 SCC 499]** wherein the Honorable Supreme Court held that if an assessee approaches the High Court without availing the alternate remedy, assessee should ensure that it has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.
The Honorable Court opined that there is no ground stated in the writ petition that would enable invocation of the extraordinary remedy under Article 226 of the Indian Constitution and held that, when there is a specific period for delay of condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Indian Constitution.

Author's Comment:-

Belated appeals are permitted up to a maximum of one (1) month under section 17(4) after the end of the due date for filing under section 107(1) or (2/3). Appellate Authority has the power to condone delay, but this power cannot be expected by the appellant to

be exercised routinely and automatically condone delay. Limitations Act, 1963 states in sections 5 and 14 that "sufficient cause" must be shown to justify the delay. In Ramlal v. Rewa Coalfields Ltd. ibid, Apex Court has held that:
(a) Non–filing of appeals within the normal time allowed is not questionable;
(b) Every day of delay is to be explained with an Affidavit;
(c) Reasons cited verified and rejected if not found satisfactory; and
(d) Condonation allowed by a speaker order.
The principle of law is that when the time to file an appeal lapses, the counterparty gets a vested right (or advantage or benefits from such failure) which cannot be denied by condonation of appeal in a routine and mechanical manner without 'good and sufficient' reasons.
A similar judgment has been delivered by The Honorable Madras High Court in the case of **Thiruchy Royal Steels v. Deputy State Tax Officer [W.P.NO. 15338 OF 2023, W.M.P. NOS. 14861 and 14863 of 2023 dated May 11, 2023]** wherein the Honorable Court dismissed the writ and directed the assessee to file an appeal before the Appellate Authority and directed the Appellate Authority to dispose of the case on an emergent basis.

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7. Notice issued to Revenue Department challenging the arrest & summoning powers of GST officials

The Honorable Supreme Court in **Gagandeep Singh v. Union of India & Ors. [W.P. (Crl) No. 339 of 2023 dated August 25, 2023]** admitted the Writ filed by Gagandeep Singh **("the Petitioner")** and issued notice to the Revenue Department challenging GST provisions about power to arrest and power to summon.
The Petition has been filed a writ before the Honorable Supreme Court under Article 32 of the Constitution of India, contesting the constitutional validity of Section 69 (i.e., power to arrest), and Section 70 (i.e., power to summon individuals to furnish proofs and produce documents) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**).
The Petitioner contended that the above provisions are criminal, they could not have been enacted under Article 246A of the Constitution of India. The power to arrest and prosecute is not ancillary and incidental to the power to levy and collect goods and services tax. The Petitioners submitted that Entry 93 of List 1 of the Seventh Schedule of the Constitution of India confers jurisdiction upon the Parliament to make criminal laws only concerning matters in List 1, not CGST. Therefore, Sections 69 and 70 of the CGST Act are beyond the legislative competence of the Parliament.
The Petitioners have filed the present petitions, suspecting coercive action by the Respondents, and have asked that the proceedings against them under the CGST Act, in connection with an alleged non-cognizable offense, be quashed without adhering to the legal process as outlined in Chapter XII of the CrPC, specifically Sections 154 to 157 and Section 172 thereof.
The Supreme Court after hearing the case on August 25, 2023, tagged the present matter with the **GaganKakkar vs. Union of India [WP (Cr.) 357/2023]** and held that no coercive steps will be taken against the Petitioner.

Author's Comment:-

It is worth noting that even though CGST officers possess the powers of both police officers and civil court officials during their investigations, the proceedings are consistently referred to as 'inquiries,' and the individuals summoned are not regarded as 'accused.' It has been emphasized that these officers are not officially recognized as police officers, resulting in the summoned individuals being denied the safeguard specified in Article 20(3) of the Indian Constitution. The cases asset that this scenario is leading to substantial unfairness for the petitioners.

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8. Whether service of an assessment order on a common GST portal after cancellation of GST registration be considered an effective mode of service of order under GST law?

Yes, The Honorable Kerala High Court in **Koduvayur Constructions v. Assistant Commissioner-Works Contract [WP(C) No. 21212 of 2023 dated August 07, 2023]** held that it is the assessee's responsibility to check the GST portal for any notice or order that had been served on it. The Contention that the assessment order was not served validly was untenable.
The Honorable Kerala High Court observed that a plain reading of Section 169(1) (a) to (f) of the CGST Act makes it clear that any decision, order, summons, notice, or communication under the CGST Act and its rules can be served on the taxpayer through any one of the methods listed. Further observed that section 169(1)(d) of the CGST Act recognizes the availability of orders on the common GST portal as an effective manner of delivery of the order.
The Honorable Court noted that in the present case, the Assessment order was made available on the common portal which is a valid mode of service as provided under section 169(1) of the CGST Act, and held that Petitioner must check and verify the common GST portal for any communication from Revenue Department and it was Petitioner's fault to have failed to do so.

Author's Comments:-

Although Section 169 of the CGST Act, 2017 specifies 14 different ways/modes of serving any decision, order summons, notice, or order communication under the Act care must be taken by the authorities not to simply pick and choose any option, rather the best possible option must be chosen by which it is mostly likely to reach the notice. The notice or any other communication cannot be termed to be served until it has reached the intended notice.

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9. Whether the section 16(4) of the CGST/BGST Act is constitutionally valid and not violative of Articles 19(1)(g) and Article 300-A of the Constitution of India?

Yes, The Honorable Patna High Court in **Gobinda Construction v. Union of India [Civil Writ Jurisdiction Case No. 9108 of 2021 dated September 08, 2023]** held that Section 16(4) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") is constitutionally valid and are not violative of Article 19(1)(g) and Article 300 (A) of the Constitution of India and is not inconsistent with or in derogation of any of the fundamental right guaranteed under the Constitution of India. The language of section 16 of the CGST/BGST Act suffers from no ambiguity and stipulates the grant of ITC subject to conditions and restrictions put there.

Author's Comments

This is a major blow to the taxpayers contesting the issue of ineligible credit post the time limit specified under section 16(4) of the Act. There is always a presumption of the constitutional validity of legislation, with the burden of showing the contrary, lying heavily upon someone who challenges its validity.
The petition lacked persuasive arguments to persuade the Honorable Court regarding the ultra vires of Section 16(4) provision.

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10. Whether the Applicant eligible to avail of ITC on gold coins given to dealers on achieving sales target?

Yes, The AAR, Karnataka, in **M/s. Orient Cement Limited [Advance Ruling No. KAR ADRG 27 of 2023 dated August 24, 2023]** ruled that ITC on gold coins is not restricted under section 17(5)(h) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) since the gold coin is not given as gifts but as the achievement of marketing targets set by the assessee.
The AAR, Karnataka observed that the Applicant has issued gold coins as incentives as per the agreement between the Applicant and the dealers. It is only issued subject to the fulfillment of certain conditions and stipulations and the gold coins are for the achievement of marketing targets set by the Applicant.
The AAR opined that a Gift is something which is given without any conditions and stipulations and the same cannot be covered under the scope of "gift". Further noted that section 17 (5)(h) of the CGST Act states that ITC is not available on "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples". Since the gold coin is not given as gifts, this clause does not apply to the present transaction.
The AAR Held that ITC is not restricted under any of the provisions of Section 17 more so under section 17(5)(h) of the CGST Act.

Author's Comments:-

On closer examination of facts, it appears to be a taxable outward supply. Taxing ingredients found to exist is that there is an (i) lawful and permanent transfer of property in goods (mobile phone) (ii) from one person (car manufacturer) to another person (dealer) (iii) in the course or furtherance of business (of supplying cars) (iv) under enforceable terms announced (binding obligations) for mutual consideration (in non – monetary form).

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11. Whether the GST Council have the authority to change the classification of the product and whether the circulars based on Council's recommendations are legally valid?

The Honorable Allahabad High Court in **M/s. Dharampal Satyapal Limited v. Union of India [Writ Tax No. 979 of 2023 dated August 21, 2023]** granted the stay on show cause notice provided the deposit of INR 10 Crores is made with the Revenue Department in a separate account within three weeks and a bank guarantee of the balance amount is furnished. The assessee manufacturer and supplier of silver-coated illaichi submitted that the GST Council has no authority to change the classification of its product from Chapter 20 to Chapter 21 and to enhance the rate of GST from 12 percent to 18 percent under a clarification; since the matter required consideration, same was listed by the Honorable Court.
The Honorable Allahabad High Court as an interim measure has stayed the effect and operation of Circular No. 163/19/2021-GST dated October 06, 2021, and on the SCNs. The Honorable Court clarified that the Respondent may adjudicate the matter but will not give effect without the permission of the Court.

Author's Comments:-

Pertinent to mention here that the proceedings under section 67 of the CGST Act, 2017 can be initiated basis of "Reasons to Believe" that the valuation adopted by the taxpayer is incorrect, only if there is sufficient material to state that incorrect classification is adopted by the taxpayer to evade payment of taxes. For issues relating to valuation, proceedings must be initiated under section 65 of the CGST ACT, 2017 not under section 67.

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12. What would happen if DGGI and other agencies initiated proceedings and sought information from the assessee, which is available with one of the agencies?

The Honorable Gujarat High Court in **Vipul Chandra Pursottamdas Mahant Prop of Vaibhavi Construction v. Assistant Commissioner of State Tax** [R/Special Civil Application No. 9488 of 2023 dated June 22, 2023] directed the assessee to co-operate with the inquiry initiated by the DGGI and further directed Assistant Commissioner of State Tax and State Tax Officer 2 to provide all relevant documents to the DGGI Officer for further investigation.

The Petitioner contended that the documents have the DGGI Officer and thus, the Assistant Commissioner and the State Officer have no authority to proceed further with the inquiry in connection with the same subject matter. The Petitioner relied upon Section 6(2)(b) of the CGST Act and submitted that the first investigation is initiated by the DGGI Officer in connection with the Petitioner and therefore, it is not open to the Assistant Commissioner and the State Officer.

Author's Comments:-

It is important to understand that once the DGGI officer steps out of the premises of the taxable person, there is no jurisdiction with the DGGI officers to call for any information, documents, or other things.
Moreover, Summons can be issued only in case an inquiry under the proceedings U/s 67 is pending. In the instant case, no proceedings U/s 67 are pending before state authorities to issue summon Notices.

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13. Supreme Court Stays Karnataka High Court Verdict Quashing GST Department's ₹21,000 Crore Claim Against Gameskraft

The Honorable Supreme Court in the case of **Directorate General of Goods and Services Tax Intelligence and Ors v. Gameskraft Technologies Private Limited and Ors [Special Leave to Appeal (C) No(s).19366-19369/2023 dated September 06, 2023]**, has issued a stay order on a Karnataka High Court verdict passed in May of this year. The High Court had quashed a notice issued by the GST department, which claimed ₹21,000 crore in dues from the online gaming company Gameskraft. The Honorable Supreme Court granted ad interim stay on HC ruling that Online/offline/physical/electronic/digital Rummy games and also other games played with or without stakes on the assessee's Mobile App are substantially and preponderantly games of skill and not of chance, are not covered within expression 'betting and gambling' appearing in Entry 6 of Schedule III to Central Goods and Services Tax Act, 2017; and, hence, some are not taxable.

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14 Whether the Applicant entitled to avail ITC of an inward supply of motor vehicles that are used for demonstration purposes?

No, the AAR Telangana, in **M/s. Sai Service Pvt. Limited [TSAAR order no. 13 of 2023 dated August 01, 2023]** ruled that Input Tax Credit (**"ITC"**) cannot be availed on test-drive vehicles when retained in a workshop as a replacement vehicle.
The AAR Telangana noted that Section 17(5) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) restricts availment of ITC on motor vehicles purchased by a taxpayer even though they may be used in the course of furtherance of business. However, this restriction is subjected to certain exceptions based on the purpose of usage and Stated that to understand the exceptions reference is made to 'Principles of statutory interpretation' by Justice G.P Singh ''Exception is intended to restrain the enacting clause to particular cases''. Therefore, the particular case which is relevant to the present proceedings is the ''further supply of such motor vehicles''.
Further noted that the word 'supply' is defined under Section 7 of the CGST Act which includes the sale, lease, rental, etc. Thus, the exception is made not only for the sale of motor vehicles but for the lease, rent, etc., wherein there is no immediate transfer of property in goods and such motor vehicle may be capitalized in the books of the purchaser in case of an intention to lease, rent etc. Hence, capitalizing the motor vehicle purchased does not make the tax paid on their purchases ineligible for ITC if there is a further supply of such motor vehicles within the meaning of Section 7 of the CGST Act. The AAR opined that whether the applicant is eligible for ITC depends on the occurrence of a future event i.e. either the assessed retains the vehicle in his workshop as a replacement vehicle or sells such vehicles.
The AAR held that -:
§ Eligible for claiming ITC- If the Applicant is making further supply of such vehicle.
§ Not eligible for claiming ITC- if the Applicant is retaining the vehicle for his workshop as a replacement vehicle as mentioned in the sales policy Company.

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15. Whether the Revenue Department have the right to conduct the audit under Section 65 of the CGST Act after the closure of the business?

No, The Honorable Madras High Court in **Tvl. Raja Stores v. The Assistant Commissioner (ST), West Veli Street Circle [W.P.(MD). No. 15291 of 2023 dated August 11, 2023]** held that Section 65 (**"Audit by tax authorities"**) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) applies only to registered businesses and concluded that authorities cannot conduct audits for businesses that have closed and further clarified that there is no barring in initiating a proceeding under Section 73 and 74 of the CGST Act.
The Honorable Madras High Court observed Section 65 of the CGST Act and opined that Section 65 specifically states 'any registered person' then it ought to be construed as an existing concern and the unregistered person is exempted from the purview of Section 65 of the CGST Act.
The Honorable Court held that the Respondent could conduct an audit only while the business was operational, they could not do so after it had closed. However, this will not preclude the Respondent from initiating assessment proceedings for the said concern under Sections 73 and 74 of the CGST Act.

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16. Whether the State Tax Officer issue a notice of 'provisional attachment' under Section 83 of the MGST Act?

No, The Honorable Bombay High Court in **Saket Agarwal v. Union of India [Writ Petition (L) No. 22585 Of 2023 dated August 31, 2023]** held that the State Tax Officer does not have any jurisdiction to issue notice/communication under Section 83 of the Maharashtra State Goods and Services Tax Act, 2017 **("the MGST Act")**. The learned AGP on the behalf of respondents fairly stated that the State Tax Officer would not have any jurisdiction to issue such communication; hence, the impugned communication dated 21 April 2023 is being withdrawn by the officer who had issued it.
The Honorable Court Stated that since the Impugned communication itself is being withdrawn, the Petitioner may send an intimation of withdrawal of such communication immediately to the Officer-In-Charge of the Central Depository Services (India) Ltd.

Author's Comments

This welcome decision by the Honorable Bombay High Court and it comes to the resume of the taxpayers and once again the Rule of Land Stands tall against the over-passionate administration.
The Revenue Department has to understand that this kind of approach renders the due process ''laid down in the statute superfluous, unnecessary, and nugatory, which is impermissible in the law.

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17. Does investment Advisory services rendered by the Indian Company to the overseas service recipient qualify as an export of service?

Yes, The Honorable Delhi High Court in **M/s. Cube Highways and Transportation Assets Advisor Private Limited v. Assistant Commissioner CGST Division &Ors. [W.P.(C) 14427 of 2022 dated August 17, 2023]** held that the advisory services were treated as 'export of services' under service tax and the assessee was not treated as 'Intermediary' under the Finance Act, 1994 (**"the Finance Act"**) and since, the definition of 'Intermediary' is similar to the definition under Sub-section (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017 (**"the IGST Act"**) therefore the advisory services to be treated as export of service.
The Honorable Delhi High Court observed that neither the Adjudicating Authority nor the Appellate Authority had any material to doubt the Petitioner regarding rendering advisory services to the overseas recipient and noted that the Petitioner is the service provider and is rendering the advisory services directly to the service recipient and is not acting as a facilitator for providing such services.
The investment advisory Services were treated as an 'export of services' for levy of service tax under the Finance Act and the definition of 'Intermediary' under Rule 2(f) of the Place of Provision of Service Rules, 2012 is similar to the definition of 'Intermediary' under Sub-section (13) of Section 2 of the IGST Act. The Honorable Court held that the impugned order was not sustainable on the aforesaid grounds set aside the Impugned Order and remanded back the matter to the Adjudicating Authority.

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18. Whether GST Registration can be canceled without considering the reply of the Petitioner, particularly when GST registration is canceled on the grounds of fraud, wilful misstatements, or suppression of facts?

No, the Honorable Delhi High Court in the case of **M/s. Rahul Kumar Jain and Co. v. Union Of India &Anr. [W.P. No. 11963 of 2023 dated September 12, 2023]** observed that the Revenue Department cannot cancel the GST Registration of an assessee where specific reasons are not provided. The Court held that show cause notices and orders lacking reasons cannot be upheld.
The Honorable Delhi High Court observed that the Petitioner was not provided with specific reasons for the cancellation of its GST registration, despite requesting such information. The impugned order did not explain the cancellation and merely referred to the Impugned SCN without stating any grounds.
The Honorable Court Noted that in several previous decisions, it had held that show cause notices and orders lacking reasons cannot be upheld. The court expressed concern that taxpayers continue to face such notices and orders that do not explain whatsoever for the actions taken by the tax authorities.
The Honorable Court allowed the Petitioner's petition and imposed a cost of INR 5,000 on the Respondent.

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19. Whether failure to carry valid documents during the transit of goods would be treated as a wilful act of tax evasion?

Yes, the Honorable Kerela High Court in **M/s. EVM Passenger Cars India Pvt. Ltd. v. State of Kerela [WP(C) NO. 10565 OF 2018 dated August 23, 2023]** dismissed the petition filed against the order of the Adjudicating Authority and held that the owners/dealers must substantiate why the goods during transportation were not accompanied by the documents as specified under GST law and in case the assessee is not able to substantiate, it would mean that assess wilfully attempted to transport the goods without any documents and tried to evade the tax liability on the goods.
The Kerela High Court observed that the adjudicating authority held that after issuance of the Show Cause Notice, there is no provision to accept the documents subsequently to prove the genuineness of transport in a case involving the transport of goods without any statutory documents and opined that owners/dealers have to substantiate why the goods being transported did not accompany the statutory documents.
The Honorable Court noted that the dealer willfully attempted to transport the goods without any documents and tried to evade the tax liability on the goods and held that the impugned order imposing the tax and penalty does not require any interference and therefore the writ petition fails and hereby dismissed.

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20. Whether the Applicant eligible to avail ITC of the GST charged by the CSP for providing the canteen services?

No, The AAR Gujarat, in **M/s. Eimco Elecon India Ltd. [Advance Ruling No.Guj/Gaar/R/2023/28 dated August 24, 2023]** ruled that the assessee will not get Input Tax Credit (**"ITC"**) of GST on the canteen facility provided to the contract worker because contract workers are not employees of the assessee but are employees of the Contractor and there is no obligation on the assessee to provide canteen facility to such contract worker.
The AAR Gujarat noted that the subsidized deduction made by the Applicant from the permanent employees would not fall under the definition of 'Supply' in light of **Circular 172/04/2022-GST dated July 06, 2022**, wherein it has been clarified that perquisites provided by the employer to the employees as per contractual agreement are not supply.
The AAR held that about ITC GST charged by the canteen service provider will be restricted to the extent of cost borne by the Applicant only. About contractual workers, noted that they do not fall within the ambit of employee and the Applicant doesn't need to provide a canteen facility to the contractual worker as per provisions of CLRA. Further held that recovery from contractual worker on account of third-party canteen services provided by the Applicant would fall within the ambit of the definition of 'outwards supply' and therefore liable to tax under GST.
About ITC, noted that Section 17(5)(b)(i) of the Central Goods and Services Tax, 2017 (**"the CGST Act"**) allows ITC on food and beverage only in cases where it is obligatory under the law and since, the contract worker and the Applicant are not employee and employer and providing canteen facility to the contract worker is not obligatory for the Applicant, therefore the Applicant is not liable to the ITC on food supplied to contract workers.

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21. Whether the wheat crushing services provided to the State Government eligible for exemption if the 'value of goods' < 25% of the value of supply?

Yes, the AAR West Bengal, in **Aryan Flour Mills Private Limited [Advance Ruling No. 14/WBAAR/2023-24 dated July 13, 2023]** held that crushing of wheat and addition of nutrients in atta is a composite supply and the principal supply is crushing service. The services are provided to the state government under Public distribution and since the value of goods involved in such composite supply does not exceed 25% of the value of supply, the Applicant is eligible for exemption under Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 **("the service rate exemption notification").**
The AAR West Bengal observed that the crushing of wheat and addition of nutrients to atta is a composite supply of service and in the light of **Circular No. 153/09/2021-GST dated June 17, 2021**, the service provided by the Applicant is about any function entrusted to a Panchayat under article 243G of the Constitution.
Further noted that as per **Circular No. 153/09/2021- GST dated June 17, 2021** entry No. 3A only applies to the composite supply of milling of wheat and fortification thereof if the value of goods supplied in such composite supply does not exceed 25% of the value of composite supply.
In respect of valuation, the Authority relied upon the Judgment of AAAR, Andhra Pradesh in **Re: Sri Kanakadurga Rice and Flour Mill [Advance Ruling No. 180 of 2020 dated March 24, 2020]** wherein it was held that, the value of by-products so retained by the Appellant shall be included as part of the value of supply and also to be termed as a bona fide form of consideration.
The AAR opined that the value of supply shall be the consideration in money and also include all the components towards non-cash consideration. Further noted that the value of goods involved in the present case is within the limit specified in Sl. No. 3A of the service rate exemption notification and held that the Applicant is eligible for exemption under Sl. No. 3A of the service exemption notification.

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22. Whether Adjudicating Officer can go beyond the SCN and impose a penalty in Order?

No, The CESTAT, Chandigarh in **M/s. M R Beltings v. Commissioner of Central Excise Rohtak [Excise Appeal No. 57958 of 2013 dated August 25, 2023]** set aside the demand order on the ground that the entire demand is barred by limitation since the department was not able to bring anything on record to show that the assessee has suppressed the material fact to evade the payment of duty.
The CESTAT, Chandigarh noted that the SCN received by the Appellant on November 16, 2010, for the period about 2007-08 by invoking the extended period of limitation without the ingredients present as required under Section 11A(4) of the Central Excise

Act. Further noted that the Appellant has regularly filed an ER-1 return which was scrutinized by the Respondent and the Respondent never objected to the irregularity committed by the Appellant. The CESTAT also noted that the Respondent has not been able to bring on record anything to show that the Appellant has suppressed the material fact to evade the payment of duty.
Further observed that the Honorable Supreme Court in the case of **Anand Nishikawa Co. Ltd. v. CCE 12005 (188) ELT 0149 (S.C)]** interalia held that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression.
The CESTAT Held that the entire demand is barred by the limitation set aside by the Impugned Order.

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ABOUT THE AUTHOR

CA Ritesh Arora
Partner, Ritesh Arora& Associates
Author

CA Ritesh Arora is a highly skilled and experienced practicing Chartered Accountant specializing in the indirect tax regime. With over a decade of experience in this field, he possesses in-depth knowledge and expertise in handling various aspects of indirect taxation.

Ritesh Arora's key strength lies in providing comprehensive solutions to his clients, catering to their diverse business, financial, and regulatory requirements. He is committed to offering a one-stop solution that addresses the specific needs of his clients, ensuring their compliance with the tax laws and regulations.

As a trusted professional, Ritesh Arora offers a wide range of services to his clients, including GST compliance, tax consultancy, advisory, and litigation support. He assists businesses in navigating the complex and ever-evolving indirect tax landscape, helping them optimize their tax positions and minimize any potential risks.

With his extensive experience and practical insights, Ritesh Arora is well-equipped to guide his clients through various tax-related matters, providing expert advice and strategic solutions. His dedication to delivering high-quality service and his ability to understand the unique requirements of each client make him a valuable partner in managing their tax affairs effectively.