TATTVAM
ADVISORS

Volume -XXVIII

Consolidated April - 2023

Legal Zine

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JUDICIAL PRONOUNCEMENTS

a) Seeking pre-deposit of bank guarantee for grant bail is unsustainable

(M/s Makhijani Pushpak Harish Vs the State of Gujarat, 2023-VIL-45-SC)

Facts:

- On being arrested on the basis of complaint filed by Central GST, for the offence punishable under Section 69 & 132(1)(a) of the CGST Act, the appellant made an application under Section 437 of CrPC, 1973 for seeking bail before the Chief Judicial Magistrate.
- Bail was granted subject to the condition to submit a bank guarantee of an amount of Rs. 3 crores along with certain conditions.
- On being aggrieved by the imposition of condition with respect to the deposit of bank guarantee, the appellant filed the Criminal Miscellaneous Application before the Hon'ble HC, and HC modified the condition of furnishing bank guarantee from 3 crores to the 1.5 crore.
- Accordingly, the Appellant filed the Criminal Appeal in the Hon'ble SC with regard to the furnishing bank guarantee.

Held:

- Such pre-condition of deposit of an amount or furnishing a bank guarantee has been the subject matter of consideration by this Court in number of cases where condition of pre-deposit has been held to be bad.
- Reference is made to the **Subhash Chouhan Vs UOI-2023-VIL-06-SC,** wherein the Hon'ble SC set aside the order passed by the HC imposing a condition of deposit while granting bail to the appellant therein.
- In addition to above, a similar view was being taken in the case of **Anatbhai Ashokbhai Shah Vs State of Gujarat & Ors, Cr. Appeal No. 523/2023.**
- Accordingly, the facts of the present case being identical to the facts of the aforesaid two criminal appeals.

- Thus, following the reason given in the aforesaid judgments and order, the Hon'ble SC is of considered opinion that pre-condition of furnishing bank guarantee imposed by the HC is not liable to sustained and hereby set aside.

b) Penalty under Section 45 of Gujarat Sales Tax Act, 1969 is a statutory penalty and does not require *mens rea* as an essential ingredient

(State of Gujarat and Anr Vs M/s Saw Pipes Ltd, 2023-VIL-42-SC)

Facts:

- The assessee had opted for payment of lump-sum tax as provided under Section 55A of the Gujarat Sales Tax Act, 1969. Accordingly, assessee deposited tax at the rate of 2% on sales involved in the execution of works contract of coating of pipes by treating the same as civil contract as prescribed in entry-1 of the Notification dated 18.10.1993.
- The Assessing Officer (AO) passed an order holding that the contract of coating of pipes is not a civil works contract and therefore the composition amount was not payable at the rate of 2% as deposited by the assessee, and it fell under the Residuary Entry-8 of the said notification.
- Accordingly, AO levied penalty and interest against the respondent assessee under the provisions of Section 45(6) and Section 47(4A) of the Gujarat Sales Tax Act, which was confirmed by the Income Tax Appellate Tribunal (ITAT) in appeal.
- Eventually, the High Court set aside the levy of penalty and interest confirmed by the Tribunal, mainly on the grounds that the tax imposed had already been paid and that the assessee was under a bonafide opinion as to its tax liability and was following expert advice and therefore, paid the tax at the rate of 2%.
- According to the HC, though not specifically mentioned/opined, there was no *mens rea* on the part of the assessee in not paying the tax at the rate of 2% and in making the payment of the tax at2%.
- Feeling aggrieved and dissatisfied with the judgment and order passed by the HC whereby the penalty and interest has been set aside, the state has filed the present appeal before the Hon'ble SC.

Held:

- From the language of Section 45(6) of the Act, it is seen that the penalty leviable under the said provision is a statutory penalty. The moment it is found that a dealer is deemed to have failed to pay the tax to the extent mentioned in sub-section 5 of Section 45, there shall be levied on such dealer a penalty not exceeding one and one-half difference referred to in sub-section 5 of Section 48.
- As per Section 48(5) of the said Act, where in the case of a dealer the amount of tax assessed or re-assessed exceeds the amount of tax already paid by the dealer in respect of such period by more than 25% of the amount of tax so paid, the dealer shall be deemed to have failed to pay the tax to the extent of the difference between the amount so assesses or re-assessed and the amount paid.
- Therefore, the moment it is found that a dealer is to be deemed to have failed to pay the tax to the extent mentioned in Section 48(5) of the said Act, the penalty is automatic, there is no discretion with the assessing officer either to levy or not to levy and /or to levy any penalty lesser than what is prescribed in Section 45(6) of the Act.
- Under the circumstances, on strict interpretation of Section 45 and Section 47 of the Act, the only conclusion would be that the penalty and interest leviable under Section 45 and 47(4A) of the Act are statutory and mandatory and there is no discretion vested in the commissioner/Assessing officer to levy or not to levy the penalty and interest other than as mentioned in Section 45(6) and Section 47 of the Act.
- Further, the Supreme Court while relying on **State of Gujarat Vs Arcelor Mittal Nippon Steel (India) Ltd, (2022) 6 SCC 459,** opined that there is no discretion with the assessing officer either to levy or not levy and/or to levy and penalty lesser than what is prescribed in Section 45(6) of the Act, 1969. Hence, there is no question of considering any *mens rea* on the part of the assessee as observed by the High Court.
- Accordingly, the judgment passed by the High Court is quashed and set aside and order passed by Assessing Officer confirmed up to the Tribunal to levy penalty and interest under Section 45(6) and Section 47(4A) of the Act are restored.

c) Duty free shops cannot be saddled with any indirect tax liability and refund of service tax paid if any cannot be denied

(Commissioner of CGST And Central Excise, Mumbai East Vs Flemingo Travels Retails Ltd. 2023-VIL-39-SC-ST)

Facts:

- The respondent was engaged in the business of running duty free shops at the arrival and departure terminals of the Mumbai and Delhi International Airports.
- In pursuance to the Notification No 41/2012-ST dated 29.06.2012, the respondent filed an application claiming refund of service tax paid with respect to charges levied by Mumbai International Airport for the period 01.10.2011 to 30.06.2017.
- The Adjudicating Authority rejected the refund claims on the ground that payment of service tax on the renting immovable property of the concerned duty free shops has been rightly levied and is not liable to be refunded. The said order was challenged by the respondent assessee by filing an appeal before the Commissioner, Appeals which was dismissed.
- Consequently, respondent approached the CESTAT, by filing an appeal which has been allowed.
- Aggrieved by the decision passed by the Tribunal the Revenue has filed a present appeal.

Held:

- Duty free shops, whether in the arrival or departure terminals, being outside the customs frontiers of India, cannot be saddled with any indirect tax burden and any such levy would be unconstitutional.
- Court in the case of **A1 Cusine Pvt Ltd Vs Union of India- 2018-VIL-575**, while relying on the **Aaatish Altaf Tinwala Case (WP(C) No.564/2019**, held that duty free shops in the international arrival or departure terminals shall be deemed to be the area beyond the customs frontiers of India.
- The same view in respect of the duty free shops has again been taken by two different HC, namely Bombay HC in the case of **Sandip Patil Vs UOI-2019-VIL-495-BOM** and the Kerala HC in the case of **CIAL Duty Free Retails Services Vs UOI-2020-VIL-463-KER.**

- Further, no appeal has been filed against the said judgment and same has been verified through the RTI. Significantly, the judgment in the case of **Sandip Patil(supra)** of the Bombay High Court has been accepted by the Union of India in the case of duty free shops.
- Therefore, keeping in view of the aforementioned judgment and Article 286 of the Constitution of India, duty free shops, whether in the arrival or departure terminals, being outside the customs frontiers of India, cannot be saddled with any indirect tax burden and any such levy would be unconstitutional.
- Accordingly, if any tax is levied, the same cannot be retained and the duty free shops would be entitled for refund of the same without raising any technical objection including the limitation.

d) GST payment in instalments under section 80 is not permissible in case of arrears in payment of admitted tax

(M/s K.I International (India) Ltd Vs the Principal Secretary, 2023-VIL-267-MAD)

Facts:

- The petitioner, registered under the GST Act, did not file returns in Form-GSTR-3B for the period September, 2018 – March 2019.
- There was an inspection in the premises of the petitioner on 11.03.2019 wherein several discrepancies were found. Petitioner admitted to those discrepancies for the period in question and further in communication dated 22.10.2019, it acceded to the position that there has been non-payment of GST for the period in question.
- Petitioner made a submission with plea of mercy assuring the respondent that would remit the amounts due in 24 instalments along with interest. However, the request has come to be rejected by the Commissioner holding that facility of grant of instalments under Section 80 is only in respect of disputed tax and not the admitted tax.
- Petitioner seeking to allow the payment of self-assessed tax in instalment.
- In pursuance to the same petitioner filed the writ petition before the Hon'ble HC on the issue that "Whether Section 80 would be applicable in cases of arrears in payment of admitted tax.

Held:

- The object of Section 80 is to benefit an assessee who approaches the Commissioner for a scheme of installments. The sole exception to the application of Section 80 is in respect of admitted tax.
- Section 2(37) of the CGST Act defines "a return" to mean 'any return' prescribed or otherwise required to be furnished by or under this Act or the Rules made thereunder.
- Section 37 onwards till Section 48 proceed as Returns to mean that the various forms prescribed for filing by assessee, either setting out details of inward or outward supplies or tax credit, would all constitute returns.
- The return of outward supplies is in form GSTR-01 and is the return that has been filed by the petitioner. Thus, the argument that GSTR-01 only deals with 'details' and hence would not constitute a statutory return is unacceptable and contrary to the scheme of the Act.
- Section 80 makes no reference to an assessment at all. It only talks of turnover that has been self-assessed.
- In this case, the petitioner has filed the prescribed form setting forth the details of the outward supplies and the question of assessment does not arise. Incidentally, an assessment has also been made proximate to the proceedings for inspection when also the petitioner has acceded to the position that there has been suppression of sales.
- Therefore, accepting the argument of the petitioner would tantamount to a situation wherein one who has omitted to file a return of monthly turnover but has filed the prescribed return reflecting taxable sales, is allowed the benefit under Section 80, of an installment scheme.
- The object of Section 80 is only to benefit an assessee who has been compliant in effecting payment of the admitted tax.
- However, in the instant case petitioner had filed the returns and it has not paid tax, hence, it is barred from obtaining benefit under Section 80 of the CGST Act.
- Accordingly, the Hon'ble High Court dismissed the writ petition and thus impugned order is sustained in the present case.

e) SCN under Section 74 can be issued without prior initiation of proceedings under Section 61(3)

(M/s Naarjuna Agro Chemicals Pvt Ltd Vs the State of U.P and Another, 2023-VIL-266-ALH)

Facts:

- The petitioner was registered under the CGSTA Act and has submitted the returns for the assessment year 2017-18.
- Department did not initiate any proceedings under Section 61 of the CGST Act but the proceedings under Section 74 have been initiated against the petitioner on certain grounds.
- In pursuance to the proceedings initiated, Department examined the issue and ultimately passed the impugned order whereby the tax previously paid was found short and demand has been raised for deposit of appropriate short fall in the deposit of tax as also interest and penalty levied against the petitioner.
- Aggrieved by the impugned order passed by the Department, the petitioner filed the present writ petition before the Hon'ble High Court.

Held:

- Section 61 of the CGST Act regulates the scrutiny of returns. In the process of scrutiny of such returns the proper officer has been vested the jurisdiction to examine the return and in case any discrepancies are notice therein the proper officer can intimate such discrepancy to the assessee with the object of conferring an opportunity upon the assessee to rectify such discrepancy.
- However, in the present case no discrepancy was noticed by the Department in the petitioner returns nor any deficiency was pointed out to the assessee for it to be rectified by it.
- It is later at the stage of consideration of the return that the Department has found that proper tax has not been deposited and consequently proceedings under Section 74 has been initiated against the petitioner.
- In the statutory scheme the course followed by the Department would clearly be permissible in the law.

- The argument that unless deficiency in return is pointed out to the assessee, and an opportunity is given to rectify such deficiency, that the department can proceed under Section 74 is not borne out from statutory scheme and the argument in that regard therefore must fail.
- The scrutiny proceedings of return as well as proceedings under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.
- Merely because no notices were issued under Section 61 of the Act would mean that issues of classification or short payment of tax cannot be dealt with under Section 74 as exercise of such power is not dependent upon issuance of notice under Section 61.
- Accordingly, the petitioner has remedy of preferring an appeal which has not been availed. Thus, the Court directed the petitioner to file an appeal to the concerned authorities.

f) Provisional attachment order is not valid after the expiry of one year

(M/s Nitesh Jain Mangal Vs the Senior Intelligence Officer, 2023-VIL-265-MAD)

Facts:

- There was an inspection in the petitioner premises for alleged bill trading in violation of the provision of the provisions of the CGST Act.
- Based on the aforesaid allegations, there was seizure effected on various documents and electronic devices and petitioner was arrested and remanded back to the judicial custody.
- Thereafter, an order under Section 83 of the CGST Act has been issued provisionally attaching various bank accounts in the name of the petitioner, his father and other firms operated by him and along with his family members.
- Sub-Section (2) of the Section 83 states that any provisional attachment shall cease to have effect after a period of one year from the date of attachment and thus the attachment in the petitioner case died natural death in January, 2020.

- Thus, as on date, and with the efflux of the period of one year as provided under Section 83(2) of the last order of attachment has worked itself out.
- Accordingly, the petitioner filed the present writ petition before the Hon'ble High Court on the issue that whether Section 83 contemplates a continued attachment of bank accounts for several years.

Held:

- It is the case of the respondents that the delay is on account of the non-response of the petitioner to show-cause-notice. However, the respondents are well aware of the procedure set out under statute and have to adhere to the same in timely fashion, in accordance with law.
- In the present case, the SCN was issued on 08.10.2022 in respect of an inspection that has transpired in Jan, 2019. Therefore, the time limit of Section 83 which is stated to be '*provisional attachment to protect revenue in certain cases'* cannot be deployed so as work against the assessee continuously for several years as has happened in the present case.
- Further, the Court relied upon the decision passed in the case of **Muthuraman and Co. Vs Principal Additional Director, General and others (2022) 107 GSTR 102,** wherein it was held that the "It is made clear that this order only relates to the impugned proceeding s of bank attachment and will not stand in the way of the revenue taking resort to Section 83 yet again, if the circumstances so warrant, at a later juncture in the proceedings, in accordance with law. No costs. Connected Miscellaneous Petitions are closed.
- Therefore, inspection in the case is Jnuary,2019 whereas the SCN is issued only in October, 2022. The delay of nearly four years in issuing SCN cannot be a reason to continue an attachment under Section 83 of the Act, which itself is provisional in nature.
- Accordingly, Section 83 must be resorted to in appropriate cases, ensuring with equal vigor that the Department is proceeding in a timely manner, by issuing notice and finalizing proceedings in a time bound fashion. Thus, the Court allowed the writ petition and directed the GST authorities to inform the bank to permit operation of bank account by the petitioner.

g) GST refund to unregistered buyers where construction contract is cancelled, HC quashed the order of the department

(M/s C.P Ravindranath Menon & Another Vs Deputy Commissioner of State Tax & Ors, 2023-VIL-263-BOM)

Facts:

- The petitioner being an unregistered person entered into an agreement for sale of residential flat with respondent.
- Pursuant to the further proceeding that took place under the said agreement, the petitioner became entitled to claim refund of the Goods and Service Tax.
- Accordingly, the petitioner applied for refund to the respondent under the provisions of the Section 54 of the CGST Act.
- However, by the impugned order, respondent rejected the refund of the petitioner on the ground that being an unregistered person the petitioner is not entitled for refund in the present case.
- Accordingly, the petitioner filed the present writ petitioner before the Hon'ble High Court.

Held:

- There have been substantial changes in the procedure governing the application of refund by unregistered person since the passing of the impugned order.
- The CBIC has issued the **Circular No 188/20/2022-GST, dated 27.12.2022** with respect to the filing of refund to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/ agreement for supply of services of construction of flat/ building or on termination of long-term insurance policy.
- The fact that the petitioners are flat purchasers and unregistered persons and that the policy now has evolved governing the application of refund by unregistered person.
- Subsequent to passing of the impugned order rejecting the refund, an opportunity needs to be given to the petitioners on facts and whether the petitioner is entitled to refund or otherwise will have to decide on its own merits after giving adequate opportunity to the petitioners.

- Accordingly, the Court quashed and set aside the impugned order.

h) Summary of a Show Cause Notice cannot be a substitute to a proper show cause notice and therefore non-service of proper show cause notice would entail violation of principles of natural justice

(Vishkarma Industries Vs the State of Jharkhand and Ors. 2023-VIL-261-JHR)

Facts:

- In the present case, all these writ petitions have been tagged together as the petitioners have common grievances.
- W.P.(T) No. 2091 of 2019 was initially preferred for quashing of the Show Cause Notice issued by the respondent asking him to show cause as to why proceedings be not initiated for alleged wrongful claim of ITC and wrongful distribution of ITC benefit.
- Therefore, the Petitioner prayed that two parallel proceedings and investigation in respect of the same transaction cannot be continued for alleged wrongful claim of ITC and wrongful distribution of ITC by two different authorities.
- In W.P.(T) No. 1593 of 2019 petitioner sought quashing of the summary of the order contained in Form GST DRC-07 issued by the respondent. He also sought quashing of the show cause notice by the respondent as being wholly without jurisdiction.
- In W.P.(T) No. 1594 of 2019 similar prayer is made as in W.P.(T) No. 2091 of 2019 inter alia challenging the Show Cause Notice issued by the respondent.
- Therefore, the petitioners seek to confine the challenge to the proceedings on a common ground that the issuance of the summary Show Cause Notice cannot substitute the requirement of the proper show cause notice under Section 74 of the Act.

Held:

- The Hon'ble Court held that, in order to proceed under the provisions of Section 74 of the Act, the specific ingredients enumerated thereunder have to be

clearly asserted in the notice so that the Noticee has an opportunity to explain and defend himself.

- Further, it was observed that a summary of a Show Cause Notice cannot be a substitute of a proper show cause notice and therefore, non-service of proper show cause notice would entail violation of principles of natural justice. Thus, in the absence of clear charges upon which the person so alleged is required to answer, proper opportunity to defend itself stands denied.
- It is pertinent to mention here that the writ petitions have been decided only on the ground of violation of principles of natural justice and failure to follow the procedure prescribed under the Act and not on the merits of the case of the parties.
- It has also been clarified by the Court that quashing of the impugned notices and the summary of the order passed by the State Tax authorities would not come into the way of the respondent DGGI to proceed against the petitioners in the pending proceedings in accordance with law.
- Thus, the writ petitions are allowed on the ground of violation of principles of natural justice and failure to follow the procedure prescribed under the CGST Act.

i) Payment of tax and penalty under protest to release detained goods cannot be treated as "Admission" on the part of assessee

(M/s Hindalco Industries Limited Vs State of UP and Another, 2023-VIL-257-ALH)

Facts:

- The Department issued the notice on the ground that movement of goods after the expiry of e-way bill.
- In pursuance to the said notice, the petitioner deposited the amount of tax and penalty under protest and prayed for release of the confiscated goods.
- The Department treated the deposit of tax as voluntarily deposit of tax on part of the petitioner by ignoring the protest contained in reply furnished by the petitioner.
- Petitioner aggrieved by non-issuance of orders under Section 129(3) of the CGST Act, filed the writ petition before the Hon'ble High Court.

Held:

- Once the deposit of tax and penalty was made under protest, the authorities were required to pass proper orders under Section 129(3) of the CGST Act and that the authorities have erred in treating the deposit to be voluntarily deposit of tax on part of the petitioner, without there being any protest.
- Accordingly, the Court disposed off the present petition with a direction upon respondent to consider the protest made by the petitioner while disposing the amount of tax and penalty and pass an appropriate order under Section 129(3) of the GST Act.

j) Amount deposited by assessee during the search cannot be considered as voluntary payment without issuance of show cause notice under Section 74(1) of the CGST Act

(Modern Insecticides Ltd and Another Vs Commissioner, CGST and Another, 2023-VIL-256-P&H)

Facts:

- The petitioner is manufacturer of pesticides for more than 30 years and is purchasing inputs to manufacture finished goods. The petitioner is selling its product in domestic market as well as exporting out of country.
- As per the facts stated in the petition, officials of the respondents searched the factory premises of the petitioner and resumed the entire record lying there.
- The petitioner claims that they were released on the condition of deposit of an amount which were deposited through reversal of Input Tax Credit (for short ITC) from electronic credit ledger and surrender of refund already applied.
- In the present case, the petitioner is seeking direction to the respondent to refund an amount of Rs.2.54 crores and supply copy of Panchnama along with other electronic gadgets, including mobiles, resumed from the premises of the petitioner.
- The issue here is:

Whether the amount paid by the assessee could be retained by the department without issuing the show cause notice under Section 74(1) of the CGST Act?

Held:

- The Hon'ble High Court held that, though the respondents can initiate proceedings under Section 74 (1) of the Act by issuing notice within the period of limitation, they cannot retain the amount deposited by the petitioner, which as per respondent-department was voluntary.
- Since no proceedings under Section 74 (1) of the CGST Act have been initiated till date, as per Rule 142 (1A) of CGST Rules, 2017, the department cannot even issue Form GST DRC-01A to ask the petitioner to make payment of tax, interest and penalty due.
- Further, it was observed that the very fact that in two years' time, no notice has been issued, the deposit of tax during search cannot be retained by the department till the adjudication of notice, which can take more time in future.
- In view of the above discussion, a direction is being given to the respondents to return the amount to the petitioner along with simple interest at the rate of 6% per annum from the date of deposit till the payment is made.
- Hence, the Petition stands allowed accordingly.

k) Refund of undisputed to be sanctioned by the department and assessee to submit relevant documents regarding disputed amount

(M/s Omjay Ev Limited Vs Deputy Commissioner of State Tax, 2023-VIL-243-ORI)

Facts:

- The petitioner was engaged in the business of manufacture of e-vehicles in various processes including chasis punching, colouring, wiring etc and subsequent supply thereof.
- The petitioner procures inputs for manufacturing of e-vehicles at various rates whereas the outward supply of e-vehicles is leviable to 5% GST.
- On account of lower rate of the GST on outward supply, ITC gets accumulated in the hands of petitioner.

- Petitioner applied for the refund of accumulated ITC due to inverted duty structure as per Section 54(3) read with the Rule 89(5) of the CGST Act/ Rule.
- Further, petitioner was issued with a show-cause-notice for production of books of account for verification of input wise details of spare parts used during the manufacture of e-vehicle in order to ascertain the amount of inputs used during the assembling/ manufacturing of e-vehicles.
- In response to the above-mentioned SCN, the petitioner replied the said SCN and submitted certain documents but failed to submit the input wise details of spare parts used during the assembling/ manufacturing process of e-vehicles.
- Department rejected the refund of accumulated ITC on the ground of non-submission of entire books of account for determination of amount of refund to be sanctioned.

Held:

- From perusal of the statutory provisions and the **Circular No. 125/44/2019-GST, dated 18.11.2019,** it is clear that in order to get refund as per formula given under Rule 89(5), the petitioner has to adhere to the said provisions. Therefore, petitioner shall require to submit and adhere the provisions which is mentioned in the said Act, Rules, and CBIC guidelines.
- The petitioner was served a SCN and petitioner replied to the said SCN but failed to submit the input wise details of spare parts used during the assembling/ manufacturing process of e-vehicle.
- Therefore, no illegality or irregularity has been committed by the authority in rejecting the refund application of the petitioner.
- It is admitted on the part of revenue that the dispute is with regard to refund the amount which requires proper adjudication by the authority on production of documents as claimed by petitioner.
- Accordingly, the Courts directed the department to refund the amount accordance with law wherein the petitioner has submitted the input wise details of spare part used during the manufacturing process and directed the writ petition to disposed of.

l) Parallel proceeding by Central tax authority and State tax authority can be initiated on the same transaction against different assessee

(Fondement Bitumenous Industries Private Ltd Vs State of Bihar, 2023-VIL-242-PAT)

Facts:

- The petitioner was issued with summons by the Central Tax Officer, pursuant to which the petitioner is said to have filed the required documents before the said authority.
- The Central Tax Authority has initiated the investigation against the petitioner with respect to availment of fake input tax credit by supplier. The Central Tax Authority alleged that the petitioner has purchased the goods from the bogus dealer.
- Furthermore, in addition to above proceeding, the State Tax Authority, by notices has also initiated proceeding on the very same transaction is the contention taken.
- The petitioner contended before the Hon'ble High Court that the Department has initiated the parallel proceeding by the Central tax officer and State tax officer cannot be sustained.

Held:

- The proceeding initiated by the Central Tax Authority and State Tax Authority are against the different assessees. The notice issued is under Section 70 of the CGST Act, which is power to summon persons to give evidence to produce documents and not for intelligence based enforcement action on the Noticee.
- Further, with respect to the summon, it requires the petitioner to produce documents or things, including the details of purchase made from M/s D.S Bitumix, Kolkatta.
- The action initiated by the Central authority is against the M/s D.S Bitumix, Kolkata and the summons is issued only insofar as the petitioner having dealt with the said assessee.
- The Notice issued to the assessee by the State Tax Authority states that during the course of investigation conducted by Central Tax Authority, Kolkata which is alleged to be a bogus firm engaged in the availment of fake input tax credit and subsequently passing of irregular input tax credit to many entities and the

petitioner was one of the dealer who had allegedly purchased material from the said bogus firm.

- Accordingly, the proceeding initiated by the State Tax Authority is against the petitioner with respect to the input tax credit claimed by petitioner on the purchase made from the bogus dealer is legally correct.
- Further, the investigation, as initiated against the supplier of the petitioner, cannot have any bearing on the action taken by the State Tax Authority against the petitioner for the relevant periods, being distinct from each other and against two separate assessee. Accordingly, the Court dismiss the writ petition filed by the petitioner.

m) Constitutional validity of Section 13(8)(b) and Section 8(2) of IGST Act upheld

(Dharmendra M. Jani Vs The Union of India, 2023-VIL-240-BOM)

Facts:

- The petitioner was engaged in providing marketing and promotion services to its customers located outside India. The overseas customers to whom services are provided by the petitioner are *inter alia* engaged in the manufacturing and sale of goods.
- The petitioner provides the services only to its foreign principal and receives consideration in convertible foreign exchange from the principal located outside India.
- The petitioner contended that the transaction entered into by it with the foreign customers would be one of export of service from India earning the valuable convertible foreign exchange for the country by an intermediary.
- The petitioner contended that the Section 13(8)(b) of the IGST Act is an unconstitutional primarily on the ground that such provision cannot be read under the provisions of the CGST/SGST Act as what is explicitly not permissible to be incorporated under CGST/SGST Act cannot be done implicitly to tax export of services, by reading Section 13(8)(b) of the IGST Act into the provisions of the CGST Act.

- When the transaction in question of 'export of services' falling within the meaning of Section 2(6) of the IGST Act can same be treated as an "intra-state trade or commerce" under the CGST/SGST Act.
- However, due to the provisions mentioned under the Section 13(8) of the IGST Act, the place of supply shall be the location of the supplier of services which is in India and levy of CGST and SGST would arise.
- Accordingly, the petitioner filed the present writ petition challenging the constitutional validity of Section 13(8)(b) of the IGST Act.

Held:

- It is necessary to confine transaction which are clearly transaction in the course of Inter-State trade or commerce and more particularly transactions of export of services as defined under Section 2(6) of the IGST Act and the intermediary services, to be subjected, relevant and confined only to the provisions of the IGST Act, and transaction which are in the course of Intra-State trade or commerce, shall remain confined to the provisions of the CGST/SGST Acts.
- The provision of Section 13(8)(b) of the IGST Act cannot be applied in a context which is not attracted and which is not provided for under the CGST Act and MGST Act.
- The CGST Act and the MGST Act both pertain to intra-state supply of goods and services, these enactments do not define what is export of services. They also do not give any indication as to any express incorporation of any provisions in regard to export of services.
- If the legislature and it ought not be without a reason, has refrained from making any specific reference or incorporation to such provision, it may not be permissible for the respondent to read into the provisions by the CGST and MGST Act, as to what has been omitted and expressly not provided.
- It clearly appears that the entire concept of "export of services" which has been specifically stipulated and provided only under the provisions of the IGST Act, to be read into the provisions of the CGST and MGST Acts, would not be a correct reading of the provisions of Section 2(86) read with 2(65) of the CGST Act, for the respondents to consider that Section 13(8)(b) stands firmly incorporated in the provisions of the CGST/SGST Acts. This more particularly,

when the Legislature itself has explicitly avoided having any such express incorporation.

- It may thus be observed that the fiction which is created by Section 13(8)(b) would be required to be confined only to the provisions of IGST Act, as there is no scope for the fiction travelling beyond the provisions of IGST Act to the CGST and the MGST Acts, as neither the Constitution would permit taxing of an export of service under the said enactments nor these legislations would accept taxing such transaction.
- It may be also observed that the incorporation of the limited provisions of IGST Act into the CGST Act and MGST Act, to the extent as noted above, certainly is a piece of legislation by incorporation.
- The provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional, provided that the provisions of Section 13(8)(b) and Section 8(2) are confined in their operation to the provisions of IGST Act only and the same cannot be made applicable for levy of tax on services under the CGST and MGST Acts
- Accordingly, the Court observed the fiction which is created by Section 13(8)(b) would be required to be confined only to the provisions of IGST and ruled that Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional.

n) Issuance of SCN in Form GST RFD-08 without intimation of deficiency for rectifications is contrary to the scheme of CGST Rules

(M/s Knowledge Capital Services Private Ltd. Vs Union of India, 2023-VIL-238-BOM)

Facts:

- The petitioner had exported services under a Letter of Undertaking without payment of Integrated tax in terms of Section 16(3) of the IGST Act, which permits claim of refund of the unutilised ITC on supply of goods or services or both without payment of integrated tax.
- Accordingly, the petitioner claimed the refund of accumulated ITC on account of export of services. However, department issued a show cause notice to the

petitioner and alleged that the defect in the sheet in the said notice. Thereafter, the department passed an order rejecting the refund claim by the petitioner.

- According to the petitioner the defect sheet was never shared by the department to the petitioner.
- Being aggrieved by the action taken by the department the petitioner filed the present writ petition before the Hon'ble High Court.

Held:

- The gist of the procedure is that the once an application for refund is made, it has to be processed by the department. If there are lacunae, the Applicant is to be informed to remove that lacunae and to submit the claim after removing the said lacunae. The department is required to informed the applicant with respect to the application is to be considered for either grant or rejection of the refund.
- Also, no application for refund should be rejected without giving an opportunity to the applicant of being heard. The procedure is self-contained and provides for various stages which mandates steps to be taken by the applicant by the applicant and the officer.
- In the present case, the petitioner applied for refund and 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 by the department under the said acknowledgement and neither any deficiency memo, as contemplated under Rule 90(3) of the CGST Rules in FORM GST RFD-03 was issued to the petitioner.
- The petitioner directly received the GST RFD-08 for rejection of the application for refund, the deficiencies pointed out in FORM GST RFD-08 ought to have been communicated to the petitioner under FORM GST RFD-03, instead of these deficiencies were made a ground to issue SCN for rejection of the refund.
- The statutory prescribed the forms prescribed the critical role in GST systems as they ensure smooth functioning and promote transparency and compliance.
- Accordingly, the methodology adopted by the department in rejecting the refund application is completely contrary to the scheme of the CGST Rules.
- The petitioner was neither given an opportunity to clear deficiencies nor given an opportunity of hearing before rejecting the refund application.

- Therefore, the impugned order passed by the respondent cannot be sustained and liable to be set aside. Consequently, the application of the petitioner made under FORM GST-RFD-01 is restored to file.

o) Appellate order disapproving amount and method adopted in adjudication order without providing reasons set aside

(M/s Daimond Steel Vs Sttae of UP and Ors. 2023-VIL-233-ALH)

Facts:

- The inward and outward supply was duly reflected on the portal and petitioner uploaded the supply made by him in GSTR-1 and after claiming the ITC as reflected in GSTR-2A, filed his return in form of GSTR-3B.
- Inspection was carried out by SIB authorities of business premises and panchanama was drawn and certain papers were seized under Section 67 of the GST Act.
- Summary of SCN in the GST DRC-01 was issued to the petitioner wherein the column indicating the brief facts of the case "Adverse material found in SIB" was mentioned. However, the said SIB reports was never supplied to the petitioner.
- The department passed an order on the basis of SIB reports however in the present case nor the SIB reports and nor any documents referred was provided to the petitioner.

Held:

- While passing the assessment order, the adjudicating authority assessed the demand of tax and levied penalty on the basis of some guidelines issued by the Income Tax Authorities and taking the mean average of 8% which is wholly impermissible while adjudicating Section 74 of the CGST Act.
- The adjudication adopted by the respondent can be best be termed as best judgment assessment which can be resorted to only under Section 62 and that too only in respect of the persons who have not filed the returns.

- In respect of the persons who have filed returns, Section 61(3) is very clear under which the departments is duly empowered to take action under Section 73 or 74, in case the returns furnished contains discrepancies and the assessee fails to take corrective measures in respect of the said discrepancies.
- For taking recourse to Section 74, it is essential that along with search and seizure report, certain specific averment is made with regard to the supply of goods and the non-payment of tax coupled with the fact that the same should be by reasons of fraud, willful misstatement or suppression of facts and an intent to evade the tax.
- However, the adjudication order quantifying demand amount on basis of guidelines issued by Income-tax authorities and appellate order quantifying demand amount without providing reasons through disapproving quantification method adopted by Adjudicating Authority were not in accordance with Section 74 of the CGST Act.
- Accordingly, the manner in which the demand has been raised and the quantified alone, the appellate orders as well as the adjudicating authority's orders are liable to be quashed. Consequently, the Court set aside the order.

p) Notifications issued withdrawing the exemptions provided to ECOs like Uber are not *ultra vires* the Constitution of India

(Uber India Systems Pvt. Ltd. Vs. UOI & Anr., 2023-VIL-228-DEL)

Facts:

- The petitioner is an e-commerce operator (ECO) and has filed the present petition challenging the Clauses (iii) and (iv) of Notification No. 16/2021-Central Tax (Rate) and Clauses 1(i) and 2(i) of Notification No. 17/2021 - Central Tax (Rate), both dated 18.11.2021 (impugned notifications) as *ultra vires* the Constitution of India and Section 9(5) and 11 of the CGST Act.
- Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 (parent exemption notification) provided an unconditional exemption from GST in cases of supply of services by auto rickshaws and transportation of passengers by stage carriage other than air-conditioned stage carriage. The said exemption of tax on the 'fare' was available to the individual auto-rickshaw driver, bus

operator and the ECO irrespective of the mode of booking availed by the consumer, i.e., online/offline or offline agents.

- The impugned notifications were issued withdrawing the exemption to the ECOs granted vide parent exemption notification.
- The present petition was filed on following grounds:
  - Impugned notifications fail to satisfy the test of reasonable classification under Article 14 of the Constitution as there is differential treatment between auto rickshaw drivers providing services through the petitioner and street hailing auto rickshaw drivers;
  - They are against public interest and impact the livelihood of the auto rickshaw drivers providing services through ECOs and freedom of choice to the consumers thereby violating Articles 19(1)(g) and 21 of the Constitution;
  - The value of conveniences offered by ECOs is charged separately and liable to GST; and there are no other instances of transportations supplied through ECOs being taxed differently such as that levied through the impugned Notifications, therefore, the same are liable to be struck down.

Held:

- The ECOs for the purpose of Section 9(5) and Section 52 of the CGST Act are entities which are liable to collect and pay tax on the supplies made through it by other individual suppliers. Thus, statute itself recognises the ECO as a class distinct from the individual supplier registered with the ECO and the supply of services through the ECOs as an independent taxable event of supply distinct from the individual service providers.
- Accordingly, the impugned notifications have been issued under Section 9 of the CGST Act, which evidence that even when the individual supplier is exempt from taxation, the said supply when provided through the ECO is exigible to tax.
- Section 52 makes the ECOs liable to collect the amount of tax collected at source from suppliers, who have made supplies through the ECO. To enforce this obligation of the ECO, the individual supplier who is otherwise exempt from registration under Section 23(2) is required to obtain the compulsory registration under Section 24(ix) to enable the ECO to comply with the said obligation. This interplay of Section 24(ix) and 52 also evidences the distinction

between the supply of service through the e-platform of the ECO and the individual supplier, as a separate class of persons under the statute.

- Further, ECOs seeking parity with the individual auto-rickshaw drivers and bus operators and therefore seek equality amongst unequals:
  - ECOs charges commission to the auto-rickshaw drivers whereas the auto rickshaw driver who is street hailed do not have to pay the said commission. Therefore, the exemption to the latter provides the capacity to economically compete with the services provided by the ECO and have an option to operate independently.
  - ECOs provide various other services like, app, doorstep facility, multiple payment options, safety etc. which are not offered by street hailed auto rickshaw.
- Classification has a rational nexus with the object sought to be achieved by the CGST Act i.e., every transaction must be taxed as far as possible so that the burden of tax does not fall only on a few suppliers of goods and services.
- The impugned notifications do not result in an artificial discrimination and classification based on the 'mode of booking' as the ECOs assume responsibility for the discharge of services assured by the ECOs to the consumer and provide bundle of services. Therefore, for all purposes, the ECOs are an independent supplier of service to the consumer.
- It is trite law that there can be no vested right in claiming exemption from payment of tax.
- Therefore, impugned notifications are not violative of Articles 14, 19(1)(g) and 21 of the Constitution.

q) GST Refund Application re-filed after issuance of Deficiency Memo against original application will not be treated as fresh application for the purpose of determining time limitation of 2 years

(M/s Bharat Sanchar Nigam Limited Vs. Union of India & Ors., 2023-VIL-229-DEL)

Facts:

- The petitioner had filed an application (in Form GST RFD 01) on 17.01.2020 seeking refund of the excess payment of tax amounting to ₹2,63,98,462/- made in GSTR-3B filed for the month of December, 2017.

- In response to which, the Adjudicating Officer issued a Deficiency Memo dated 31.01.2020 (in Form GST RFD 03) seeking certain other documents. In pursuance to said deficiency memo, the petitioner had uploaded the documents online on 10.02.2020 in the prescribed format and it was acknowledged as a fresh refund application (in Form GST RFD 01).
- Thereafter, by an order dated 29.04.2020, the petitioner's application was rejected on the ground that the same was beyond the period of limitation as the clarifications submitted by the petitioner on 10.02.2020 (in Form GST RFD 01) was treated as the application for refund. Since the same was beyond the period of two years from the date of filing the GSTR-3B (which was filed on 22.01.2018), the petitioner was denied its claim for refund of excess tax.
- Being aggrieved with the order, the petitioner appealed the said order before the Appellate Authority, which was also rejected by the impugned order 25.11.2021 on the premise that the petitioner had filed the first online refund claim along with documents on 10.02.2020. The petitioner's application filed on 17.01.2020 was completely ignored by the Adjudicating Authority as well as Appellate Authority.

Held:

- The Hon'ble Delhi High Court has held that if original refund application is filed within time and the same is accompanied by documentary evidences as per Rule 89(2) of CGST Rules, then it cannot be rendered as ***non est*** merely because certain other documents/clarification are sought thereafter through Deficiency Memo and applicant is ought to re-file the fresh application in terms of Rule 90(3) of CGST Rules.
- Thus, the impugned order passed by the Appellate Authority as well as the order passed by the Adjudicating Authority, is set aside, and the matter is remanded to the Adjudicating Authority to consider afresh in the light of the observations made by this Court.

r) Rule 89(4) of the CGST Rules applies only in cases of refund of integrated tax paid on zero rated supplies made without payment of tax

(Ohmi Industries Asia Private Limited Vs. Assistant Commissioner, CGST, 2023-VIL-222-DEL)

Facts:

- The petitioner had filed an application dated 29.05.2020 seeking refund of an amount of Rs. 3,99,187/- being the integrated tax paid on the export of services (zero rated supply) in respect of the invoices raised in the month of October 2018. The petitioner received the Foreign Inward Remittance against the said invoices in November 2018.
- The Adjudicating Authority rejected the petitioner's claim for refund of integrated tax by the order dated 30.07.2020. The Adjudicating Authority while determining the quantum of the refund applied the formula under Rule 89(4) of the Central Goods and Services Tax Rules, 2017 and rejected the petitioner's claim 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 filed the present petition impugning an order dated 26.11.2021 passed by the Appellate Authority whereby the petitioner's appeal against the order dated 30.07.2020 was rejected.

Held:

- The Hon'ble High Court held that the opening sentence of Rule 89(4) of the CGST Rules makes it 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.
- Thus, Rule 89(4) of the Rules is inapplicable to cases of refund of integrated tax paid on zero rated supply.
- The Appellate Authority failed to address the petitioner's contention and proceeded to mechanically reject the petitioner's appeal on, ex facie, erroneous assumption that the petitioner was seeking refund of accumulated ITC. Thus, the impugned order is set aside.
- Hence, the appeal filed by the petitioner is remanded to the Appellate Authority to decide afresh in view of the observations made in this order.

s) Person in charge of the conveyance to carry relevant documents/ invoices in physical form

(M/s JK Jain Buildtech India Pvt. Ltd. Vs Assistant Commissioner, Revenue and Ors. 2023-VIL-213-CAL)

Facts:

- The Appellant was transporting goods from one place to another and the vehicle along with the goods were seized and the person in charge of the vehicle produced the relevant invoice in digital form but could not produce the said invoices in physical form.
- After due process of law, the impugned order was passed without providing an opportunity of being heard to the Appellant.
- Being aggrieved, the Appellant has preferred the present appeal.

Held:

- As per the heading of Rule 138A of the CGST Rules, the *"documents and devices to be carried by a person-in-charge of the conveyance"* which are included under sub-rule (1)(a) of the said rule i.e., the invoice.
- It is trite that the provision in a taxing statute has to be construed strictly and no benevolent interpretation is available while construing taxing statute.
- The Court held that when the said provision specifically provided for documents and devices to be carried by the person-in-charge of a conveyance including the invoice, it clearly means that the invoice has to be carried in physical form and if required shall be produced in its physical form.
- Further, with respect to personal hearing, the Court held that an opportunity may be given to the petitioner to produce the relevant invoice before the statutory appellate authority before taking a final decision on the issue to subserve justice to the petitioner also.
- Directed the Respondent to revisit the issue and pass a reasoned order after providing an opportunity of being heard to the Appellant and the petitioner shall produce the relevant documents/ invoice in physical form before it, strictly in accordance with law.
- In case the Petitioner does not produce the relevant documents/ invoice, the impugned order of the appellate authority shall revive and operate in full force.

- The appeal was disposed by stating that the matter has not been decided on merits by the Court and the statutory appellate authority shall decide the appeal in accordance with law applying its independent mind.

t) Communications issued by the Central and the State authorities without Document Identification Number (DIN) are invalid

(M/S Ericsson India Private Limited Vs Deputy Commissioner of Customs, Chennai & Ors, 2023-VIL-207-MAD-CU)

Facts:

- The petitioner is a Telecommunications Solutions provider and a manufacturer of telecom equipment engaged in rendering services to Telecom Operators. The petitioner imports hardware including Blade Server Platforms (BSP).
- Upon the initiation of investigation by the Directorate of Revenue Intelligence (DRI), the petitioner had been called upon to produce certain particulars.
- However, it appears that on the basis of investigation report of the DRI dated 09.04.2020, bill of entry no. 5679605 dated 22.03.2018 and bill of entry no. 6023989 dated 18.04.2018 had been provisionally assessed in the Indian Customs EDI System (ICES).
- No document representing an assessment, provisional or otherwise, has ever been produced in the matter, not even before the Court. Also, the impugned communication by the department contains no Document Identification Number (DIN).
- Thus, the issue here is whether the non-generation of DIN would render the impugned communication invalid.

Held:

- The purpose of the DIN is to ensure that every paper that emanated from the system of an officer for transmission to an assessee would be authenticated with a digital print. The objective of DIN is to create a digital directory, and to maintain a proper audit trail for all official communications issued.
- Since the impugned communication contains no DIN, it is assailed on the ground that it is contrary to the guidelines issued by the CBIC circular.

Therefore, the Hon'ble High Court held that, non-generation of a DIN is fatal to the communication itself.

- Section 151A of the Customs Act enables the Board to issue Instructions to officers of Customs and such Instructions bind the officers, except in two situations. The exceptions are:
  - No order, instruction or direction will require any officer of Customs to make a particular assessment or dispose a particular case in a specified manner.
  - No instructions shall be issued so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of appellate functions.
- Thus, both exceptions concern the conduct of judicial duties only and in respect of the administrative duties, the board has the final word to prescribe guidelines that are mandatory qua the officers.
- Accordingly, the impugned communication dated 04.08.2020 was set aside and the writ petition was allowed.

u) Tax collected without any authority of law would amount to depriving a person of his property and infringement of his right under Constitution of India

(Diwakar Enterprises Pvt Ltd Vs Commissioner of CGST and Anr., 2023-VIL-205-P&H)

Facts:

- The petitioner is engaged in manufacturing of lead and lead related products.
- Search was conducted at the premises of the petitioner by Respondent, pursuant to which the petitioner deposited Rs. 1,99,90,000/- vide FORM GST DRC-03 showing 'Cause of payment' as 'Voluntary'. However, the Petitioner lodged the protest regarding the said deposit.
- Now, in the present writ appeal the petitioner has stated that he was forcibly been taken to their office and was kept detained for two days wherein he was pressurized to deposit the said amount.
- Petitioner was then issued a show cause notice raising demand of Rs.4,04,42,761/-, to which he filed his reply and order was passed confirming demand of Rs. 3,34,47,685/-.

- Now, the petitioner has approached this Court by filing the present writ petition for issuance of writ in the nature of mandamus for issuance of direction to Respondent to refund a sum of Rs.1,99,90,000/- along with interest as the he was forcibly taken to the office and was kept detained for two days wherein he was pressurized to deposit the said amount whereas the Department contended that the petitioner has deposited the impugned amount voluntarily and that proper procedure has been followed.

Held:

- The Court held that Article 265 of the Constitution of India lays down that collection of tax has to be by the authority of law. If tax is collected without any authority of law, the same would amount to depriving a person of his property without any authority of law and would infringe his right under Article 300 A of the Constitution of India.
- Moreover, in the present case, no receipt was given by the Proper Officer after accepting the impugned amount.
- Thus, the amount deposited by the petitioner under protest were liable to be refunded as the petitioner has been deprived of his right.
- Accordingly, the writ petition was allowed and Respondent was directed to refund a sum of Rs.1,99,90,000/- along with 6% interest.

v) Rent collected by directors in their individual capacity would not be taxable under RCM

(M/Cords Cables Industries Ltd. Vs Commissioner, Central Excise, Jaipur, 2023-VIL-338-DEL-CESTAT-ST)

Facts:

- The Appellant paid an amount of Rs. 2,73,01,852/- towards rent to Naveen Sawhney and D.K. Prashar for the premises let out by them to the appellant. The premises were used by the appellant for its Registered Office/Corporate Office. Naveen Sawhney and D.K. Prashar also happen to be the Directors of the appellant. In the invoices raised by the landlords to the appellant in respect

of the properties let out, service tax aggregating to Rs. 27,14,665/- was also charged and deposited as and when it fell due.

- SCN was issued to the Appellant alleging that the Appellant had paid the rent to the tune of Rs. 2,73,01,852/- to the landlord/owner of the premises and they happened to be, at the relevant time, Director of the Appellant and, therefore, service tax of Rs. 33,74,509/- was payable by the appellant on reverse charges basis (RCM) in accordance with Notification dated 20.06.2012 (as amended).
- As per the said notification 100% service tax was payable under in case of taxable services provided or agreed to be provided by a director of a company to the company.
- Further, Rule 2(1)(d) of the Service Tax Rules, 1994 states that service tax on services provided or agreed to be provided by a director of a company or the body corporate to the said company or body corporate, is payable by the recipient of such service.
- Further, the Appellant had not obtained registration for "renting of immoveable property" services nor filed any ST-3 return for the said services.
- After due procedure of law demand was confirmed by the Commissioner (Appeals) assuming that Naveen Sawhney and D.K. Prashar are providing service of renting of immovable property as Directors of the appellant.
- Being aggrieved, the Appellant filed the present appeal.

Held:

- The Court observed that the premises which were let out to the Appellant are owned by Naveen Sawhney and D.K. Prashar in their individual capacity and it is not the case of the department that the properties were owned by them as Directors of the appellant.
- In such a situation, rent was collected by them in their individual capacity and merely because they also happen to be the Directors of the appellant would not mean that they had collected rent as Directors of the appellant.
- Therefore, the Appellant could not have been asked to pay service tax on a reverse charge mechanism.

w) Exemption cannot be denied merely on the basis of minor procedural lapse

(Solvay Specialities India Pvt. Ltd. Vs. Commissioner of Central Excise & ST, Surat-II, 2023-VIL-337-CESTAT-AHM-ST)

Facts:

- The Appellant is engaged in providing services of sales promotion and marketing outside India to a foreign company and received the consideration in foreign exchange. The Appellant did not pay service tax on the said consideration and argued that the said transaction amounted to expert of services (Issue 1).
- Further, the Appellant provided the said services to a foreign company wherein consideration was received by a company outside India. The Appellant was of the view that no service tax was payable on the said transaction however, later it made payment of service tax along with applicable interest upto 30.09.2009 as service tax in respect of service provided by a commission agent located outside India were exempted vide Notification No. 18/2009-ST dated 07.07.2009 w.e.f. 01.10.2009.
- However, the said exemption was denied by the adjudicating authority on the on the ground that appellant have not declared the amount of commission paid in the shipping bills (Issue 2).
- In this regard, the Appellant argued that it is only a procedural lapse and entirely revenue neutral situation.

Held:

- Regarding the first issue, the Court held that since the recipient of service is located outside India and the payment of commission against said service is received in India, service clearly falls under the category of Export of Service in terms of Rule 3(1)(iii) of Export of Service Rules as the said service was provided in relation to business or commerce and such service was received by the recipient located outside India.

- Therefore, the service is clearly covered under Export of Service Rules. Accordingly, the same cannot be charged to service tax. This issue is clarified in the Board Circular No. 111/05/2009-ST.
- Regarding the second issue, the Court held that the exemption was denied only on the ground that the appellant have not mentioned invoice number in the shipping bills for export of goods. However, the use of input service received is meant for export of goods only. Except the lapse of not mentioning invoice number in the shipping bill, there is no other violation of notification. Merely for the small procedural lapse exemption cannot be denied.
- Accordingly, allowed the appeal and set aside the demand.

x) Transportation of tractors by driving it safely from one place to another does not fall within the ambit of 'supply of manpower services'

(M/s SYAL & Associates Vs. Commissioner of Central Excise, Chandigarh, 2023-VIL-322-CESTAT-CHD-ST)

Facts:

- The appellant was engaged in the business of transportation of tractors by driving the tractors from the factory of M/s Punjab Tractors Ltd to the premises of the dealers.
- As per the agreement, the tractors were to be driven by the drivers appointed by the appellants; consideration was paid to the appellants on the basis of the rates fixed on per kilometre basis; the appellants were required to ensure that the tractors were delivered in proper and good condition.
- The department was of the opinion that the service rendered by the appellants was squarely covered by 'Manpower Supply Agency Service'; accordingly, issued SCN which was subsequently, confirmed by the impugned order.
- Being aggrieved, the Appellant has filed a present appeal.

Held:

- On perusal of the terms of the agreement i.e., rates are inclusive of all expenses, overall responsibility of tractors is of the appellant, it is evident that the said agreement is not for supply of the drivers.

- The appellants had to undertake the transportation of tractors from premises of Punjab Tractors Ltd to their dealers and in the bargain they may appoint drivers for the work.
- Thus, the appellants have rendered the job assigned by Punjab Tractors Ltd and did not at all supply any manpower.
- Relied upon the case of **Talala Taluka Sahakari Khand Udyog Mandali Limited & others vs. CCE & ST, Bhavnagar [2022-VIL-922-CESTAT-AHM-ST]** and **M/s Fire Controls vs. CCE, Cus & ST, Mysore [2019-VIL-575-CESTAT-BLR-ST]** to hold that the job work undertaken by the appellants does not fall under the category of 'Manpower recruitment or supply agency service'.
- Accordingly, allowed the appeal and set aside the demand.

y) Service tax cannot be demanded without identifying the nature of service

(M/s Ambuj Hotels & Real Estate Pvt Ltd Vs. DGGI New Delhi, 2023-VIL-317-CESTAT-DEL-ST)

Facts:

- The appellant is engaged in supply of catering services. The appellant has entered into Master License Agreement with the Indian Railway and paid license fee to obtain license i.e., authorization to provide catering service onboard the trains.
- SCN was issued to the appellant for payment of service tax on license fee paid by the appellant to the Indian Railways under reverse charge mechanism on account of 'support services' provided by the Indian Railway to the appellant for the period July 2013 to June 2017 and subsequently, the same was confirmed vide impugned order. The support services that have been confirmed are infrastructural support, operational support and marketing support.
- Being aggrieved, the Appellant has filed a present appeal.

Held:

- The taxability of the activity of providing licenses has been clarified by the CBIC Circular dated 11.10.2019. It states that the act of granting license is taxable

only after 01.04.2016. Therefore, the Court held that the grant of license is clearly not exigible to service tax before 01.04.2016 and has to be set aside.

- As per Section 66B of the Finance Act, the taxable event under the Finance Act is the provision of service and not the consideration paid. Further, as per Section 68(2) of the Finance Act, liability under reverse charge mechanism is in respect of 'taxable service'.
- Therefore, it is an essential pre-requisite that a taxable service is identified before any service tax is levied under Section 68 of the Finance Act. Accordingly, demand for recovery of service tax under Section 73 of the Finance Act also arises when the service tax which was required to be paid under Section 68 of the Finance has not been paid or has been short paid. Thus, it is important that the correct taxable service is identified in the show cause notice and it is not enough to identify that there is an amount of money paid from one person to another.
- In the instant case, the SCN has demanded service tax on "support services" provided by the Indian Railway to the appellant under reverse charge, as it is not covered in the negative list of service provided under Section 66D of the Finance Act.
- The Court observed that license fee is not quid pro quo for any support offered by the Railways. It also needs to be noted that license fee is paid as consideration for the service provided by the Railways to the appellant by way of grant of the authorization to provide catering service on the train.
- In the instant case, the license fee paid by the appellant to Railways is the consideration for the privilege to be the sole catering agent on board the trains for which a license was issued. This "grant of license/privilege" is the service which was taxable and the value of this service is equal to the license fee which is the consideration paid for this service. The show cause notice has not identified this service. To tax this service would, therefore, result in going beyond the scope to the show cause notice.
- Accordingly, allowed the appeal and set aside the impugned order.

z) Once the entire CENVAT credit availed stood reversed, it would amount to non availment of CENVAT credit and the demand for recovery of the CENVAT credit cannot be sustained

(M/s Rajasthan Renewable Energy Corporation Limited Vs Commissioner of Central Excise, Jaipur 2023-VIL-306-CESTAT-DEL-ST)

Facts:

- The Appellant is a State Nodal Agency engaged in promoting and developing non-conventional energy resources.
- During the Audit, following observations were made by the Department:
  - Wrong availment of cenvat credit on improper documents on telephone bills, mobile bills etc.
  - Wrong availment of cenvat credit exclusively used in manufacture of electricity in terms of Rule 6(3) of the Cenvat Credit Rules, 2004 (Credit Rules).
  - Short payment of service tax on value of electricity, as common input services are used for both taxable and exempt goods.
  - Short payment of service tax on one-time accreditation charges received for accrediting the applicant for lifetime and in the form of annual accreditation charges for accrediting the applicant for one year and forfeiture of security deposit in relation 'Business Auxiliary Services (BAS)'.
- Cenvat credit was entirely reversed by the Appellant as per the audit observations.
- After due process of law, demand was created and confirmed *vide* impugned SCN and order, respectively, in respect of all the aforementioned observations.
- Being aggrieved, the Appellant has preferred the present appeal.

Held:

Wrong availment of cenvat credit on improper documents on telephone bills, mobile bills etc.:

- Relied upon the cases of **Chandrapur Magnets Pvt. Ltd.**, **Precot Meridian Ltd., Ashima Dyecot Ltd.**, **Hello Minerals Water (P) Ltd**. and **Beekay Engineering Corporation Ltd.** it was held that once the entire CENVAT credit availed by the appellant stood reversed, it would amount to non availment of CENVAT credit and the demand for recovery of the CENVAT credit cannot be sustained.

Wrong availment of cenvat credit exclusively used in manufacture of electricity in terms of Rule 6(3) of the Cenvat Credit Rules, 2004 (Credit Rules):

- The Court referred to the case of referred to the case of **Star Agriwarehousing & Collateral Management Ltd.** to hold that since the entire disputed cenvat credit has been reversed by the Appellant, the provisions of Rule 6(3) of the Credit Rules would not be applicable as the said rule is applicable if the taxpayer desires to avail and utilize CENVAT credit pertaining to common input services.

Short payment of service tax on value of electricity, as common input services are used for both taxable and exempt goods

- The Court referred to the case of **Gularia Chini Mills vs. Union of India [2014 (34) S.T.R. 175 (All.)]** to hold that Rule 6 of the Credit Rules is applicable to excisable and exempted goods whereas electricity is neither excisable goods nor exempted goods and therefore, Rule 6 would not apply.

Short payment of service tax on one-time accreditation charges

- The Court noted that where a party permitted by the appellant to set up power plants, does not set up the same within the prescribed time period, the accreditation charges made by such party is forfeited. This amount is shown as 'forfeiture of security deposit' in books of account of the appellant. However, where the project is successfully completed, the said deposit is returned back to the party. The amount collected towards forfeiture of security deposit is not towards any service and, therefore, no service tax is payable.
- Further, with respect to the demand of service tax for the period till 30.6.2012 under Business Auxiliary Services, the Court referred to the case of **Commissioner of C. Ex., Nasik vs. Maharashtra Industrial Development Corporation [2018 (9) G.S.T.L. 372 (Bom.)]** to hold that the said charges recovered by the Appellant are in the course of discharge of mandatory statutory functions and the appellant cannot be said to be rendering any services in respect thereof.
- Accordingly, allowed the appeal and set aside the impugned order.

aa) Services ancillary to transmission of electricity are also exempt from service tax

(M/s Madhya Pradesh Power Transmission Company Ltd. Vs Commissioner CGST, Jabalpur. 2023-VIL-304-CESTAT-DEL-ST)

Facts:

- The Appellant is a public sector undertaking established by the Government of Madhya Pradesh for transmission of electricity.
- For transmission of electricity, the Appellant is required to undertake certain constructions like construction of electric sub-stations, electrical poles etc and provide consultation regarding the same.
- A SCN was issued to the Appellant demanding service tax on:
  - Supply of engineer consultancy services
  - Damages/ penalties recovered by the Appellant from the contractors on account of breach of contract
  - Supply of manpower recruitment services
  - Legal services
- After due procedure of law, demand was confirmed vide impugned order.
- Being aggrieved, the Appellant has preferred the present appeal.

Held:

Consultancy services:

- The Appellant provides consultancy services which are incidental to the transmission activities as the Appellant has the expertise in the power transmission without which it would not be possible to transmit electricity.
- Reliance was placed on the case of **Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd.** wherein it was held that that the activities that are related/ancillary to transmission and distribution of electricity would be exempt from payment of service tax as the same are bundled services of transmission and distribution of electricity which is exempt from service tax.
- Accordingly, set aside the subject demand.

Liquidated damages:

- Relied upon the case of **Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd.** wherein it was observed that no service tax can be levied on the amount collected towards liquidated damages or penalty for breach of any of the terms of the contract. Accordingly, set aside the subject demand.

Manpower recruitment:

- The contention of the Appellant that most of the service providers were public limited or private limited who discharge their own liabilities was not accepted as the Appellant could not substantiate this contention with documents. Accordingly, confirmed the subject demand.

Legal services:

- The Appellant has not also been able to substantiate that certain amount towards stamp duty was included. Accordingly, confirmed the subject demand.

bb) Mere receipt of password and website address from the foreign company and forwarding to Indian customers does not amount to import of service

(M/s Dassault Systemes Simulia Private Limited Vs The Commissioner of Central Excise and service tax Chennai 2023-VIL-281-CESTAT-CHE-ST)

Facts:

- The Appellant was engaged in the sale of software programme to various customers.
- During the Audit, it was observed that the Appellant's head office was at USA from whom they purchased software, enter into an agreement with Indian customers for maintenance and enhancement of the software sold by them and the Appellant had incurred expenditure in foreign currency towards the purchase.
- Further, it was observed that the Appellant offered various licence types to their customers and the generated revenue and the expenses were related to

the purchase of software and MES-ME related to maintenance, enhancement and support of the software provided by the foreign companies to the Appellant.

- Accordingly, SCNs was issued invoking extended period and demanding service tax on import of management, maintenance or repair services under reverse charge for the period from the FY 2006 to 2009.
- After due process of law, the demand was dropped upto 18.04.2006 and confirmed for the subsequent period vide impugned order observing that the software was available in India and the password and the internet site address, which are received by the appellant from the foreign company, was only forwarded within India to the customers who use such password and internet site for downloading the service. Further, upheld the invocation of extended period.
- Being aggrieved, the Appellant has filed the present appeal on following issues:
  - Whether the Revenue was justified in demanding service tax from the appellant under the category of 'management, maintenance or repair' service?
  - Revenue neutrality;
  - Whether the Revenue was correct in invoking the extended period of limitation?

Held:

- The Court observed that a co-joint reading of Section 66A of the Finance Act, 1994 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 point that said provisions shall apply only when services are 'provided from outside India' and not when the services are provided by a person in India, to any other person in India.
- Department's contention that the software was available in India, with the Appellant and hence the provision of service was from India only, runs counter to the demand of service tax under reverse charge mechanism within the meaning of Section 66A read with Rule 3 (ii) of the Taxation of Services Rules ibid.
- There was no service received by Appellant as alleged in show cause notice, much less any maintenance or repair service as the Appellant only receive password and website address and forwarded to customers. Meaning thereby

that the transaction only involves mere sharing of password and website address, which per se does not fall under definition of management, maintenance or repair service.

- The Court held that the appellant could not have been fastened with the service tax liability under management, maintenance or repair service for the reason that there is no document placed on record to negate the Appellant's claim that they have not rendered any service in India and the Revenue has also not been able to place anything on record in their support to establish that the Appellant had rendered nothing but management, maintenance or repair service.
- Further, the Court did not decide the issue of revenue neutrality and invocation of extended period
- The Court set aside the demand on merits and allowed the appeal.

AAR/ AAAR

cc) The manpower supply by an assessee for housekeeping, cleaning, security, data entry operators etc. to various Government departments shall not be liable for exemption under GST

(M/s Sankalp Facilities And Management Services Pvt Ltd, 2023-VIL-19-AAAR)

Facts:

- The Appellant is engaged in the business of providing manpower supply for housekeeping, cleaning, security, data entry operator etc. Further, the Appellant submits that it provides manpower services to several Government authorities/ entities and the Appellant is eligible to claim exemption benefit under Sr.No.3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 for pure services (supply of manpower, security service) provided to Central Government, State Government, Local authorities, Government entities as detailed, in their application, subject to the condition that the services provided to these entities mentioned 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.

- The Appellant sought advance ruling on the following question:
  - "Whether the appellant is liable to pay GST on manpower services provided to the Central Government, State Government, Local authorities, Governmental authorities and Government entities?"
- The Gujarat Authority for Advcane Rulling (hereinafter referred to as "GAAR") vide its order No. GUJ/GAAR/R/51/2021 dated 06.09.2021 - 2021-VIL-383-AAR, gave the following ruling to the above question:
  - The subject supply for the purpose of security, cleaning and housekeeping services provided to the cited schools are exempt from GST.
  - GST is liable to paid on subject supply provided to all cited Government Colleges providing education services of above higher secondary level.
  - GST is liable to be paid on subject supply provided to all cited Government offices.
  - GST is liable to be paid on subject supply provided to all cited Government hospitals.
- Being aggrieved by the said ruling, the Appellant has [preferred the present appeal.

Held:

- In the present matter, the Appellant has relied upon Entry No. 3 to Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for claiming exemption on supply of manpower services provided to the Central Government, State Government, Local authorities, Governmental authorities and Government entities. The extracts of the said entry No. 3 to Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended.
- Further, there are three conditions which needs to be fulfilled for availing exemption under the above referred entry:
  - There should be supply of pure services;
  - The recipient of services should be Central Government, State Government or Union territory or local authority;
  - The services provided should be by way of any 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.

- The words "or a Governmental authority or a Government Entity" in the heading Description of services against above referred Entry No.3 has been omitted vide Notification No. 16/2021-Central Tax (Rate) dated 18.11.2021.
- Further, the GAAR in their findings stated that they have examined 155 contracts/ work orders presented by the appellant before the advance ruling authority and the GAAR extended the benefit of exemption to Government Schools not under Entry Sl. No. 3 but under Entry Sl. No. 66 to Notification No. 12/2017-CT (Rate) dated 28.06.2017 as amended. They denied the benefit of exemption to Government Colleges under the said Entry Sl. No. 66 and denied the benefit of exemption to Government Hospitals under Entry Sl. No. 46 and 74 of notification ibid. They further denied the benefit of exemption to Government offices under Entry Sl. No. 3 of Notification No. 12/2017-CT (rate) dated 28.06.2017.
- The GAAR, on examining the requirement of condition denied the benefit of exemption notification to the appellant on non-fulfillment of the said condition only.
- The Appellant in the said appeal has admitted that there is no Entry exempting such services provided to Government offices. The Appellant is however mistaken to assume that the Entry No. 3 specifically exempts all the services provided to Government offices carrying out the functions enumerated under article 243G of the Constitution or article 243W of the Constitution. The manpower services provided by the Appellant like housekeeping, cleaning, security, data entry operators etc are consumed within the premises of concerned Government offices enumerated above. These services were not related to any activity in relation to any function carried out by these service recipients as entrusted under article 243G or 243W of the Constitution of India.
- Further, the case of M/s. A.B. Enterprise, relied upon by the Appellant is irrelevant as the GAAR held that the exemption is subject to the condition that the services provided are services 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.

- Hence, the manpower supply by the appellant for housekeeping, cleaning, security, data entry operators etc. to various Government departments, mentioned in their application, is not eligible for exemption against Entry No. 3 to Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended and the appeal stands rejected.

dd) General Power of Attorney (GPA) holder is a supplier of renting of immovable property service for the immovable property owned by a non-resident

(M/s Nagabhushana Narayana, (Through Prabhavathi, GPA Holder), 2023-VIL-78-AAR)

Facts:

- The Applicant is a non-resident Indian, holds an OCI card and residing at California, United States of America (USA), owns an immovable property at Bangalore, India and rented the said commercial property to the tenants and is in receipt of rental income.
- The Applicant contends that he is the owner and supplier / provider of Renting of Immovable Property Service where the location of the supplier is outside India as he resides outside India and also he doesn't have any fixed establishment in India and the service being provided by him becomes import of service as it satisfies the requirements and the responsibility to pay tax is on the service recipient under reverse charge mechanism and thus, he is neither liable for registration under GST nor liable to pay the tax.
- Further, the Applicant has appointed his mother Smt. Prabhavathi, resident of Bengaluru, to manage the property including induction of tenants, creating tenancy and to execute necessary deeds or documents either registering before the jurisdictional sub-registrar and to receive all profits, rents, lease advance money, advance security deposit amount from the existing tenant and also from the prospective tenant and to take care all necessary action regarding tenancy of the said scheduled property, except for to mortgage or sell or alienate the scheduled property.

- In pursuance of the provisions of GPA, Smt. Prabhavathi has created tenancy and inducted various tenants by way of leasing out the scheduled property for commercial purposes.
- The applicant has sought advance ruling in respect of the following questions:
  a. Whether the Applicant is liable to be registered in Karnataka under KGST/CGST Act 2017?
  b. Whether applicant is required to pay tax on renting of commercial building?

Held:

- In the present matter, it is evident that though Shri Nagabhushana Narayana, is the absolute owner of property, the act of leasing of immoveable property was taken up by Smt Prabhavathi as a GPA holder of the said property.
- The income from the property, including the rent is received and retained by the GPA holder being his mother.
- Further, the activity of leasing or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services in terms of entry 2(b) of Schedule II to Section 7 of CGST Act, 2017.
- In the instant case, the supply of service is directly in relation to immoveable property, in terms of Section 12(3) of IGST Act, 2017, the place of supply of service shall be the location of the said immoveable property i.e., in Bangalore, Karnataka and both the supplier & the supply are in Karnataka making it an intra-state supply Smt. Prabhavathi is liable to pay CGST.
- Hence, Smt. Prabhavathi, the GPA holder is the supplier of service and is liable to be registered in Karnataka under KGST/CGST Act 2017 and the GPA holder is required to pay tax on supply of Renting of Immovable Property service of the commercial building.

ee) Transactions between the Association and its members are covered under Section 7(1)(a) and clarified by insertion of Section 7(1)(aa) and is leviable to GST

(United Planters Association of Southern India, 2022-VIL-75-AAR)

Facts:

- The Applicant is a mutual benefit association registered under the Tamil Nadu Societies Registration Act, 1975 established by the planters and growers of Tea, Coffee, Rubber, Pepper and Cardamom in southern India, viz., Tamil Nadu, Kerala and Karnataka, with the object to conduct research and analysis for the benefit of members in whole to achieve maximum productivity and quality in their plantation activities and to represent before various authorities for the welfare of members and such other welfare activities (training, meeting etc.,) collectively for their benefit and the membership subscription fee received from them used for the above said activities and to meet out administration and other running cost of the association.
- Further, the Applicant is running for welfare of its members by way of conducting analytical and research to improve the plantation activities by its members, inventing new crops by horticultural research for its members and their benefits, conducting soil, tea quality test and such other agricultural tests for its members to do effective plantation and growing activities, representation before various authorities for the benefit of its members. Apart from the said activities, the membership subscription fee received is utilized for conducting meetings and to meet out necessary running and administrative costs of the institution.
- Further, to avail the benefit of the Notification No. 14/2018 CT dated 26.07.2018 vide Sl. No.77A, providing exemption for Services provided by an unincorporated body or non-profit association registered under any law for the time being in force engaged in activities relating to the welfare of industrial or agricultural labour or farmers and all the members of the Applicant comes under the category of farmers and therefore, the Applicant contends that it is well eligible to avail the benefit of Sl. No. 77A of Notification No. 14/2018 - Central Tax dated 26th July, 2018 inserted by Notification No. 12/2017 CTR dated 26.07.2017.
- The Applicant seeks advance ruling on the following:
    - Whether the applicant is eligible to avail the benefit of Notification No. 14/2018 - Central Tax dated 26.07.2018 as the non-profit association

registered under any law engaged for the welfare of farmers vide serial No. 77A, Heading 9995?

- Whether the doctrine of mutuality as laid down by the Supreme Court in various cases is applicable in our case?
- It is clear that the Finance Act, 1994 (as amended from time to time) does not abrogate or do away with the doctrine of mutuality. The question that now need to be answered is whether the introduction of GST abrogates or does away with the doctrine of mutuality as laid down by the Supreme Court in various cases.
- Is the applicant-association a person distinct from the member or a related person?
- Is there a transaction between the applicant-association and its members which are covered under Section 7(1) (a), (c) or (d) of the Central Goods and Services Tax Act, 2017?

Held:

- In the instant case, the Applicant is an apex body of planters of tea, coffee, rubber, pepper and cardamom in the Southern States of India and there are various members affiliated to it. Further, it is the premier representative body of buyers, sellers, processors, exporters, co-operatives, and all other market intermediaries of tea, coffee, rubber, and spices.
- There is a permutation and combination of different activities along with farming by the member of the association. A member engaged only in farming cannot be equated with a member engaged in more than one activity including farming.
- Farming can be done by an individual, partnership firm, company or any other form of organization recognized by law, but qualify as a farmer and for instance, a company registered under Companies Act, 2013 can grow, harvest, process and sell tea to consumers, wherein tea farming is one of the activity in its tea business, but cannot qualify as a mere farmer.
- The Applicant is also engaged in the following:
  - Preparing the action plans for the development of the plantation industry
  - Involving in international negotiations relating to plantation commodities

- Interacting with Commodity Boards to orient decisions/action of the Boards to be conducive to the growth of the planting industry
- Analyzing international trends in the plantation commodities covered by UPASI and suggesting appropriate approach change to the planters.

- Further, the definition of "Business" as per Section 2(17) of the CGST Act, 2017 and it is inclusive definition and states that provision of facilities or benefits to the members of association/society by an association/society for a subscription or consideration is 'business' for the purpose of GST and various facilities and benefits accrue to the registered members of the applicant association and thus the applicant is covered under the definition of "business".
- The Applicant is not entitled to avail the benefit of Notification No. 14/2018 Central Tax (Rate) dated 26th July 2018 due the following reasons:
  - The Applicant is premier representative body of buyers, sellers, processors, exporters, co-operatives, and all other market intermediaries of tea, coffee, rubber, and spices.
  - There is a sub-classification on the basis of crop area and the amount of annual subscription also varies from Rs. 1000/- to 1750/-.
  - Further, it is a settled position of law that any exemption notification should be strictly interpreted. Applicant is an association of members who are engaged in different activities in or in relation to tea, coffee, rubber, pepper and cardamom. Agriculturists or farmers merely engaged in farming are one among them and a member engaged only in farming cannot be equated with a member engaged in more than one activity including farming. Further, farming can be done by an individual, partnership firm, company or any other form of organization recognized by law but qualify as a farmer. However, the exemption notification mandates welfare of industrial or agricultural labour or farmers. Here, welfare of labour or farmers refers to natural persons following the doctrine of ejusdem generis.
- The Applicant being a registered society, providing services to their members, who are distinct from the applicant and registered as member on payment of any amount towards subscription/contribution, is a supply of service and is accordingly taxable except subscription received from natural persons who are farmers simpliciter and the annual subscription for all membership.
- The Ruling is as follows:

S. No.	Questions	Ruling
1.	Whether the applicant is eligible to avail the benefit of Notification No. 14/2018 - Central Tax dated 26.07.2018 as the non-profit association registered under any law engaged for the welfare of farmers vide serial No.77A, Heading 9995?	The applicant is eligible to claim exemption vide serial number 77A of Notification No. 12/2017 Central Tax (Rate) as amended by Notification No. 14/2017 Central Tax (Rate) in respect of subscription received from natural persons who are farmers simpliciter and the annual aggregate subscription amount for all membership, under various nomenclature, up to Rs. 1000/-.
2.	Whether the doctrine of mutuality as laid down by the Supreme Court in various cases is applicable in our case?	Interpretation of law is not mandated to Advance Ruling Authority under Section 97(2). Therefore, no ruling on the same.
3.	It is clear that the Finance Act, 1994 (as amended from time to time) does not abrogate or do away with the doctrine of mutuality. The question that now need to be answered is whether the introduction of GST abrogates or does away with the doctrine of mutuality as laid down by the Supreme Court in various cases.	Interpretation of law is not mandated to Advance Ruling Authority under Section 97(2). Therefore, no ruling on the same.

4.	Is the applicant-association a person distinct from the member or a related person?	Interpretation of law is not mandated to Advance Ruling Authority under Section 97(2). Therefore, no ruling on the same.
5.	Is there a transaction between the Applicant-association and its members which are covered under Section 7(1) (a), (c) or (d) of the Central Goods and Services Tax Act, 2017?	Yes, there is transaction between the Applicant-association and its members covered under Section 7(1)(a) and clarified by insertion of Section 7(1) (aa) and explanation with effect from 01st July, 2017 by Section 108 of the Finance Act, 2021 - brought into force on 01st January, 2022 vide Notification No. 39/2021-C.T. dated 21st December, 2021.

ff) The services of common employees of a person, provided by branch office to head office and vice versa having separate GST registration, shall attract GST liability

(M/s Profisolutions Private Limited, 2022-VIL-70-AAR)

Facts:

- The Applicant is engaged in providing engineering services for industrial and manufacturing projects. Further, the Applicant is registered under the state of Karnataka and have a branch office at Chennai.
- The branch office of the Applicant has been providing support services like engineering services, design services, accounting services, etc to the Head Office at Bangalore and also registered in the State of Karnataka under GST Act.
- The Applicant stated that the employees are appointed and working for the company as whole and not employed for head office or branch specifically, which is a distinct person under GST and it was further stated that the support services like engineering services, design, accounts services, etc are provided

by the common employees of the applicant company in Tamil Nadu to Head Office of the applicant company in Karnataka. AR stated that no invoice is issued and no GST is paid for provision of the said services.

- The Applicant seeks advance ruling on the following:
  - Engagement of system integrator for implementation water revenue management system, creation and maintenance of database, spot billing/meter reading

Held:

- As per the submissions and documents discussed that the Applicant from branch office has supplied, apart from accounting services, various technical services to head office in other State where the factory is located to fulfill the product design requirement of the customers.
- Further, the Applicant stated that the employees are appointed and working for the company as a whole and not employed for head office or branch specifically, while recognizing the legal position that head office and branch office are distinct person under GST.
- As per the statutory provisions of the CGST Act, any supply of services between two registrations of the same person in the same State or in different States attract the provisions of Section 25 (4) and Section 7 read with Schedule I (2) and Section 15.
- Even the services of employees deployed in a registered place of business to another registered premises of the same person will attract the provisions of CGST Act, 2017, as the employees are treated as related person in terms of explanation to Section 15 and treated as supply by virtue of Schedule I (2) to CGST Act.
- Hence, the services, including the services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability under respective Acts, viz IGST Act or CGST Act and SGST Act or UTGST Act.

gg) ITC shall be available only to the extent borne by the employee and not on the amount paid by the employer for providing canteen services

(M/s AIA Engineering Limited, 2022-VIL-67-AAR)

Facts:

- The Applicant is engaged in the manufacturing of high chrome grinding media balls and parts of machinery for grinding & crushing and has employed more than 250 employees and is also registered under the Factories Act, 1948.
- Further, the Applicant provides canteen facility to its employees at its Moraiya-Sanand factory, the primary reasoning for providing the said facility is the mandatory providing and maintaining the canteen services for its employees in terms of section 46 of the Factories Act, 1948.
- The Applicant arranged a canteen service providers [for short - CSP] on contractual basis and as per the agreement between the Applicant and the CSP, the Applicant provides utensils like tea urns, glass tumblers, eating plates, steel bowls and other utensils necessary for the preparation of food & serving the same and the CSP raise invoices along with applicable GST on the basis on the consumption, tracked on the biometric punching by the employees, availing the canteen facility.
- The employees bear 50% canteen charges while the remaining 50% is borne by the Applicant on behalf of their employees and the contention of the Applicant is not generate profit.
- The Applicant has filed this application for advance ruling to ascertain the GST implication on the existing arrangement of canteen facility being provided to the employees at the factory by raising the following question for advance ruling:
    - Whether GST is applicable on the amount representing the employee's portion of canteen charges recovered/collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee?
    - Whether the Company is eligible to take the input tax credit for the GST charged by the canteen service provider for the canteen services for its employees where the canteen facility is mandatory in terms of section 46 of the Factories Act, 1948?

Held:

- In the present matter, the reference is made to Circular No. 172/04/2022-GST which provides clarification that perquisites provided by the 'employer' to the 'employee' in terms of contractual agreement entered into between the employer and the employee, shall not be subjected to GST when the same are provided in terms of the contract between the employer and employee and the subsidized deduction made by the Applicant from the employees who are availing food in the factory would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017.
- Further, the input tax credit of the GST charged by the CSP for the canteen services for its employees where the canteen facility is mandatory in terms of Section 46 of the Factories Act, 1948 read with Gujarat Factories Rules, 1963 shall be available to the Applicant only on the amount paid by the employees and ITC on GST charged by the canteen service provider will be restricted to the extent of cost borne by the appellant only.

Sr. No.	Questions	Answer/Ruling
1.	Whether GST is applicable on the amount representing the employee's portion of canteen charges recovered/collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee?	GST is not leviable on the amount representing the employee's portion of canteen charges recovered/collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee since it would not be considered as a supply under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.
2.	Whether the Company is eligible to take the input	ITC will be available to the applicant on GST charged by the service provider in

	tax credit for the GST charged by the canteen service provider for the canteen services for its employees where the canteen facility is mandatory in terms of section 46 of the Factories Act, 1948?	respect of canteen facility provided to its direct employees working in their factory, in view of the provisions of Section 17(5)(b) as amended effective from 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

hh) No GST leviable when the packaging of dals and pulses are as per the requirements of the buyer.

(M/s Seetharamnjaneya Dal and Fried Gram Mill, 2022-VIL-66-AAR)

Facts:

- The Applicant is engaged in the business of pulses and dals and have a facility in its mill to convert pulses into dals.
- Further, 'The Andhra Pradesh State Civil Supplies Corporation Limited', Vijayawada is a state government undertaking engaged in the business of supplying essential commodities to the fair price shops for public distribution and the corporation invited tenders for supply of 25,000 MTs red gram dall, (Fatka) variety in 1 kg packet form with secondary packaging in 50 kg PP bags to all the MLS points of APSCSCL in (13) districts across the Andhra Pradesh State for distribution under PDS and various schemes through AP e-procurement auction platform.

- The Applicant is a successful bidder and started supplying the red gram dl to the corporation adhering to the guidelines issued by the corporation packing and printing of label on the packing.
- The Applicant seeks advance ruling on the following:
  - Whether the supply of 1 kg packing red gram dal secondary packing in 50 kg bag to the AP State Civil Supplies Corporation Limited, Vijayawada as per the design and label given by the corporation with a prior agreement attracts GST?

Held:

- The reference is made to the Notification no 06/2022 (CT Rate), dated 18th July 2022 wherein, GST has been made applicable on supply of "pre-packaged and labelled" commodities attracting provisions of Legal Metrology Act, 2009 wherein, the expression "pre-packaged and labelled" means a "pre-packaged commodity" as defined in clause (l) of Section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act 2009 (1 of 2010) and the rules made thereunder.
- Further, the supply of such specified commodity having the following two attributes:
  - It is pre-packaged; and
  - It is labelled which means that it is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.
- In the instant case, the applicant is supplying red gram dal to the corporation in 1 kg packaging and secondary packaging in 50 kg bag. It is also contended by the applicant that AP State Civil Supplies Corporation Limited being an institution which supplies essential commodities under public distribution system, the above supply is not an 'Institutional supply' and is not exempted by rule 3(B).
- Further, the first and foremost condition of taxability is that the commodity should have been a pre-packed commodity which means that the commodity is not packed for any specific known buyer. In the instance case the applicant

is packing the commodity at the behest and at the specific instructions of the buyer, i.e., AP State Civil Supplies Corporation Limited. It is clearly evident from the package that the AP State civil have made very clear instruction as to the color, theme, transparency and the details to be printed on the package.

- Thus, the commodity is packed for retail sale for any buyer who may purchase at a later point, but it is packaged to a specific buyer. Thus, the first and foremost condition of taxability is not satisfied.
- Hence there is no question of taxability of the commodity in the instant case.

ii) Engagement of system integrator for implementation water revenue management system, bill distribution (MRBD) services, etc for water supply & sewerage connections under the jurisdiction of Municipal Corporation, Gurugram are taxable.

(M/ BCITS Pvt Ltd, 2022-VIL-62-AAR)

Facts:

- The Applicant is providing maintenance of data base, spot billing meter reading and bill distribution services to the Municipal Corporation, Gurugram for water supply and sewerage connections. A person is deputed area wise and provide an android device and generates a water bill by taking the reading in water meter and giving the same to the consumer.
- Further, the company provides software to install in the mobile phone to enable the consumers to generate the bills and the scope of the work includes all the services of Water Revenue Management System.
- The Applicant has received a work order from Municipal Corporation Gurgaon (Haryana) for "engagement of system integrator for implementation water revenue management system, creation and maintenance of database, spot billing/meter reading and bill distribution (MRBD) services for water supply & sewerage connections under the jurisdiction of municipal corporation Gurugram. We are providing maintenance of database, spot billing, meter reading & bill distribution service for water supply & sewerage connections to Municipal Corporation of Gurgaon.
- The Applicant seeks advance ruling on the following:

- Engagement of system integrator for implementation water revenue management system, creation and maintenance of database, spot billing/meter reading and bill distribution (MRBD) services for water supply & sewerage connections under the jurisdiction of Municipal Corporation, Gurugram is covered under which SAC of the GST Act?
- Determination of the liability to pay tax on the above services means the rate of output tax liability on above mentioned services?
- Is this service exempt under clause 3 of notification 12/2017 dated 28.06.2017?

Held:

- The function of the water supply to the public at large has been entrusted to MCG by the Government of Haryana and as per the Notification No. 12/2017 dated 28.06.2022 nil rate of tax is applicable on pure services provided to the local authority by the way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution of India.
- Further, the Government has notified the list of services or activities which are exempted under the GSY Act, 2017. Relevant entry no.3 of Pure Services in the exemption notification dated 12/2017-CT(R) which got amended on 18.11.2021 w.e.f. 01.01.2022 is as: Pure Services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority by way of any 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.
- In the present case, it can be said that whatever services (as per article 243W of the constitution) the Municipal Corporation, Gurugram renders to the Public at large is exempted but all the services which are received/availed by the MCG is not covered under the exemption notification no. 12/2017 dated 28.06.2017.
- But the nature of services rendered by the Applicant is like a software tool operated by its staff and the said services include creation and maintenance of data base of the consumers and the web-based spot billing and collection of payments on behalf of Municipal Corporation. These services cannot be termed as pure services as defined under the provisions of the GST Act, 2017.

- The main function of water distribution services is of MCG and the same can be considered as pure services. But the services received by MCG from the Applicant are not in the nature of Pure Services and not the support services as these are support services and not in relation to any function which is entrusted to the MCG.
- Further, the goods (tangible and intangible) and services provided by the Applicant cannot be regarded as an integral part of the water distribution system itself and these are add on activities. The definition of the Scope of Supply and Business under the CGST Act, 2017 is quite extensive.
- The taxability of any supply of goods and services is covered under these definitions. There should be an express/explicit provision for the availment of any exemption under the CGST Act, 2017. Exemptions are not optional and the conditions/constrained prescribed under the provisions must be fulfilled. And in the present case, it is clearly observed that the said services provided by the applicant to the MCG are not part and parcel of the water supply system.
- So, it is concluded from the above discussion and legal provisions that the services provided by the applicant to MC, Gurugram is a taxable supply**.**

Questions	**Answers**
Engagement of system integrator for implementation water revenue management system, creation and maintenance of database, spot billing/meter reading and bill distribution (MRBD) services for water supply & sewerage connections under the jurisdiction of Municipal Corporation, Gurugram is covered under which SAC of the GST Act, 2017?	SAC Code 998633
Determination of the liability to pay tax on the above services means Rate of Output Tax liability on above mentioned service?	18%
Is this Service exempt under clause 3 of notification 12/2017 dated 28.06.2017.	No

CIRCULARS

jj) Advisory on deferment of implementation of time limit on reporting old e-invoices

(Advisory dated 06.05.2023)

- The imposition of time limit of 7 days on reporting old e-invoices on the IRP portal for the taxpayers with aggregate turnover or equal to 100 crores by 3 months vide advisory dated 13.04.2023 (https://www.gst.gov.in/newsandupdates/read/578) has been deferred.
- The next date of implementation will be shared in due course of time.

kk) Advisory on Bank Account Validation

(Advisory dated 24.04.2023)

- The functionality for bank account validation is now integrated with the GST System. This feature is introduced to ensure that the bank accounts provided by the Taxpayer is correct.
- The bank account validation status can be seen under the Dashboard --> My Profile --> Bank Account Status tab in the FO portal. Taxpayers will also receive the bank account status detail on registered email and mobile number immediately after the validation is performed for his declared bank account.
- For seeking detail, please click on below mentioned URL: - https://tutorial.gst.gov.in/downloads/news/advisory_on_bank_account_validation%20_17april2023.pdf

ll) Pre-deposit can be made through DRC-03 in case of GST Appeals

(Instruction bearing no. CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC dated 18.04.2023)

- CBIC examined Para 2 of instruction bearing no. CBIC-240137/14/2022-Service Tax Section- CBEC dated 28.10.2022 which read as under:
    - *"2. The matter has been examined. It may be seen that Form GST-DRC -03 is prescribed for payment of tax, interest, penalty under sub-sections (5) and (8) of both sections 73 and 74, and section 129 (1) of the CGST Act, 2017 or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in rule 142 (2) and 142 (3) of the CGST Rules, 2017. Further, in GST regime, in connection with appeal mechanism under section 107 of the CGST Act, 2017, Rule 108 (1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with option of payment of admitted amount and pre-deposit through electronic cash/credit ledger.* ***Thus, under GST Act also, Form GST DRC - 03 is not a prescribed mode for payment of pre-deposit****."*

- It is clarified that the aforesaid instructions were meant for the cases of appeals belonging to the Central Excise/ Service Tax only and any reference to the GST Act was unintentional and for the limited purpose of drawing a parallel between provisions of the GST Act and Central Excise Act, 1944/ the Finance Act, 1994.
- Hence, the instruction stated that last line of para 2 of the instruction bearing no. CBIC-240137/14/2022-Service Tax Section- CBEC dated 28.10.2022 may be considered as infructuous and pre-deposit can be made through DRC-03 for filing GST Appeals.

mm) Generation and quoting of DIN on communications issued under GST by the officers of the Directorate to taxpayers and other concerned persons.

(Trade Circular No. 1/2023 dated 29.03.2023- West Bengal)

- To keep the objective of transparency and accountability in the administration of GST laws through widespread use of information technology, the Directorate of Commercial Taxes is implementing a system of electronic generation of Document Identification Number (DIN), hereinafter to be referred to as

'WBGST DIN', for those communications under GST that cannot be generated through GSTN portal, to be sent by the officers to the taxpayers or other concerned persons. Initially the WBGST DIN would be used for summons, arrest memos, search authorizations, inspection notices, recovery proceedings etc., relating to a taxpayer/ taxable person/any person, as the case may be.

- This measure would create a digital directory for maintaining a proper audit trail of such communications. Besides, it would provide the recipients of such communications a digital facility to ascertain the genuineness of such communications. Subsequently, WBGST DIN may be extended to other communications.
- Specified certain exceptions and circumstances wherein DIN may not be required.
- Prescribed a format for communication of post facto WBGST DIN and DIN structure.
- The genuineness of such communication can be ascertained by the recipient (taxpayer/ taxable person/any person) through the website of the Directorate of Commercial Taxes (https://www.wbcomtax.gov.in) using the WBGST DIN itself.
- The trade circular is effective from 01.04.2023.

TATTVAM GROUP

TATTVAM ADVISORS

TATTVAM VALUERS

TATTVAM CAPITAL

TATTVAM & Co. CHARTERED ACCOUNTANTS

CONTACT US

JD-2C, 2nd Floor, Pitampura, Metro Pillar No. 355, New Delhi- 110034

No. 1371, Sri Nikethan, 1st Floor, 31st B Cross Road, 4th T Block East, Jayanagar Bengaluru, Karnataka - 560041

501, Sheetal Enclave, Mindspace, Nr. Tangent Showroom, Off New Link Road, Malad (W), Mumbai - 400064, India

301, 3rd Floor, V3A Square Near Shailendra Nagar Under Bridge, Priyadarshani Nagar, Pachpedi Naka, Raipur, Chhattisgarh-492001

www.tattvamadvisors.com

info@tattvamadvisors.com
indirecttax@tattvamgroup.in

+91 9953 107 107 / +91 9650 777 079 / +91 9818 651 716 / +91 11 4904 0239