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NEWSLETTER

How are accountants using AI capabilities?

GST CASE LAW COMPENDIUM

CHAIRMAN'S MESSAGE

CA SHINE P. JOSEPH
CHAIRMAN

Namasthe!

Wishing each one of you a peaceful month ahead!

Dear Professional Colleagues,

I wish you all a very happy financial year 2024-25. Financial year commence on 1st April 2024 .Let the financial year herald a wonderful professional and personal life in the family our professional fraternity and bring laurels to our profession. Let the financial year usher in a new era in our contribution to the society.

Most of you must be getting ready for Bank Branch Audits and I wish you a smooth conduct of the audit within the stipulated time limits. Lot of changes have happened in the Indian economy during the last six months such as demonetisation and one needs to consider the same while doing the Bank Audit. Lot of initiatives and activities have been proposed to be taken up which are covered under Announcements in this newsletter.

We had hosted a CPE seminar on Advance Excel for Chartered Accountants & Discussion on Finance Bill, 2024 and Taxation of Non-resident Artistes or Sportspersons' and it was conducted in two sessions and technical session one was Advance Excel for Chartered Accountants by CA.Sudhakaran K.V, and the resource persons for the technical session two was CA Amit Rustagi, Gurgaon. The sessions where wonderful and a great success.

A CPE seminar 'Accounting Standards for Company Audit & GST Audit' done at Vijaya International convention centre Thiruvalla, the sessions handled by CA.Amal Paul and CA.Jatin Christopher.

As days pass by the challenges faced by professionals are on the rise and it is all the more important that we always stay alert and updated, so that we are able to continue our good work without compromising on our ethical values. Let us continue the process of learning, unlearning and re-learning, as this is the only way we can keep pace with the dynamic business environment.

Jai Hind! Jai ICAI!

CA Shine P. Joseph
CHAIRMAN

CPE Seminar on ' Advance Excel for Chartered Accountants & Discussion on Finance Bill, 2024 and Taxation of Non-resident Artistes or Sportspersons'




CPE Seminar on Accounting Standards for Company Audit & GST Audit






How are accountants using AI capabilities?

CA. SABU THOMAS

Although AI techniques such as machine learning are not new, and the pace of change is fast, widespread adoption in business and accounting is still in early stages. In order to build a positive vision of the future, we need to develop deep understanding of how AI can solve accounting and business problems, the practical challenges and the skills accountants need to work alongside intelligent systems.

ACCOUNTING PROBLEMS

Accountants apply their technical knowledge about accounting and finance to help businesses and stakeholders make better decisions. To support their decision-making and advice, accountants need high quality financial and non-financial information and analysis. This is reflected in a wide range of accountancy roles across business and practice to capture, prepare, check and communicate information, to undertake analysis, and to make a wide variety of decisions. Accountants have been deploying technology for many years to help them provide better advice and make better decisions. Technology can help them do this by solving three broad problems:

- providing better and cheaper data to support decision-making;
- Generating new insights from the analysis of data; and
- freeing up time to focus on more valuable tasks such as decision-making, problem solving, advising, strategy development, relationship building and leadership. The very nature of machine learning techniques lend themselves to substantial improvements across all areas of accounting, and can equip accountants with powerful new capabilities, as well as automate many tasks and decisions. Therefore, it is important to identify accounting and business problems where machine learning is likely to be particularly fruitful and where problems may be less suitable for these techniques. This will ensure that adoption efforts are driven by business need, rather than simply technology capabilities. To date, there has been limited use in real-world accounting but early research and implementation projects include:
- using machine learning to code accounting entries and improve on the accuracy of rules based approaches, enabling greater automation of processes;
- improving fraud detection through more sophisticated, machine learning models of 'normal' activities and better prediction of fraudulent activities;
- using machine learning-based predictive models to forecast revenues; and
- improving access to, and analysis of, unstructured data, such as contracts and emails, through deep learning models.

NEXT STEPS

ICAEW's future work on AI will focus on building understanding of the practical use of AI across business and accounting activities today and in the near future. In addition, it will lead and encourage wider debate about the long-term opportunities and challenges.

TRUSTED INFORMATION SOURCE

ICAEW has a unique place as an independent, professional body with long-standing expertise in technology-related

issues, and which draws on experience across many aspects of business, finance and accounting. This enables it to provide information to many stakeholders that gets beyond the hype typical of many technologies, and grounds discussion in a deep understanding of the business and accounting environment.

This provides a strong platform to build and share understanding of the specific application of machine learning technologies. We also support other stakeholders in the profession who need to understand the capabilities and issues here, including:

- Educators and training providers, who are considering the future skills of accountants;
- Regulators, who are considering the risks attached to new technologies; and
- Governments and policymakers.

INSTITUTIONAL PARTNER

Working across disciplines is an essential part of building learning and capabilities in this area. ICAEW is keen to work with other organisations in many other disciplines to support thinking about the short and longer-term impacts of AI technologies. This includes:

- Accountants working in business and practice and in small and large organisations, who can reflect the diverse range of experience across the profession;
- Computer scientists and machine learning experts, who understand the strengths and limits of techniques;
- Software providers who are developing solutions for accounting problems using AI; and
- Other experts and professions who are facing similar opportunities and threats from AI. This approach was demonstrated in a multi-disciplinary workshop held in early 2017 on AI in audit and forensic accounting, as outlined below

ANOMALY DETECTION IN FLIGHT PATHS AND AUDIT

In January 2017, ICAEW held a joint workshop with Portsmouth University that brought together accounting academics, researchers into machine learning and practitioners from audit and forensic accounting. The multi-disciplinary approach encouraged sharing of different perspectives from machine learning and accounting to identify relevant accounting problems and discuss the kinds of capabilities offered by machine learning techniques.

Discussions drew on experience of modelling 'normal' flight paths, which demonstrated the benefits of building a model of 'normal' based on machine learning, as well as the practical challenges and limits. Such models could have potential application in areas of audit or forensic accounting, where there is a need to identify fraudulent behaviour or errors.

HUB FOR INNOVATIVE THINKING

It is also essential to encourage innovation to exploit capabilities and develop new ways of adding value to clients and businesses. While individual firms and businesses will innovate based on their specific needs, there may be opportunities for collaboration to encourage broader innovation.

- In areas where the business case for investment may be weaker, there may be opportunities to share some of the effort and resource.
- There may be significant benefits from sharing data to build better models or models which reflect shared goals. ICAEW will actively explore ways in which it can help the profession to think more radically about a future working with AI, and translate innovative ideas into practice.

In this articls, Images are created using with the help of AI

GST CASE LAW COMPENDIUM – APRIL 2024 EDITION

CA. Ritesh Arora

1.	Whether two parallel proceedings in respect of the same period are permissible?
2.	Whether the GST registration of the deceased person can be cancelled retrospectively on account of non-filing of returns?
3.	Whether the Demand Order can be passed without issuing the Show Cause Notice?
4.	Whether Appeal can be allowed where pre-deposit is made through Form GST DRC-03 due to technical glitch?
5.	Whether the DGGI have the power to seize cash from the premises of any person?
6.	Whether Confiscated goods and vehicles can be released by depositing 25% of the amount mentioned in the Order in cash and furnishing a bank guarantee for the balance?
7.	Whether GST can be demanded based on figures in Profit and Loss Account?
8.	Whether GST registration should be cancelled retrospectively when the SCN issued is vague in nature and no opportunity was granted to file objection?
9.	Whether typographical or clerical error in e-way bill is a ground for imposition of penalty?
10.	Whether medical reason is a valid reason for condoning delay in filing an Appeal before the Appellate Authority?
11.	Whether the time limit to file appeal before Appellate Tribunal is extended since the Appellate Tribunal is not constituted?
12.	Whether refund claim should be rejected when refund application filed under wrong category?

13.	Whether a Proper Officer can pass an order without considering the relevant facts?
14.	Whether Taxpayer is entitled to claim refund under Inverted Duty Structure even in case of same inward and outward supplies?
15.	Whether ITC can be denied when not claimed in GSTR-3B but claimed in GSTR-9 and reflected in GSTR-2A?
16.	Whether Writ jurisdiction can grant a waiver of statutory pre-deposit condition for filing appeal?
17.	Whether Section 5 of the Limitation Act is applicable for appeal filed under GST?
18.	WhetherSCN can be issued ifthe GST liability paid with Interest before the issuance of SCN?
19.	Whether the GST Registration can be cancelled based on vague SCN?
20.	Whether ISD is eligible to transition ITC available on the Appointed Day?
21.	Whether a vague orders sustainable under the law?
22.	Whether Central GST Authority can initiate proceedings when State GST Authority has already initiated proceedings on the same subject matter?
23	Whether the Appellant can remit the amount of pre-deposit from attached bank accounts for filing an appeal?
24.	Whether ITC can be denied in case of bonafide errors in filing GST returns where there is no loss of revenue?
25.	Constitutional validity of Section 16(2)(c) of the CGST Act challenged
26.	Whether ITC is available in relation to construction of immovable property, which is further let out for commercial purpose?

Whether two parallel proceedings in respect of the same period are permissible?

No, the Honorable Guwahati High Court in the case of **SubhashAgarwalla v. State of Assam [Case No. WP(C)/ 683/2024 dated February 12, 2024],** held that once a proceeding is initiated either in the Central Goods and Services Tax Act, 2017 or the State Goods and Services Tax Act, 2017, another proceeding for the same period under other Act cannot be initiated. Therefore, the operation of the Order-in-Original was to remain suspended till the returnable date.

The Honorable Guwahati High Court observed that Section 6(2) of the CGST and SGST Act which inter alia indicates that once a proceeding is initiated either of the above two acts, another proceeding for the same period under the other Act is not to be initiated, the operation of the Impugned Order shall remain suspended till the returnable date.

Author's Comments: As per Section 6(2)(b) of the CGST Act, if a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter. In the considered opinion of the author, there is no bar under the law that once a proceeding is initiated for a particular period by the CGST department, no proceedings can be issued by the SGST or UTGST authorities for the same period. The only bar that the statute places is regarding proceedings based on the same cause-of-action and same subject matter (in a few circumstances, even for the same cause-of-action, parallel proceedings are permissible).

Important to highlight here that cross-empowerment is allowed for proceedings carried out under section 67 only and for the rest of the proceedings, where there is no evasion of tax involved, the Proper officer to issue Show Cause notice under section 73/74 is the jurisdictional department (either CGST or SGST).

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Whether the GST registration of the deceased person can be cancelled retrospectively on account of non-filing of returns?

No, the Honorable High Court of Delhi in the case of **R. Trading Co. v. Commissioner of Delhi Goods and Services Tax [Writ Petition (Civil) No. 809 of 2024 dated February 05, 2024]** held that GST registration cannot be canceled with retrospective effect mechanically. It can be canceled only if the proper officer deems it fit to do so. In the instant case, there was nothing on record to show that the deceased was not making requisite compliances. Therefore, retrospective cancellation was not warranted but the GST registration was canceled with effect from the date of demise of the sole proprietor.

The Honorable High Court of Delhi observed that in terms of Section 29(2) of the CGST Act, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be canceled with a retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

The Honorable Court noted that the proper officer is also required to consider that if the taxpayer's customers are denied the Input Tax Credit availed in respect of the supplies made by the taxpayers during such period while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be canceled with retrospective effect only where such consequences are intended and warranted.

Author's Comments: Section 29(2)(c) of the CGST Act provides for the cancellation of registration where the registered person fails to furnish returns for a continuous period of 6 months. The proper officer is permitted to proceed with cancellation and pass a speaking order inREG19. But the important question is whether any order can be passed against a dead person.

The Order XXII Rule 1 of the Code of Civil Procedure1908, which is reproduced for reference as follows:

"(1) the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives."

Due to the death/demise of a person, all the proceedings against such person stand abated. Further as per section 169 of the CGST Act 2017, service of any notice, order, or communication against such person is neither validly served to said person nor it must be accepted on account of such person by another person.

The Apex Court in the case of CIT v. Scindia Steam Navigation Co. Ltd.1961 AIR SC 1633, held that:

"...it is well settled that no mandamus will be issued **unless the applicant had made a distinct demand on the appropriate authorities** for the very reliefs which he seeks to enforce by mandamus **and that had been refused."**

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Whether the Demand Order can be passed without issuing the Show Cause Notice?

No, the Honorable Allahabad High Court in the case of **Yash Building Material v. State of Uttar Pradesh [Writ Tax No. 1435 of 2022 dated January 31, 2024]**, held that a demand order passed without the issuance of a Show Cause Notice is without legal basis and are required to be quashed.

The Honorable Allahabad High Court directed that the Respondents proceed in the matter after issuing SCN under Section 74(1) of the UPGST Act and held that proper SCN was not issued to the Petitioner. Therefore, all the Impugned Orders were baseless and were issued without any basis of law. Hence, the Impugned Orders were quashed and set aside.

Author's Comments Important to highlight here that the intimation in FORM DRC-01A issued under section 73(5)/74(5) is communication of liability ascertained by the Proper officer and by no measures of standard can be regarded as the Show Cause Notice issued to demand and recover dues from the taxpayers.

The taxpayer is denied justice at the threshold itself by not issuing a SHOW CAUSE NOTICE to create any demand and recover taxes. Similar views were given by the Honorable Apex court in the case of Menaka Gandhi v. UoI&Ors AIR 1978 SC 597; State of Orissa v. Dr (Mrs.) BinapaniDey & Ors. AIR 1967 SC 1269.

Another common issue surfacing is the issuance of DRC-01 (summary of demand) without issuing SCN. Most of the state authorities are following this practice. This practice is contrary to the law and the judicial pronouncements where justice is denied to the first step itself to demand and recover taxes along with interest and penalty without issuing a valid SCN.

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Whether Appeal can be allowed where pre-deposit is made through Form GST DRC-03 due to technical glitch?

Yes, the Honorable Andhra Pradesh High Court in the case of **Manjunatha Oil Mill v. Assistant Commissioner** (ST) [W.P. No. 2153 of 2024 dated February 2, 2024] set aside the Impugned Rejection Order in the case where the appeal filed was rejected on the ground that, pre-deposit was made

through Form GST DRC-03 instead of the required Form APL-01, due to technical glitch.

The Honorable Andhra Pradesh High Court set aside the appeal rejection order and remanded back the matter to the Respondent for further consideration on factual aspects and condonation of delay.

Author's Comments: This is a welcome judgement by the Honorable Court. Appeals must not be rendered defective based on such technical issues. It is also expected out of Appellate authority to pass speaking orders for rendering any APL-01 defective.

In the coming times when Appellate Tribunals will be constituted, a major challenge will be faced by the taxpayers in admission of Appeal before GSTAT. Currently, a lot of taxpayers have paid the pre-deposit required under section 112(8) of the Act through form DRC-03, as there is no provision to file an APL-05 form for filing an appeal before the Appellate Tribunal. When the form APL-05 is live on the portal, such taxpayers would be liable to make a further pre-deposit in order to file APL-05 since the online module would not permit filing the appeal without such pre-deposit, considering the negative construct in section 112(8).

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Whether the DGGI have the power to seize cash from the premises of any person?

No, the Honorable Delhi High Court in the case of **M/s. K.M. Food Infrastructure Pvt. Ltd. v. The Director General, DGGI [Writ Petition (Civil) 328 of 2024 dated February 13, 2024]** held that the word "things" appearing in Section 67 of the Central Goods and Services Tax Act, 2017 does not include "money". The CGST Act does not support such an action of forcibly taking over the possession of currency from the premises of any person. Therefore, the action on the part of the DGGI to seize the cash was illegal and arbitrary.

The Honorable Delhi High Court observed that sub-section (2) of Section 67 of the CGST Act specifies the power to seize the goods. If the Proper Officer has reasons to believe that any goods which are liable for confiscation or any documents or books or things which in his opinion would be useful and relevant for any proceedings under the CGST Act are secreted at any place, he may either search or seize the said goods, documents or books or things. The Second Proviso to sub-Section (2) of 67 of the CGST Act clarifies that insofar as the seized documents or goods or things are concerned, the same shall be retained only so long as it is necessary for their examination and any inquiry or proceedings under the Act. Further opined that sub-section (7) of Section 67 of the CGST Act specifies that where the goods are seized under sub-section (2) of Section 67 of the CGST Act and no notice, in respect thereof is given within six months of the seizure of the goods, the goods are required to be returned to the person from whom the same was seized. This period of six months can be extended by a further period not exceeding six months on sufficient cause being shown under proviso to Section 67 (7) of the CGST Act. Further, in the current case the cash was seized vide Panchnama dated October 04, 2021, and in accordance with sub-section (7) of Section 67 of the CGST Act thereof, when no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. On this ground also, the Petitioners are entitled to the return of resumed cash. The Honorable Court opined that cash is clearly excluded from the definition of the term 'goods' as the same falls squarely within the definition of the word 'money' as defined in Sub-section (75) of Section 2 of the Act and relied on the judgment in case of **Shabu George v. State Tax Officer (IB), State GST Department, Aluva (2023) 9 Centax 28 (Ker.),** where the question was whether the word "thing" in the CGST Act would include cash, the Division Bench of the Kerala High Court held that the power of any authority to seize any "thing" while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned. The aforesaid decision of the Kerala High Court received the stamp and approval of the Honorable Supreme Court, since as the Special Leave Petition was dismissed.

Further relied on **Deepak Khandelwal Vs. Commissioner of CGST Delhi West (2023) 9 Centax 244 (Delhi),** the Court held that the power under Section 67 of the CGST Act cannot be read to extend to enable the seizure of assets on the ground that the same are not accounted for.

The Honorable Court observed that there is no evidence that the cash so seized was representing the sale proceeds of unaccounted goods. Therefore, it could not have been seized under the provisions of the CGST Act as the seizure is limited to the goods liable for confiscation. Therefore, there is no reason for the retention of the cash amount by the Respondents and held that the action on the part of the Officers of the Respondents seizing the cash was illegal and arbitrary.

Author's Comments: It is important to note that even cash must be 'secreted' to qualify for the seizure but, more importantly, cash is not 'goods liable to confiscation' under section 130(1) but are 'things' which are considered "useful or relevant" by the Authorized Officer to carrying out "any further proceedings". What, therefore, can be the 'use or relevance' of cash to be seized? There is a popular, mysterious, and erroneous understanding that 'cash' is illicit if discovered in search proceedings. Officers tend to seize cash without even ascertaining to whom it belongs. 'Cash' seizure does not directly point to proceeds from unaccounted ales. That would have been easy but the Legislative wisdom is that (i) 'Evasion of tax is a must for proceedings under section 67 to be with the jurisdiction and lawful and (ii) No presumption flows in favor of the Revenue, especially, when cash may be treated to be 'things' and not 'consideration from supply'. After all, 'things' seized can only be if they are"useful or relevant" for that Authorized Officer in carrying out "any further proceedings".

A similar decision was given by the Honorable Gujarat High Court in the case of **M/s. Bharat Kumar Pravin Kumar and Co. v. State of Gujarat [Special Civil Application No.26222 of 2022 dated October 26, 2023, and** by the Honorable Kerala High Court in the case of **Shabu George v. State Tax Officer (IB) [WA No. 514 of 2023 dated March 23, 2023].**

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Whether Confiscated goods and vehicles can be released by depositing 25% of the amount mentioned in the Order in cash and furnishing a bank guarantee for the balance?

Yes, the Honorable Punjab and Haryana High Court in the case of **M/s. Kanchan Supplier v. State of Punjab and Ors. [Civil Writ Petition No. 1629 of 2024 dated January 24, 2024]** held that the Taxpayer has the right to appeal against the Order. Further, the vehicle and the goods confiscated shall be released upon furnishing 25% of the amount mentioned in the Impugned Order and the outstanding balance shall be secured by furnishing a bank guarantee.

The Honorable Punjab and Haryana High Court relied on the case of the **State of Punjab vs. M/s. Shiv Enterprises and others [2023 (96) GST 120]**, wherein the Honorable Apex Court set aside an order passed by the High Court on the ground that it was premature for the High Court to quash the show cause notice issued under Section 130 of the CGST Act by invoking Article 226 of Constitution of India. Further, the contention raised that the consignee, being local as such, would furnish the surety bonds is not liable to be accepted since the consignee is not before the bench and they cannot direct the said person to furnish any surety bonds.

Hence, the writ petition was disposed of with the liberty to challenge the Impugned Order.

Author's Comments: Post amendment made in section 130 effective from 01 January 2022 by virtue of Finance Act, 2021, it is extremely important for the department to conclude proceedings under section 129 by issuing MOV 9 to proceed to confiscate goods (issue SCN MOV 10). No confiscation is possible without the seizure of goods. Any proceedings under section 130 without concluding proceedings under section 129 (when section 67 is not invoked) by issuing an order under section 129 i.e. MOV 09 are in excess of the jurisdiction conferred to the proper officer and against the legislative mandate.

Seizure can be done only u/s 67(2) and 129(1). Confiscation ends if the physical custody over the offending goods is lost. Section 67(6) read with Rule 140 and section 129(1)(c) provides for provisional release of seized goods or conveyance.

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Whether GST can be demanded based on figures in Profit and Loss Account?

No, the Honorable Madras High Court in the case of **M/s. Ralco Synergy Pvt. Ltd. v. Joint Commissioner of State Tax and Ors. [W.P. No. 5554 of 2024 dated March 5, 2024]** set aside the Impugned Order passed by the Revenue Department, thereby holding that GST demand cannot be raised based on figures in the Profit and Loss Account.

The Honorable Madras High Court noted that the Respondent Assessing Officer relied upon the total expenditure and revenue of the corporate entity on all India bases and the profit and loss account of the Petitioner was the basis for issuance of the Impugned Order. The Honorable Court opined that the Impugned Order has been issued without any application of mind and held that the Impugned Order is quashed and the matter is remitted back for reconsideration after depositing 5 percent of the disputed tax demand.

Author's Comments: There is an urgent need to understand that linear comparison of figures is meaningless in GST. Yes, it may raise suspicion but no adverse inference can be made regarding non-payment, short-payment, or evasion of taxes.

In this particular case, Output tax is demanded citing data differences without stating (i) the nature of supply (ii) the taxability of the same (iii) the HSN code (iv) the time of supply, and (v) the place of supply. Without these taxing ingredients, any demand for output tax is arbitrary and illegal.

This principle has been laid by the Honorable Apex Court in the case of Govind Saran Ganga Saran v. CST &Ors. AIR 1985 SC 1041, where it was held that 'four ingredients' are required to be present in any proceedings to demand tax.

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Whether GST registration should be cancelled retrospectively when the SCN issued is vague in nature and no opportunity was granted to file objection?

No, the Honorable Delhi High Court in the case of **M/s. Friends Media Add Company v. Principal Commissioner of Goods and Service Tax [W.P.(C) No. 1260 of 2024 dated February 12, 2024]** modified the GST cancellation order to operate prospectively from the date of issuance of the SCN thereby holding that GST registration should not be canceled retrospectively when the SCN issued is vague in nature and no opportunity was granted to file objection against retrospective cancellation.

The Honorable Delhi High Court observed that as per Section 29(2) of the Central Goods and Services Act, 2017, the Proper Officer is empowered to cancel GST registration of a person from a certain date including retrospective date, if the circumstances enumerated in sub-section (2) of Section 29 of the CGST Act are satisfied. Also, the registration cannot be canceled with a retrospective date mechanically and must be based on objective criteria.

The Honorable Court noted that merely because a taxpayer has not filed a return for some period should not lead to cancellation of taxpayer registration from retrospective date, also covering the period for which the returns have been filed and tax has been paid. Further noted that the proper officer is required to take into consideration the fact that, the cancellation of Petitioner registration retrospectively, would lead to denial of credit to the Petitioner customers with respect to the supplies made during the said period. The Honorable Court noted that the SCN does not give the Petitioner to notice that the registration is liable to be canceled retrospectively and opined that the Petitioner was not granted any opportunity to raise objection with respect to cancellation of GST registration retrospectively.

Author's Comments: This is a welcome decision by the Honorable High Court of Delhi and it comes to the rescue of the taxpayer once again the Rule of Land stands tall against the over-passionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law. A similar judgment was passed in the case of Singla Exports v. Central Board of Indirect Taxes and Customs & Ors W.P. (C) 2732 of 2023 dated August 09, 2023 by the Honorable Delhi High Court and in the case of Rishiraj Aluminium Pvt. Ltd. v. Goods and Services Tax Officer [W.P. (C) No.4125 of 2023 dated April 17, 2023 by the Honorable Delhi High Court.

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Whether typographical or clerical error in e-way bill is a ground for imposition of penalty?

No, the Honorable Allahabad High Court in the case of **Hawkins Cookers Ltd. v. State of UP [Writ Tax No. 739 of 2020 dated February 12, 2024]** set aside the penalty orders and held that the typographical or clerical error in the e-way bill is not a ground for imposition of penalty when most of the required documents are accompanied with the goods supplied.

The Honorable Allahabad High Court observed that for imposition of penalty under Section 129 of the Central Goods and Services Tax Act, 2017, the intention to evade tax is important. The existence of intention may be presumed by the Department when the rules are not complied with. Further, the presumption of evasion of tax is rebuttable when material pertaining to supply of goods is provided by the owner/transporter. The Honorable Court noted that when there is a typographical or clerical error in the e-way bill, and most of the documents required are accompanied by the goods, a presumption to evade tax does not arise and opined that mere technical error committed by the Petitioner should not lead to imposition of harsh penalty upon the Petitioner. Therefore, the penalty imposed in the present case is without any imposition of law.

Author's Comments: As per Circular No.64/38/2018 dated 14.09.2018, a general penalty under section 125 of the GST Act must be imposed in case of minor breaches or discrepancies.

In the Author's opinion, all the discrepancies in relation to the movement of goods except the fatal errors like non issuance of tax invoices are to be treated as minor discrepancies and no penalty u/s 129 of the GST Act can be imposed.

As per Section 129 and Rule 138A of the GST Act, until and unless mensrea exists and is proved, all the errors

and omissions have to be termed as non-fatal errors and no penalty under section 129 can be imposed.

The Honorable Supreme Court of India has decided on the same issue in the case of **Assistant Commissioner ST &Ors. Versus Satyam Shivam Papers Pvt. Ltd. [Special Leave to Appeal (C) No(s).21132/2021 dated January 12, 2022].**

Similar orders were passed by the Honorable Tripura High Court in the case of **NE Equipment Solutions Pvt. Ltd. Versus The State of Tripura and others [WP(C) No.577/2021] dated August 24, 2021**and also a similar judgment was passed by the Honorable Gujarat High Court in the case of **M/s. Shree Govind Alloys Pvt. Ltd. Versus State of Gujarat (R/Special Civil Application No. 23835 of 2022) dated December 01, 2022.**

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Whether medical reason is a valid reason for condoning delay in filing an Appeal before the Appellate Authority?

Yes, the Honorable Madras High Court in the case of **M/s. Great Heights Developers LLP v. Additional Commissioner Office of the Commissioner of CGST & Central Excise, Chennai [Writ Petition No. 1324 of 2024 dated February 01, 2024]** allowed the appeal before the Appellate Authority and held that if the Taxpayer demonstrates that the delay in filing appeal was due to valid mitigating circumstances such as medical condition then the Appellate Authority can condone delay and consider appeal on its merits.

The Honorable Madras High Court noted that under Section 107 of the CGST Act, the Appellate Authority does not have the power to condone delay beyond 120 days i.e., sub-section (4) of Section 107 of the CGST Act, the appeal can be filed within the period of three months or six months, as the case may be, allow it to be presented within a further period of one month. In the current case, the period of further delay is only 24 days and the Petitioner has provided cogent reasons to explain such delay. It is pertinent to note that the Petitioner has paid the entire tax liability and the proposed appeal is limited to penalty and interest. The Honorable Court held that the Appellate Authority receive and dispose of the appeal on merits if the appeal is received within a maximum period of ten days from the date of receipt of a copy of this order.

Author's Comments: Belated appeals are permitted up to a maximum of one month under section 107(4) after the end of the due date for filing under section 107(1) or (2/3). Appellate Authority has power to condone delay, but this power cannot be expected by the Appellant to be exercised in a routine manner and automatically Condone the delay. Limitation Act, 1963 states in section 5 and 14 that "sufficient cause" must be shown to justify the delay.

The principle of law is that when the time to file an appeal lapses, the counterparty gets a visited right (or advantage or benefit from such failure) which cannot be denied by condonation of appeal in a routine and mechanical manner without 'good and sufficient' reasons.

When an appeal is filed after the period of condonation permitted in section 107(4), the Appellate authority does not have statutory authority to condone the delay, not even if the reasons are ample and deserve to be entertained. The appeal must be dismissed for being fatally belated because the Legislature has allowed Appellate authority this much authority and not more.

The Honorable Apex court has declared in **Singh Enterprises v. CCE 2008 (221) ELT 163** that where the period of limitation is specifically provided in the statute admitting appeals albeit for 'sufficient cause' would render statutory provisions impossible. And Appellate Authority thus being the denuded of authority to condone (due to lapse of maximum time permitted) is barred and examining the cause, much less its sufficiency.

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Whether the time limit to file appeal before Appellate Tribunal is extended since the Appellate Tribunal is not constituted?

Yes, the Honorable Calcutta High Court in the case of **G.L. Kundu and Sons. Steel (P) Ltd. v. Deputy Commissioner State Taxes [WPA No. 2462 of 2023 dated January 08, 2024]** disposed of the writ petition, thereby holding that the time limit to file an appeal before the Appellate Tribunal is extended since the Appellate Tribunal is not yet constituted.

The Honorable Calcutta High Court observed that the Circular No. 132/2/2020 dated March 18, 2020, was issued by the Revenue Department wherein clarification was issued pertaining to the non-constitution of the Appellate Tribunal. The Honorable Court relying upon the judgment of the Honorable Bombay High Court in the case of Rochem India Pvt. Ltd. v. Union of India and Ors.[WP No. 10833 of 2019 dated February 08, 2023], noted that the period of the limitation was extended as the non-constitution of the tribunal was causing hardship to the Taxpayer, and interim protection can be granted by way of a writ petition for the limited period.

The Honorable High Court opined that this court is inclined to entertain the present writ petition for the limited purpose of granting interim protection to the Petitioner and held that the period of filing of the appeal before the Appellate Tribunal is extended as per the Circular.

Author's Comments: This is a laudable judgment by the Honorable Court to give the desired relief to the aggrieved taxpayer. The CBIC issued Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03 December 2019 in exercise of powers given under section 172 of the CGST Act, 2017, and also issued circular no. 132/2/2020-GST dated 18th March 2020 to clarify that the appeal to the tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later (Para 4.2 of the circular). Hence, the time to file appeal before Appellate Tribunal is extended. The only question that remains is whether or not additional pre-deposit as required under sub-section 8 of section 112 of the Act is to be made or not for stay of operation of the order under section 107/108 because CGST (Removal of Difficulties) order 9/2019-Central Tax dated 03 Dec 2019 read with circular 132/2/2020 does not expressly stay any recovery under section 79.

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Whether refund claim should be rejected when refund application filed under wrong category?

No, the Honorable Madras High Court in the case of **Engineers India Ltd. v. Assistant Commissioner (Central Tax) [W.P. No. 26927 of 2021 dated February 07, 2024]** set aside the Impugned Order and held that the refund claim should not be rejected on the ground that the refund application was filed under wrong category. The Honorable Madras High Court noted that the refund claim cannot be rejected on the ground that refund claim does not fall within the specific categories enumerated in the Circular. Section 54(1) of the Central Goods and Services Tax Act, 2017 is wide enough to include any kind of refund of tax or interest if the claim is made within two years from the relevant date and opined that the Impugned Order was issued without stating any adequate reason for rejection of refund claim, thereby, the writ petition was disposed of.

Author's Comments: Apex court has held that unjust enrichment does not apply to state by the principle of parenspatriae in para 74 of Mafatlal Industries ibid, and even in the absence of an express provision in the statute barring

enrichment of taxpayer from collecting refund of tax after having passed on its incidence under a misinformation about the applicable law, article 39 of the Constitution proscribes state from perpetuating unjust enrichment.

Except in cases where refund is claimed of cash balance in ECL or by unregistered taxpayers and, in certain cases, of exports, the application for refund must be accompanied by proof against enrichment. In fact, in the case of a refund of output tax paid, there is a presumption in section 49(9) that the incidence has been passed on.

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Whether a Proper Officer can pass an order without considering the relevant facts?

No, the Honorable Madras High Court in the case of **Global Calcium (P.) Ltd. v. Assistant Commissioner (ST) [Writ Petition No. 170 of 2024 dated February 01, 2024]** held that the Assessing Officer must consider the relevant aspects before passing any order. Therefore, the case was remanded back to the Assessing Officer.

The Honorable Madras High Court observed that the Respondent did not take into consideration the balance sheet, Form-16, and FORM 26AS before passing the Impugned Order. The expenditure incurred by the Petitioner towards remuneration and performance-based incentives would have been reflected in the profit and loss account of the Petitioner for the relevant financial years. The deduction of tax under Section 192 of the Income Tax Act, 1961 was a material fact, but is not conclusive. Ultimately, the test is whether such remuneration was paid towards services provided as an employee of the company or whether services were provided under a contract for service for fees or other considerations.

Author's Comments: **Circular No. 140/10/2020-GST dated June 10, 2020, Para 5.3** clarified that the part of the Director's remuneration that is declared as 'Salaries' in the books of a company and subject to TDS under Section 192 of the IT Act is not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the Central Goods and Services Tax Act, 2017.

This is a welcome decision by the Honorable High Court of Madras and it comes to the rescue of the taxpayer and once again the Rule of Land stands tall against the over-passionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.

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Whether Taxpayer is entitled to claim refund under Inverted Duty Structure even in case of same inward and outward supplies?

Yes, the Honorable Kerala High Court in the case of **M/s. Malabar Fuel Corporation v. Assistant Commissioner Central Tax & Central Excise [WP (C) No. 26112 of 2023 dated January 11, 2024]** allowed the writ petition and held that the Taxpayer is entitled to claim refund under Inverted Duty Structure even in case of same inward and outward supplies.

The Honorable Kerala High Court observed that as per clause (ii) of Section 54(3) of the CGST Act, the Taxpayer is permitted to claim refund of tax, in case where the credit is accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, or supplies of goods or services or both as notified by the Central Government on the basis of recommendation of GST Council.

The Honorable Court noted that as per Section 54 of the CGST Act, the refund of ITC should not be denied when the supplies do not fall within the purview of the exceptional clause and credit has accumulated on account of rate of tax on input being higher than rate of tax on output supplies.

Relying upon the judgment of Honorable Guwahati High Court in the case of **BMG Informatics Private Limited v. Union of India [WP (C) No. 3675 of 2021 dated September 2, 2021]**, Honorable Calcutta High Court in the case of **Shiva co Associates v. Joint Commissioner of State Tax [WPA No. 54 of 2022 dated March 11, 2022]** and Honorable Delhi High Court in the case of **Indian Oil Corporation v. Commissioner of Central Goods and Services Tax and Ors. [WP (C) No. 10222/2023 dated December 05, 2023]** opined that the condition laid down in the Circular pertaining to denial of refund of credit accumulated to a dealer in case when the tax on input is higher than the input supplies, in case where the input and output supplies are same, should not be taken into consideration and held that the Petitioner is entitled to refund of the ITC accumulated.

Author's Comments: A similar judgment was passed in the case of M/s. Nahar Industrial Enterprises Limited v. Union of India [Civil Writ Petition No. 8476 of 20/21 dated October 31, 2023] by the Honorable Rajasthan High Court (Jaipur Bench) wherein it was held that that refund ofInput Tax Credit can be claimed when there are multiple inputs having a higher rate of GSTthan the rate of GST on outward supplies. The Honorable Court relied upon the Circular No. 79/53/2018-GST dated December 31, 2018, and Circular No. 125/44/2019-GST dated November 18, 2019.

The department is currently rejecting the refund of accumulated credit where the inward and outward supplies are the same, citing circular no.135/5/2020-GST dated March 31, 2020. It is pertinent to mention here that this circular is issued under section 168 of the CGST Act, 2017 and it is binding on the Proper officers only. Section 54(3)(ii) provides for the refund of accumulated ITC under such circumstances.

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Whether ITC can be denied when not claimed in GSTR-3B but claimed in GSTR-9 and reflected in GSTR-2A?

No, the Honorable Madras High Court in the case of **Sri Shamunga Hardwares Electricals v. State Tax Officer [Writ Petition No. 3804 of 2024 dated February 20, 2024]** allowed the writ petition, thereby holding that Credit should not be denied when ITC claim is not reflected in Form GSTR-3B return in case where the Taxpayer filed nil return erroneously in Form GSTR-3B, but claimed ITC by relying upon Form GSTR-2A and Form GSTR-9.

The Honorable Madras High Court noted that when the registered person contends that he is eligible to claim ITC, by relying upon GSTR-2A and GSTR-9 returns, the Assessing Officer should examine whether the claim of ITC is valid by examining the required documents, further calling upon the registered person to provide the required documents. The Honorable Court opined that the entire claim of ITC was rejected by the Respondent on the ground that GSTR-3B did not reflect the ITC claim.

Author's Comments: As per section 39 read with section 41 and 59 of the CGST Act, the taxpayer is entitled to avail input tax credit when the input tax credit is claimed in GSTR-3B and credited to electronic credit ledger. There is no provision under section 44 (Annual return in GSTR-9) to avail input tax credit and the credit available in GSTR-2A does not ipso facto mean that all the conditions specified under section 16 of the CGST Act are fulfilled. The arguments presented by the government pleader were weak which resulted in such an order by the Honorable High Court.

Although this particular order does not have any binding precedent but it will certainly have referential value in the context of issues relating to section 16(4) inadmissibility.

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Whether Writ jurisdiction can grant a waiver of statutory pre-deposit condition for filing appeal?

No, the Honorable Supreme Court in the case of **Kantilal BhagujiMohite v. Commissioner, Central Excise and Service Tax-Pune III** [Special Leave to Appeal (C) No. (s). 11203/2019 dated February 14, 2024] dismissed the Petitioner's Special Leave Petition **("SLP")** against the Honorable Bombay High Court judgment, which dismissed the writ petition against the Tribunal order which denied the waiver of mandatory pre-deposit condition for filing a statutory appeal. The Honorable Bombay High Court found no merit in the Petitioner's plea that this Court, in writ jurisdiction, can waive this condition or relax or dilute its rigors.

Prior to the Judgment of the Honorable Bombay High Court, the Petitioner had advanced an argument that the CESTAT is not empowered to dismiss the appeal without adjudication on merits simply because the condition imposed by Section 35-F of the Central Excise Act, 1944 to obtain interim stay or relief against recovery is not complied with.

The Honorable Bombay High Court held that the Petitioner desired to have adjudication on merits without complying with this condition, and once the Tribunal found that condition was not complied with, it was not open to adjudicating the matter on merits. The High Court also observed that writ jurisdiction is not meant to benefit parties like the Petitioner or to enable him to get over the statutory condition of pre-deposit for filing an appeal imposed by Section 35-F of the Central Excise Act. The language of the Section clearly states that the Tribunal or Commissioner (Appeals), as the case may be, shall not entertain any appeal unless the pre-condition mandate is satisfied. Therefore, the Honorable Supreme Court held that they are not inclined to interfere in the matter.

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Whether Section 5 of the Limitation Act is applicable for appeal filed under GST?

No, the Honorable Allahabad High Court in the case of **M/s. Yadav Steels v. Additional Commissioner and Anr. [Writ Tax No. 975 of 2023 dated February 15, 2024]** dismissed the writ petition thereby holding that Section 5 of the Limitation Act, 1963 would not be applicable for appeal filed under Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017.

The Honorable Allahabad High Court observed that Section 107(4) of the UPGST Act allows an extension for a period of one month. Also, Section 107 aims to prevent undue delay in the adjudication process and promote effective administration of the GST regime.

The Honorable Court relying upon the judgment of Honorable Allahabad High Court in the case of M/s. Abhishek Trading Corporation v. Commissioner (Appeals) and Anr. [Writ Tax No. 1394 of 2023 dated January 19, 2024] noted that the Central Goods and Services Tax Act, 2017 is a special statute and a self-contained code in itself and Section 5 of the Limitation Act would not be applicable.

The Honorable Court opined that the judgment of the Honorable Calcutta High Court in the case of K. Chakra Borty and Sons. v. Union of India and Others. [MAT 81 of 2022 dated December 01, 2023, wherein it was held that Section 5 of the Limitation Act would be applicable as Section 107 of the CGST Act does not expressly or impliedly exclude the attraction of Section 5 of the Limitation Act would not be applicable in the present case.

Author's Comments: If the appeal is filed after the period of condonation permitted in section 107(4) (3+1 months), the Appellate authority does not have statutory authority to condone the delay, not even if the reasons are ample and deserve to be entertained. The appeal must be dismissed for being fatally belated because the Legislature has allowed Appellate authority this much authority and not more.

The Honorable Supreme Court has decided in **Singh Enterprises v. CCE 2008 (221) ELT 163** that where the period of limitation is specifically provided in the statute, admitting appeals albeit for 'sufficient cause' would render statutory provisions impossible. And Appellate Authority thus being the denuded of authority to condone (due to lapse of maximum time permitted) is barred from examining the cause and condone the delays even for a "good and sufficient" reason.

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WhetherSCN can be issued ifthe GST liability paid with Interest before the issuance of SCN?

No, the Honorable Telangana High Court in the case of **Rays Power Infra Pvt. Ltd. v. Superintendent of Central Tax [Writ Petition 298 of 2024 dated February 28, 2024]** held that if the taxpayer clears all the tax liability along with interest at any day, prior to the issuance of show cause notice, they would not liable for any further additional taxes by way of penalty or interest and the proceedings will be considered concluded.

The Honorable Telangana High Court observed that the audit report itself highlighted that the Petitioner had since cleared off all the tax liability and had also paid the relevant interest also up to date. Admittedly, the Impugned Notice was issued thereafter on April 20, 2022.

Section 73(5) of the CGST Act gives a clear indication that the framers of the law were very clear in mind that in the event if the taxpayer clears all the tax liability along with interest on any day, prior to the issuance of show cause notice, they would not be liable for any further additional taxes by way of penalty or interest. For this purpose, the provisions of Section 73(1) of the CGST Act and Section 73(5) of the CGST Act, both have to be read together which gives a clear indication that Sub-Section (5) of Section 73 of the CGST Act refers to even those payments which have been cleared by the taxpayers which were otherwise termed as wrongfully availed ITC.

Further observed that the Impugned Notice was issued under Sub-Section (1) of Section 74 and not under Sub-Section (1) of Section 73 of the CGST Act, the Court was of the firm view that Section 74 of the CGST Act would get attracted only in the event of their being strong materials available on record to show that the Petitioner had played fraud or there was any misstatement made by him and there being any suppression of fact. The applicability of Section 74 of the CGST Act would come into play only if the conditions stipulated in Section 73 of the CGST Act have not been met by the taxpayer in spite of the tax liability being brought to his knowledge. Then in the said circumstances, Section 74 of the CGST Act would automatically get attracted. Further, keeping in view the provisions of Sub-Sections (5) and (6), it will go to establish that once having discharged their tax liability also by paying interest on the said tax payable, and then no further proceedings could be drawn for the same tax any further. This view of the Bench, if tax is stipulated under Sub-Sections (1) and (3) is paid along with interest even after issuance of show cause notice, even then the penalty cannot be levied, and the notice proceedings shall be deemed to have been concluded.

The Honorable Court held that the passing of the Impugned Order and the Impugned Notice both are in excess of their jurisdiction, the same therefore deserves to be set-aside and are not sustainable in the eye of the law in terms of Sub-Sections (5) and (6) of Section 73 of the CGST Act. The Petitioner cannot be forced to undergo the entire process of litigation under the statute once the issuance of show cause notice itself was per se bad. Hence, the writ petition accordingly stands allowed.

Author's Comments: For the issuance of SCN under section 74 of the CGST Act, special circumstances of (a) fraud; (b) willful misstatements; or (c) suppression of facts to evade tax must be present. Interestingly section 75(2) of the Act provides a mechanism to downgrade SCN issued under section 74 to section 73 if the 'special circumstances' to invoke Section 74 are not proved.

Infraction of the law triggers the imposition of a penalty. Dispensation of a penalty in section 73(5) even in the face of an infraction of law places a burden on Revenue to bring the infraction of law beyond mere 'non-payment of tax or inadmissible claim of credit'. In other words, not every demand will automatically and irrefutably attract a penalty unless it can be shown that there was a necessary ingredient of animus or intent to commit such an infraction of law.

Penalty cannot be imposed mechanically.

This is a misplaced application of law to demand penalty under section 73/74 without demand for tax and underlying interest. General discipline given in section 122(2) read with section 126 needs to be followed for imposing penalty on 'Registered Person'.

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Whether the GST Registration can be cancelled based on vague SCN?

No, the Honorable Delhi High Court in the case of **NP Trading Co. v. Commissioner of GST** [W.P. (C) NO. 1399 OF 2024 dated February 09, 2024] set aside the Impugned Order thereby canceling Taxpayer GST registration on the ground that no details were provided in SCN relating to alleged invoices or bills made without the supply of goods or services.

The Honorable Delhi High Court held that the Impugned Order canceling the Petitioner GST Registration is liable to be set aside. The Honorable High Court further directed the Respondent to furnish the relevant material which has been relied upon for issuance of SCN and thereby adjudicate the SCN in accordance with law.

Author's Comments: This is a welcome decision by the Honorable High Court of Delhi and it comes to the rescue of the taxpayer and once again the Rule of Land stands tall against the overpassionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.

In parimateria case of **M/s. VAB Apparel LLP v. Commissioner, Delhi GST, and Ors [W.P.(C) 13642/2023 dated November 10, 2023]** the Honorable Delhi High Court decided the same. A similar judgment was passed in the case of **Singla Exports v. Central Board of IndirectTaxes and Customs &Ors W.P. (C) 2732 of 2023 dated August 09, 2023**by the Honorable Delhi High Court and in the case of**RishirajAluminium Pvt. Ltd. v. Goods and Services Tax Officer [W.P.(C) No. 4125 of 2023 dated April 17, 2023** by the Honorable Delhi High Court.

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Whether ISD is eligible to transition ITC available on the Appointed Day?

The Honorable Bombay High Court in the case of **Siemens India Ltd. v. Union of India [Writ Petition No. 986 of 2019 dated February 09, 2024]**, relying upon sub-section (7) of Section 140 of the Central Goods and Services Tax Act, 2017 adjourned the matter for further hearing and continued the interim stay granted in favor of Taxpayer being Input Service Distributor on the ground that, ITC which is legitimately available with the Taxpayer before the Appointed day, cannot be lost or lapsed, merely because of lack of effective procedural mechanism for ITC to be transferred to the Electronic Credit Ledger for utilization, thereby creating a situation of such ITC being permanently lost.

The Honorable Bombay High Court opined that appropriate examination of the aforesaid issues by the GST Council would assist the Court in the adjudication of the matter and held that the interim relief granted to the Petitioner would continue.

Author's Comments: Important to mention here that the Trans credit is neither the input tax as per Section 2 (62) of the CGST Act, 2017 nor the output tax as per Section 2 (82) of the CGST Act, 2017. Therefore, the transition credit claimed and utilized, even if found to be ineligible cannot be demanded under section 73 or 74 of the CGST Act as there is no jurisdiction with the proper officer under such provisions of the law. The transaction credit validly claimed cannot be distributed in the law.

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Whether a vague order sustainable under the law?

No, the Honorable Madras High Court in the case of **Rainbow Stones (P.) Ltd. v. Assistant Commissioner (ST) [W.P. No. 4510 of 2024 dated February 26, 2024]** allowed the writ petition, thereby setting aside the Assessment Order on the ground that the order is vague in nature and devoid of proper reasoning.

The Honorable Madras High Court set aside the Impugned Order as the Respondent Assessing Officer on the ground that the Impugned Order is vague in nature, based on which the demand of tax, interest and penalty was confirmed. The Honorable High Court directed that the matter be remanded back for reconsideration and passing of a fresh order after granting reasonable opportunity of hearing to the Petitioner.

Author's Comments

This is a welcome decision by the Honorable High Court of Madhya Pradesh and it comes to the rescue of the taxpayer once again and the Rule of Land stands tall against the over-passionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.

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Whether Central GST Authority can initiate proceedings when State GST Authority has already initiated proceedings on the same subject matter?

No, the Honorable Guwahati High Court in the case of **Rajesh Mittal vs. Union of India [WP(C) No. 371 of 2024 dated January 25, 2024]** relying upon the provision of sub-clause (b) of sub-section (2) of Section 6 of the Central Goods and Services Tax Act, 2017 stayed the proceeding initiated by the Revenue Department, thereby holding that Central GST Authority should not have issued the SCN when State GST Authorities have already issued SCN on the same issue.

Author's Comments: As per Section 6(2)(b) of the CGST Act, if a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter. In the considered opinion of the author, there is no bar under the law that once a proceeding is initiated for a particular period by the CGST department, no proceedings can be issued by the SGST or UTGST authorities for the same period. The only bar that the statute places is regarding proceedings based on the same cause-of-action and same subject matter (in few a circumstances, even for the same cause-of-action, parallel proceedings are permissible).

Important to highlight here that cross-empowerment is allowed

for proceedings carried out under section 67 only and for the rest of the proceedings, where there is no evasion of tax involved, and the Proper officer to issue Show Cause notice under section 73/74 is the jurisdictional department (either CGST or SGST).

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Whether the Appellant can remit the amount of pre-deposit from attached bank accounts for filing an appeal?

Yes, the Honorable Tripura High Court in the case of ***KamrulNahar v. Union of India [Writ Petition (Civil) No. 253/2023 dated January 03, 2024]***, directed the bank to permit the Petitioner to remit the amount of pre-deposit as required in terms of Notification No. 53/2023 dated November 04, 2023 from attached bank accounts to enable the Petitioner to file appeal within cut-off date.

The Honorable Tripura High Court observed that the Court is not required to enter into the issues of fact or law raised by the Petitioner, as the Petitioner has the liberty to invoke the appellate remedy under section 107(1) of the CGST Act by the cut-off date January 31, 2024, in terms of the Notification. The Honorable Court held that the bank accounts of the Petitioner have been attached in recovery proceedings. Therefore, in order to allow the Petitioner to effectively avail the remedy of appeal as provided under the Notification, the Court directed the Bank to permit the Petitioner to remit the amount of pre-deposit as required in terms of the Notification from the attached bank accounts on such application being made through the permissible mode for preferring the appeal within the cut-off date January 31, 2024.

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Whether ITC can be denied in case of bonafide errors in filing GST returns where there is no loss of revenue?

No, the Honorable Bombay High Court in the case of **NRB Bearings Ltd. v. Commissioner of State Tax [Writ Petition No. 10771 of 2023 dated February 14, 2024],** allowed the petition while permitting the Taxpayer to rectify FORM GSTR-1 and held that in cases of bonafide errors in filing returns where no loss of revenue occurs, the technicalities should not prevent rectification.

The Honorable Bombay High Court relied on **M/s. Star Engineers (I) Pvt. Ltd. v. Union of India &Ors. [Writ Petition No. 15368 of 2023 dated December 14, 2023],** wherein the court observed that in cases where there was a bonafide error in the filing of the return and when there was no loss of revenue caused to the Government/exchequer, the technicalities on any legitimate rectification ought not to come in the way of the Taxpayer, so as to suffer an inadvertent error, which would have a cascading effect.

Author's Comments: This judgment comes to the rescue of bonafide taxpayers to allow them to rectify their GSTR-1 and will allow recipients to settle ongoing litigation.

A Similar judgment was delivered by the Honorable Orissa High Court in **M/s. Y. B. Constructions Pvt. Ltd. v. Union of India and others [W.P.(C) No.12232 of 2021 dated February 22, 2023],** wherein it was permitted to the taxpayer to rectify the error of mentioning B2C instead of B2B in Form GSTR-1 at the time of filing of returns, holding that the Taxpayer would be prejudiced if it is not allowed to avail the benefits of ITC.

In a similar matter, the Honorable Orissa High Court in **M/s. Shiva JyotiConstruction v. The Chairperson, Central Board of Excise & Customs and others [W.P. (C) No.18216 of 2017 dated January 12, 2023]** had permitted the assessee to rectify its **Form GSTR-1** filed.

Further, the Honorable Karnataka High Court in **M/s. Wipro Limited India v. the Assistant Commissioner of Central Taxes and Ors. [Writ Petition No. 16175 of 2022 (T-Res) dated January 6, 2023]** had allowed the assessee to rectify the errors committed at the time of filing of Forms and submitting GST Returns for FY 2017-2020.

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Constitutional validity of Section 16(2)(c) of the CGST Act challenged

The Honorable Orissa High Court in **OSL Securities Ltd. v. Union of India [W.P. (C) No. 2695 OF 2024 dated February 06, 2024]** granted an interim stay in favor of the Taxpayer in the case where the Taxpayer challenged the constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017.

The Honorable Orissa High Court in Writ Petition(C) No. 2695 OF 2024 granted an interim stay holding that no coercive action should be taken during the pendency of the writ petition subject to a deposit of 20 percent of the amount of tax payable.

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Whether ITC is available in relation to construction of immovable property, which is further let out for commercial purpose?

Yes, the West Bengal AAAR, in the case of **In Re. Bathula Mahesh Babu [Appeal No. 04/WBAAAR/Appeal/2023 dated January 24, 2024]** allowed the appeal filed by the Revenue Department thereby holding that ITC is allowed on Input Goods or Services in relation to the construction of immovable property, where such expenses are not capitalized and which is further let out for commercial purposes.

The West Bengal AAAR observed that clauses (c) and (d) of sub-section (5) of Section 17 of the Central Goods and Services Act, 2017 that ITC is not available with respect to works contract services or goods or services or both received for the construction of an immovable property and, therefore would fall within the purview of blocked credit. Further observed that the explanation stated in clause (d) of Section 17 of the CGST Act, the credit is also blocked with respect to reconstruction, renovation, addition, alterations or repairs which are capitalized in the books of accounts.

The condition of capitalization in the books of accounts is only applicable with respect to reconstruction, renovation, additions, alterations or repairs to the immovable property.

The AAAR opined that the ITC is blocked with respect to construction expenses in all situations and held that no ITC is available in relation to the construction of the warehouse which is further let out by the Applicant.

Author's Comments: The case of **Chief Commissioner of Central Goods and Services Tax and Others v. M/s Safari Retreats Private Limited and Others [SLP(C) 26696/2019]** is pending before the Honorable Supreme Court and is at its final stage. Earlier Department had filed an appeal against the judgement passed by the Honorable Orissa High Court in the case of **Safari Retreats Private Limited and Others v. Chief Commissioner, Central Goods and Services Tax and Others [W.P. (C) 20463 of 2018 dated April 17, 2019]** wherein the Honorable High Court allowed the ITC on inputs and input services used for construction of immovable property which is to be used in the course or furtherance of business i.e. being further let out.

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