THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

KOTTAYAM BRANCH (SIRC)

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NEWSLETTER

GST CASE LAW COMPENDIUM

CHAIRMAN'S MESSAGE

CA SHINE P. JOSEPH
CHAIRMAN

Dear Professional Colleagues,

Work hard in Silence: Silence is the strong fence around wisdom. If your foot slips, you can regain your balance, but if your tongue slips, you can never re-build your image again. Sometimes one creates a dynamic impression by saying something and sometimes one creates a significant can't impression by remaining silent. Remember that silence is sometimes the best answer. When we have learned to listen to others, we can master the art of being quiet in order to be able to hear clearly what others are saying. I earnestly appeal to our members and students to work hard in Silence. Let your success make a noise.

This month's programs start with a MOU signing ceremony on 2nd August 2024 along with a career counseling program at Saitgits College of Engineering Pathamuttom, Kottayam. On August 03, 2024, we conducted a CPE seminar On UNION BUDGET - 2024 - Direct Tax Proposals by CA Prasanth Srinivas, KOttayam with a CPE credit of 3 hrs. His session was highly interactive and effective for the members.

August has been a month of remarkable achievements for the Kottayam Branch of ICAI. It was an overwhelming moment. Based on available records- the 1st time Kottayam Icai has been recognized. Second, the best branch of SIRC is not a means of an effort. The team work and effort without resulting expectations paid off rich dividends. We received the prize during the 56th Regional Conference of SIRC of ICAI hosted by the Bengaluru Branch of SIRC on 8th and 9th of August 2024. The program was a mesmerizing experience for Kottayam Branch. The managing committee and a few members from the branch received recognition from SIRC Chairperson Geetha B.

We celebrated the 78th Anniversary of Indian Independence on 15th August at ICAI Bhavan and 75th Green Mahotsav and the Indian Flag was hoisted on Independence Day at the branch premises.

On 17th August 2024, VITIYA GYAN MELA (VITIYA GYAN MELA) was taught at Marian Senior Secondary School Kottayam as part of a Financial Literacy Class under the leadership of ICAI Kottayam Branch.CA. Amala P. Dominic took a class on Income Tax for students.

On 22nd August 2024 we conducted a CPE Seminar on Excel Work Book & ITR 7 - Practical Aspects with 3Hrs of CPE credit conducted in 2 technical sessions. Session I is handled by CA. Sreejith R with the topic of running a business with an Excel work book and session II is handled by CA. Mathew P. M with topic ITR7 & 10B,10BB-Practical Aspects.

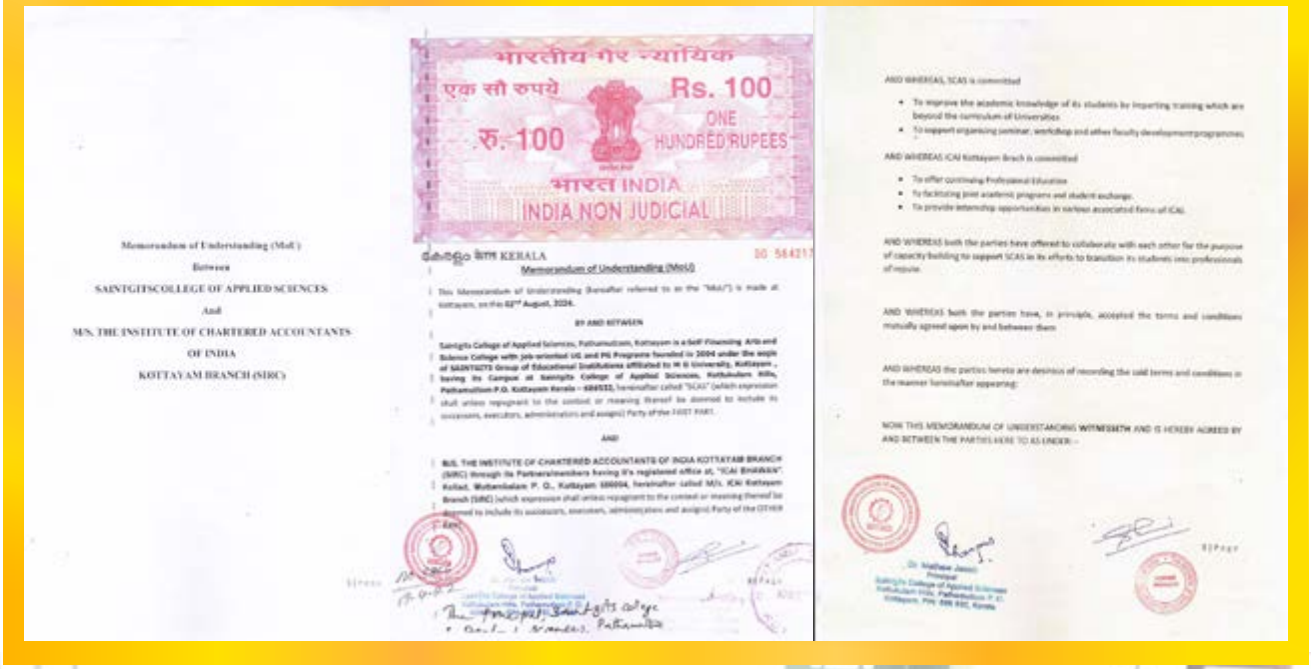
We Kottayam Brach became a part of Mega career counseling conducted on 29th August 2024. We conducted the program in 4 different schools of Kottayam educational district. Kottayam Educational district is divided into 4 sub-districts; Pala, Kanjirapally, Kaduthuruthi and Kottayam. We selected each school from this sub-educational district and around 1000 students participated in this Mega Career Counseling program. There are no shortcuts to success, but that doesn't mean success is not obtainable. Sure, the journey is always longer, more difficult, and time-consuming than we initially anticipated. But, just like everything else in life, that which is fought for most vigorously is cherished most ardently.

So, to help you embrace the challenge of achieving the success you seek, and overcoming the obstacles you'll face as you strive to achieve more in your life, we've rounded up some of the best quotes about success and achievement. May they help you succeed in the face of failure, and achieve all of your dreams.

Jai Hind ! Jai ICAI !

CA SHINE P JOSEPH

Signing of MoU with Saintgits College & Career Counselling Programme



Memorandum of Understanding (MoU)
Between
SAINTGITSCOLLEGE OF APPLIED SCIENCES
And
M/S. THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA
KOTTAYAM BRANCH (SIRC)

भारतीय गैर न्यायिक
एक सौ रुपये
Rs. 100
ONE HUNDRED RUPEES
रु. 100
भारत INDIA
INDIA NON JUDICIAL

Memorandum of Understanding (MoU)

CPE Meeting on Union Budget-2024 - Direct Tax Proposals

Independence Day Celebrations

Carrer Counselling Programme

CPE Seminar on Excel Work Book & ITR 7- Practical Aspects

Mega Career Couselling Programme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CAFY & Super Mega
Career Counselling
Programme

GST CASE LAW COMPENDIUM – August 2024 EDITION

CA. Ritesh Arora

1.	Whether Search can be conducted without recording reason to believe in form INS-01?
2.	Whether the bail can be granted to the petitioner in the absence of any evidence with regards to the creation of a fake firm?
3.	Whether the penalty can be imposed for discrepancy in the date on the E-way Bill and Tax Invoice?
4.	Whether the late-night recording of the statement violates the fundamental rights under Articles 20(3) and 21 of the Constitution of India?
5.	Whether the refund of cash seized under section 67 can be demanded where SCN is issued demanding appropriation of cash seized against the tax liability?
6.	Whether Order of cancellation of registration can be passed without assigning any reasons?
7.	Whether the order can be passed without giving the opportunity of hearing to explain the mismatch between GSTR-1 and GSTR-3B?
8.	Whether the supplier can charge and pay GST on services which are exempted and whether the recipient can claim ITC basis such invoices?
9.	Whether the adjudication order is valid when guidelines prescribed in the Circular relating to discrepancies in Form GSTR-3B and Form GSTR-2A have not been complied with?
10.	Supreme Court Majority Opinion: Royalty for Mining Operators not Considered a Tax.
11.	Whether uploading the SCN and the Order in the "view additional notices and orders" tab of the portal serve as an adequate opportunity to respond?
12.	Whether the Taxpayer is entitled to refund of the amount recovered as the appellate tribunal has yet not been constituted**?**
13.	Whether the taxpayer is entitled to the opportunity of being heard after the demand has been confirmed and tax payable appropriated?
14.	Whether the assessment order is liable to be set aside when a reply furnished by the taxpayer is not taken into consideration?
15.	Whether the appeal can be rejected if there is a delay in filing the hard copy of the impugned orders?
16.	Whether writ petition is maintainable when the alternative remedy of appeal is not exercised?
17.	Whether the penalty can be imposed under section 129 alleging intention to evade taxes where the e-way bill expired?
18.	Whether the petitioner can file an Appeal after the expiry of the statutory time limit allowed?
19.	Whether the assessment order is valid when GSTR 3B returns and comparison statements are not considered?

1. Whether Search can be conducted without recording reason to believe in form INS-01?

No, the Honorable Allahabad High Court in the case of Excellentvision Technical Academy (P.) Ltd. v. State of U.P. [Writ Tax No. 554 of 2023 dated May 20, 2024] held that where the Revenue Department failed to put forward the actual reasons to believe as required under Section 67 of the CGST Act, 2017 before initiating a search, in such case the entire proceedings have no foot to stand on and are liable to be quashed. The Honorable High Court noted that the search was carried out on January 4, 2018, however, there are two INS-01 forms, which have been issued on two different dates; one on February 11, 2019 and another on January 4, 2018 (date of the search).

INS-01 issued on February 11, 2019 is subsequent to the search and is, therefore, an invalid document. With regard to other INS-01 that has been issued on the date of search, it further appears that no reasons to believe have been noted in the same. In fact, this document was provided to the petitioner upon the petitioner making an application.

This document appears to be fabricated and created as an afterthought. Further noted that the tax Department has failed to explain and put forward the actual reasons to believe as required under Section 67 of the State GST Act in the counter affidavit filed by the tax Department. The Honorable Court opined that the entire proceedings that have originated from the illegal search and seizure carried out under Section 67 and accordingly, the entire authorization is liable to be quashed. Further, ordered the Tax Department to refund the amount deposited by the Petitioner in lieu of the order passed under Section 74 of the State GST Act within a period of eight weeks.

Author's Comments

There are very fundamental and essential 'ingredients' that must be shown to exist before the grant of authorization by the Joint Commissioner to any other officer, who will be empowered to discharge duties as the 'Authorized officer' for inspection and/or search of the premises or goods. Powers under section 67 cannot be exercised routinely even if there is suspicion. There must be 'Reason to believe' that evasion of tax has occurred and care must be taken that (i) existence (ii) validity (iii) sufficiency, and (iv) documentation of relevant material on files, in support of the reasons must be present before granting authorization. All the proceedings carried out under section 67 will be tainted if the JC is unable to justify 'reasons to believe' when called into question. Then no demand will be sustained out of such tainted proceedings. Without jurisdiction, even if there are any legitimate dues, they cannot be exacted. In the case of Nazir Ahmed v. King Emperor AIR 1936 PC 253, the Privy Council has stated that "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all"

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2. Whether the bail can be granted to the petitioner in the absence of any evidence with regards to the creation of a fake firm?

Yes, the Honorable High Court of Allahabad in the case of Pradip Kumar Jain vs. UOI [Criminal Misc. Bail application 18751 of 2024] granted the bail to the petitioner subject to furnishing of a personal bond and two heavy sureties to the satisfaction of the court. The Honorable Court observed that the offense pertained to a significant fraud involving fake firms and fraudulent ITC claims. The Revenue has alleged that Pradip Kumar Jain availed Rs. 45.39 crores of the fraudulent ITC but there was no evidence regarding the devices or methods used to create the fake firms and the applicants have been in jail since 28.02.2024, and there is no concrete evidence beyond their statements. Both were arrested under Sections 132(1)(b), 132(1)(c), and 132(1)(i) of the Central Goods & Services Tax Act, 2017.The nature of the offense, punishment, and period of incarceration was considered and the Honorable Court granted bail and imposed conditions including non-tampering with evidence, non-intimidation of witnesses, appearing before the trial court as required, not committing similar offense, and not making any inducements or threats to any person involved in the case.

Author's Comments

Where self-assessment is challenged, the burden rests on the Revenue making the allegation and not on the Registered Person-suffering the allegation. The Burden of proof is not discharged by making the allegation. The Burden of proof is discharged only when a mountain of evidence commensurate with the nature of the allegation made is produced and appended to notice. Allegations of severe wrong-doing require proportionately substantial evidence. Evidence is not extracted of books of accounts or statements taken on-oath. Evidence is that proves something.

Further, Arrest is not the commencement of a sentence. Pre-trial detention is subject to enlargement (or to be released) on bail. Pre-trial detention is subject to bail as a matter of right under section 167 of the Code of Criminal Procedure (Section 187 of Bharatiya Nagarik Suraksha Sanhita 2023). Statutory bail even in case of offense charged attracts transportation for life or death is set at ninety (90) days. A Delay in filing charge-sheet is good ground to enlarge on bail. Pre-trail remand, under the custody of the investigating officer or judicial custody, is only until preliminary investigation is completed in so far as collection of evidence or securing deposition of material witnesses is secured. While the risk of inducement to witnesses may be good grounds to seek remand but this risk cannot last the entire duration of the trial. As soon as necessary evidence from witnesses is secured, this risk stands de-risked and bail must be granted.

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3. Whether the penalty can be imposed for discrepancy in the date

on the E-way Bill and Tax Invoice?

No, the Honorable High Court of Allahabad in the case of M/s Nanhey Mal MunnaLal vs. Additional Commissioner and Ors [Writ Tax No. 1036 of 2022 dated 04 July 2024] has set aside the impugned order after reviewing the case and the records. The Honorable Court noted that the discrepancy in the date on the E-way Bill and Tax Invoice was a minor typographical error rather than an indication of intent to evade tax. Further, the Honorable Court noted that this error does not establish the necessary mensrea for imposing a penalty, as the intention to evade tax is a critical component for such imposition. The Honorable Court referenced its earlier decision in M/S Cavendish Industries Ltd. v. State of U.P where it was held that a typographical mistake, without evidence of intentional tax evasion, should not lead to penalties. The Honorable Court emphasized that imposition of penalties requires more than just minor errors and must be supported by concrete evidence of intent. Considering that both the selling and purchasing dealers are registered under GST and their registrations are active, as confirmed by the petitioner and not disputed by the respondents, and considering that the issues were based on conjectures rather than solid evidence, the Honorable Court found no grounds to attribute tax evasion to the petitioner. Thus, the Honorable Court set aside the impugned order, allowed the writ petition, and directed the refund of any amounts deposited by the petitioner in compliance with the impugned order within one month.

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 considered opinion, all the discrepancies in relation to the movement of goods except the fatal errors like not accounting for transaction of supply in the books of account, 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.

A Similar judgment was delivered by the Honorable Allahabad High Court in the case of M/s. Varun Beverages Ltd. v. State of Uttar Pradesh [Writ Tax No. 129 of 2024 dated February 07, 2024], wherein the court set aside the orders imposing penalty under Section 129(3) of the UPGST Act on the reason that the defect was of a technical nature only and without any intention to evade tax.

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4. Whether the late-night recording of the statement violates the fundamental rights under Articles 20(3) and 21 of the Constitution of India?

Yes, the Honorable High Court of Jharkhand in the case of M/s Shiv Kumar Deora vs UOI And Ors (W.P.(T) No.354 of 2024 dated May 13, 2024) directed the GST officers to adhere strictly to the guidelines and instructions issued by the Commissioner (GST-Investigation) and CBIC when exercising their powers under Section 70 of the GST Act. The Honorable Court observed that the proper officer under GST should not compel, coerce, or force a summoned person to give a statement after office hours aligns with the principles laid out in the GST Intelligence and Investigation Manual, 2023, which provides a comprehensive framework for the interrogation and recording of statements.

Specifically, the Honorable Court noted that Clause (iv) of Paragraph 5.142 of the manual stipulates that statements should be recorded during office hours. Further, the Honorable Court referred to Instruction No. 03/2022-23 (GST-Investigation), which reiterated the guidelines for issuing summons under Section 70 of the CGST Act.

Author's Comments

Issuing Summon notice is an important step in an investigation and not the end of the investigation. Summons must be issued with great circumspection only to corroborate the results of the investigation and must not be used as a tool to harass the taxpayers. For this reason, CBIC has time and again come up with strict guidelines and instructions in this regard.

Care must be taken that Summons can be issued only when there are underlying proceedings regarding 'evasion of tax'. Care must be taken that summons are not issued in a routine and casual manner. An Officer authorized under section 67 can only issue summons. Taxpayers should note that statements on oath are not ipso factore liable unless there is no dispute or challenge to averments made by the deponent. Statements on oath are the weakest form of evidence.

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5. Whether the refund of cash seized under section 67 can be demanded where SCN is issued demanding appropriation of cash seized against the tax liability?

No, the Honorable High Court of Madras in the case of M/s The Coronation Fireworks Factory V. The Joint Director & Another (W.P.(MD) No.14221 of 2024 And W.M.P.(MD) No.12477 of 2024 dated 01.07.2024) dismissed the writ petition seeking a refund of the seized amount of Rs.1,82,25,000/. The Honorable Court observed that the petitioner cannot obstruct the show cause proceedings merely because of the favorable order obtained from the Tribunal in Appeal No. 40138 of 2023. The impugned show cause notice is concerned with the appropriation of the seized amount from the petitioner's partner towards the tax liability under the respective GST enactments. It does not propose to confiscate the cash but seeks to address the tax liability. The Honorable Court noted that the petitioner is required to explain why the seized amount should not be appropriated towards the tax liability and dismissed the writ petition.

Author's Comments

It is important to note that 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 carry 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 sales. Seizure is a necessary requirement to 'secure' the specific 'goods and documents, books, or things' and to 'identify' them in later proceedings. A Seizure does not imply 'transfer of property'. Care must be taken that once the SCN is issued, it is the conclusion of the 'investigation' and therefore there is no further reason for Revenue to keep custody of seized articles. The Application must be preferred under section 67(6) to seek provisional release of seized articles.

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6. Whether Order of cancellation of registration can be passed without assigning any reasons?

No, the Honorable Gujarat High Court in the case of Shokinbhai Gaphurji Sankhala V. Commercial Tax Officer and Ors (R/Special Civil Application No.8153 of 2024) set aside the impugned orders cancelling the registration of the taxpayer. The Honorable Court relied on the decision of the Co-ordinate Bench in the case of M/s. Aggrawal Dyeing & Printing vs. State of Gujarat reported in (2022) 137 Taxmann.com 332 (Guj.) where guidelines have been issued to the respondent authorities. The Honorable Court opined that the impugned orders passed by the appellate authority as well as the Assessing Officer are hereby quashed and set aside and the matter is remanded back to the Assessing Officer to issue fresh show cause notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicants, and to pass appropriate speaking orders on merits. The petitioner is at liberty to file objections / reply to the show cause notice which may be issued by the respondent authority with necessary documents.

Author's Comments

This is a welcome decision by the Honorable High Court of Gujarat 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.

The Burden always rests on the Revenue making the allegation and not on the Registered Person-suffering the allegation. The Burden of proof is not discharged by making the allegation. The Burden of proof is discharged only when a mountain of evidence commensurate with the nature of the allegation made is produced and appended to notice. Allegations of severe wrong-doing require proportionately substantial evidence.

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7. Whether the order can be passed without giving the opportunity of hearing to explain the mismatch between GSTR-1 and GSTR-3B?

No, the Honorable High Court of Madras in the case of M/s Abhishek Suppliers vs The Commercial Tax Officer (W.P.No.15133 & W.M.P Nos.16447 & 16449 of 2024 dated 20 June 2024) set aside the impugned order on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the

date of receipt of a copy of this order. The Honorable Court noted that it is evident that the tax proposal, which pertains to the mismatch between the petitioner's GSTR 1 and 3B, was confirmed solely because the taxpayer failed to reply to the show cause notice. In the facts and circumstances outlined above, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand on merits by putting the petitioner on terms. The Honorable Court directed that upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply.

Author's Comments

This is a welcome judgment and this highlights a major issue being faced by the taxpayers, where Principles of Natural Justice are grossly violated when the opportunity of being heard is not provided. This is expressly given in the statute [Section 75(4) and 126(3)] that the opportunity of being heard must be presented where it is specifically asked by the taxpayer or where an adverse order is contemplated against the taxpayer.

In the Author's considered opinion, the petitioner could have chosen a different line of defense to vacate the notice. There is an urgent need to understand that the linear comparison of two different data sets 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 (GSTR-1 not matching GSTR-3) 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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8. Whether the supplier can charge and pay GST on services which are exempted and whether the recipient can claim ITC basis such invoices?

Yes, the Odisha AAR, In Re: EFC Logistics India (P.) Ltd., [ORDER NO. 08/ODISHA-AAR/2023-24 dated May 24, 2024] held that the taxpayer can claim ITC on exempt services if the supplier has charged GST, subject to fulfilling the conditions and restrictions specified in Section 16 of the Central Goods and Services Tax Act, 2017. The Applicant contended that services received by him are of hiring/renting of the vehicle which is exempt under Entry No 22(b) of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, hence the supplier is not liable to charge GST. The Odisha AAR noted that Section 95(a) of the CGST Act, which provides the meaning of the term 'advance ruling' and the definitions states that advance ruling is the decision provided by authority or appellate authority in relation to the supply of goods or services being undertaken or proposed to be undertaken by the Applicant. The AAR stated that in the instant case, the service of renting a vehicle is not undertaken by the Applicant therefore, no ruling can be made. For the subsequent issue, noted that, as per Section 16(1) of the CGST Act every registered person is entitled to take ITC charged on any supplies of goods or services or both to him which are intended to be used in the course or furtherance of business.

The AAR held that the Applicant provides transport services and pays GST at 12% under the Forward Charge Mechanism, thus, the Applicant may claim ITC provided it meets the conditions and restrictions outlined in Section 16 of the CGST Act.

Author's comments

Explanation to Section 11 indicates that unless an express option is granted in the exemption notification, the concessional or exempted rate of tax along with attendant conditions must be availed without any discretion to opt out of it. In the instant case, the supplier has erred in charging output tax on exempt supplies, therefore Revenue in the future may canvass a plausible interpretation regarding ineligible credit passed on and availed by the recipient.

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9. Whether the adjudication order is valid when guidelines prescribed in the Circular relating to discrepancies in Form GSTR-3B and Form GSTR-2A have not been complied with?

No, the Honorable Karnataka High Court in the case of R.S Marketing and

Logistics Private Ltd. vs. Commercial Tax Officer [W.P No. 7295 of 2024 dated June 05, 2024] set aside the adjudication order and remanded the matter back for reconsideration wherein the guidelines prescribed in Circular No. 183/15/2022-GST dated December 27, 2022, relating to discrepancies in Form GSTR-3B and Form GSTR-2A for claiming of ITC has not been complied with. The Honorable Karnataka High Court noted that the Circular is made applicable specifically w.r.t. FY 2017-2018 and procedure has been the prescribed in Para 4.1.2 in the case where the ITC claimed is less than five lakh rupees and opined that the procedure prescribed in the Circular has not been complied with by the Respondent. The Respondent ought to have taken note of the Circular irrespective of whether the petitioner had raised such contention or not. The Honorable Court held that the Impugned Order is set aside and remitted the matter back for reconsideration.

Author's Comments

Whether to celebrate such an order that remands back the case to the Proper officer for another round of adjudication (re-adjudication) is a matter of choice and strategy. In the author's considered opinion, such orders are unable to fetch the desired relief because SCN is not vacated; only a short-term relief (at a cost) is provided in this long battle. The petitioner could have disputed the cause-of-action (2A v 3B) invoked, and the burden to proof would have been on the revenue to prove their case. Important to mention that mismatch/ linear comparison of two data sets (GSTR-2A-whose authorship is not with taxpayer v GSTR-3B) is meaningless in GST. Yes, it could raise suspicion, but without discharging burden of proof and evidence in support of, it is impossible to bring home the allegations leveled against the taxpayer.

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10. Supreme Court decides that the Royalty for Mining Operators is not Considered as Tax.

In the case of Mineral Area Development v. M/S Steel Authority of India &Ors[Civil Application No. Civil Appeal Nos. 4056-4064 of 1999 dated July 25, 2024], the Honorable Supreme Court of India delivered a landmark judgment distinguishing 'royalty' from 'tax' under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). An eight-judge majority of a nine-judge Constitution Bench ruled that royalties paid under Section 9 of the MMDR Act are not taxes. Chief Justice DY Chandrachud authored the majority opinion, emphasizing that royalties are contractual obligations rather than sovereign impositions. Justice BV Nagarathna dissented, suggesting that royalty functions similarly to taxes.

The Honorable Supreme Court reasoned that royalties are contractual obligations arising from lease agreements between the lessor and the lessee, rather than payments mandated by the law. The Court distinguished royalties from taxes on three grounds: they are based on a contractual relationship, demanded by the lessor rather than a public authority, and intended as consideration for granting access to mineral resources. Justice Nagarathna, in her dissent, argued that royalties should be considered a form of tax, as they are statutory payments linked to mineral extraction. The ruling clarifies the legal framework for mineral rights and payments, emphasizing the distinction between royalties and state-imposed taxes on mineral rights.

Authors Comments

This long pending issue will have multifold bearing under the GST regime, where hefty demands have been raised demanding RCM on payment of royalty. This is a classic case to demonstrate the importance of strategy before responding to the notices. The taxpayers who opted to put forward the defense that Royalty itself is a tax and there cannot be any tax on tax, are now remediless due to admission of wrongdoing (non-payment of RCM) in their replies. Further, there is ongoing debate regarding the prospective or retrospective applicability of this judgment in the context of GST demands raised. In the author's considered opinion, judgement of a court is the interpretation of the law from its inception, therefore it will bear implications retrospectively.

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11. Whether uploading the SCN and the Order in the "view additional notices and orders" tab of the portal serve as an adequate opportunity to respond?

No, the Honorable High Court of Calcutta in the case of Mitali Saha vs State of Bengal &Ors (WPA 14092 of 2024 dated 08 July 2024) disposed of the writ petition with the direction that if the petitioner files an appeal within 30 days and includes an application for condonation of delay, the appellate authority should condone the delay and decide the appeal on its merits within 12 weeks from the filing date. The petitioner must comply with the pre-deposit requirements as stipulated under Section 107 of the Act. The Honorable

Court noted that although the show cause notice issued under Section 73 of the CGST/WBGST Act was not uploaded in the "view notices and orders" section of the portal, the petitioner was nonetheless informed about its location through email communications. This fact was corroborated by uncontroverted evidence.

Considering the confusion arising from the portal's dashboard redesign and the improper uploading of the notices, the Honorable Court decided to permit the petitioner to challenge the adjudication order before the appellate authority.

Author's Comments

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

Violation of principles of natural justice is a failure of due process. This violation renders the process arbitrary and when executive action is arbitrary it violates articles 14, 19, and 21 of the Constitution. Reference may be made to the jurisprudence in the case of Menaka Gandhi v. UOI AIR 1978 SC597, which illuminates understanding about the 'role' of a valid notice in any proceeding, however obvious the conclusion and consequent treatment might be.

In the Author's considered opinion, the validity of the service of SCN must have been disputed and must have allowed the revenue to discharge the burden of proof to show service of notice was done as per the law. Any failure to discharge this burden could have been fatal to the demand confirmed.

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12. Whether the Taxpayer is entitled to refundof the amount recovered as the appellate tribunal has yet not been constituted?

Yes, the Honorable Karnataka High Court in Cultgear Private Ltd. v. Commercial Tax Officer [W. P. No. 6795 of 2024 dated April 02, 2024], granted the liberty to the Taxpayer to file the appeal before the GSTAT as and when it is constituted and within the extended period of limitation as stipulated in the circular dated 18 March 2020. Also, The Honorable High Court directed the Revenue Department to refund the amount recovered from the Taxpayer within period of one-month subject to the furnishing of bank guarantee by the petitioner.

Author's Comments

The Writ Courts generally provide moulding relief to the petitioners and this case is one such example, although issued in-personam. There is no provision under the law to provide a bank guarantee for the stay of demand but in the instant case, the Honorable Court allowed the petitioner to furnish BG. It may encourage other taxpayers to approach respective Writ Courts to fetch similar reliefs where an additional 20% of the disputed tax amount is paid as pre-deposit for the stay of demand. Further, CBIC vide Circular No. 224/18/2024-GST dated July 11, 2024 has clarified that the taxpayer needs to file an undertaking/ declaration with the jurisdictional proper officer that the appeal will be filed against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit as per the procedure prescribed, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed as per provisions of sub-section (9) of section 112 of CGST Act.

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13. Whether the taxpayer is entitled to the opportunity of being heard after the demand has been confirmed and tax payable appropriated?

Yes, the Honorable Madras High Court in the case of Amarjyothi Carrying Corporation vs. Assistant Commissioner (ST) [W.P. No.7143 of 2024 dated March 20, 2024], quashed the assessment order and remanded back the matter thereby holding that the taxpayer is entitled to personal hearing opportunity after passing of the assessment order due to discrepancy in return when the amount of tax payable has been appropriated from a bank account.

The Honorable High Court opined as the amount of tax payable under the Impugned Order has been appropriated from the Petitioner's bank account; the interest of the Respondent is fully secured. Therefore, it would be necessary to provide the Petitioner opportunity for a personal hearing. The Honorable Court quashed the

assessment order and remanded back the matter for reconsideration. The Honorable Court further directed that the Respondent shall provide a reasonable opportunity for a personal hearing to the Petitioner and, thereafter, issue a fresh order within a period of two months.

Author's Comments

This is expressly given in the statute [Section 75(4) and 126(3)] that the opportunity of being heard must be presented where it is specifically asked by the taxpayer or where an adverse order is contemplated against the taxpayer.

Although Section 169 of the CGST Act, 2017 specifies 14 different ways/ modes of serving any decision, order, summons, notice, or other communication under the Act, care must be taken by the authorities not to simply pick and choose any option, rather the best possible option must be chosen by which it is mostly likely to reach the intended noticee. The notice or any other communication cannot be termed to be served until it has reached the intended noticee. The petitioner must have disputed the service of notice and must have allowed the Revenue to discharge the burden to prove regarding service of notice. Further, cause-of-action (GSTR-1 vs GSTR-3B) could have been disputed, where notice ought to be issued as per Section 75(12) in form DRC-01B and not under Section 73. Where a specific section is given under the statute to address issue of mismatch of data reported in GSTR-1 and GSTR-3B, resorting to Section 73 is gross misapplication of law.

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14. Whether the assessment order is liable to be set aside when a reply furnished by the taxpayer is not taken into consideration?

Yes, the Honorable High Court of Madras in the case of Monika Alloys India Private Limited vs State Tax Officer (W.P.No.16563, 18170 & 18171 of 2024) set aside the impugned order and remanded back the matter for reconsideration. The Honorable Court noted that the petitioner was served a show cause notice dated 19.09.2023, alleging wrongful availment of Input Tax Credit. The petitioner replied to this notice on 10.10.2023 by uploading it on the portal along with an attachment explaining that the transitional VAT credit was claimed by filing Form TRAN-1. However, the impugned order recorded that the petitioner did not file any objections to the DRC-01 notice or provide any documentary evidence, which contradicted the documents on record. Therefore, the Honorable Court set aside the impugned order and remanded the matter for reconsideration. The respondent was directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and issue a fresh order within three months from the date of receipt of a copy of this order.

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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15. Whether the appeal can be rejected if there is a delay in filing the hard copy of the impugned orders?

No, the Honorable High Court of Madras in the case of Indian Potash Limited vs. The Deputy Commissioner (ST), Appeal & Ors [WPA Nos.12497, 12498, 12500 & 12501 of 2024 dated June06, 2024] set aside the impugned order and held that mere non-filing of an order physically within the time limit cannot be a valid ground to rejection of appeal. The Honorable Court noted that the petitioner failed to comply with Rule 108(3) of the GST Rules, which requires filing a hard copy of the impugned order within seven days of the appeal's presentation. The Honorable Court observed that in the case of PKV Agencies, it followed the judgment of the Orissa High Court in M/s. Atlas PVC Pipes Ltd. v. State of Odisha (2022), which held that the non-production of a hard copy of the impugned order is a technical defect rather than a substantive issue. Consequently, the Court concluded that as long as the appeal is filed within the prescribed time limit, it should be processed despite the procedural lapse. The Honorable Court set aside the impugned order and directed if the appeals are otherwise in order, the first respondent is to number them within one month of receiving a copy of this order

Author's Comments

As per Notification no.26/2022-Central Tax dated 26.12.2022, Rule 108(3) is substituted and now a self-certified copy of the decision or order appealed against is required where such decision or order is not

uploaded on the common portal.

A Similar decision was delivered by the Honorable Calcutta High Court in Rama Shanker Modi v the Assistant Commissioner, Central Goods, And Services Tax and Central Excise [WPA 15639 of 2023 dated July 20, 2023] wherein the impugned order was set aside and held that mere non-filing of order physically within the time limit cannot be a valid ground to rejection of appeal.

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16. Whether writ petition is maintainable when the alternative remedy of appeal is not exercised?

No, the Honorable High Court of Madhya Pradesh in the case of RCC Infraventures Limited Vs. UOI & Ors. [W.P.8253 of 2024 dated May 28, 2024] dismissed the writ petition as withdrawn, granting the petitioner the liberty to approach the Appellate Authority for redressal.

The Honorable Court observed that the petitioner's registered office is located in Agra, and the impugned order was passed by the Additional Commissioner, CGST & Central Excise, Agra Commissionerate, Agra. Considering this, the appropriate appellate authority to address the grievance is the Additional Commissioner (Appeals), GST, located in Gomti Nagar, Lucknow, as indicated in the impugned order. Despite this, the petitioner has opted to file a writ petition under Article 226 of the Constitution of India instead of pursuing the alternative remedy of appeal. Consequently, the Honorable Court dismissed the writ petition.

Author's Comments

To approach the High Court, it must be shown to the Honorable Court that the proceedings: a) Deserves intervention to stop the march of injustice; b) Remedy necessary, cannot be allowed in adjudication or in appeal. In the instant case, nothing of this sort was placed before the consideration of the Honorable Court; therefore, rightly the Writ petition is disposed off. A Similar decision was rendered by the Honorable Rajasthan High Court in the case of M/s. Thekedar NandLal Sharma v. State of Rajasthan and Ors. [D.B. Civil Writ Petition No. 1437/2024 dated April 30, 2024] where the writ petition against the Assessment Order was dismissed since the remedy of appeal was not availed.

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17. Whether the penalty can be imposed under section 129 alleging intention to evade taxes where the e-way bill expired?

No, the Honorable High Court of Allahabad in the case of Raghuveer Ispat (P.) Ltd. V. State of U.P. (Writ Tax No. 222 of 2021 dated 29 May 2024) quashed and set aside the impugned orders and allowed the writ petition. The Honorable Court opined that in light of the arguments presented, this Honorable Court is unable to agree with the findings of the authorities as the only discrepancy found by the authorities was that the e-way bill had expired.

Consequently, the impugned orders dated December 9, 2017, and May 8, 2019, are quashed and set aside. The Honorable Court directed the respondents to refund the amount of tax and penalty deposited by the petitioner within four weeks from the date of this order.

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, 2021and 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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18. Whether the petitioner can file an Appeal after the expiry of the statutory time limit allowed?

Yes, the Honorable High Court of Madras in the case of Global Hardwarevs. The State Tax officer (W.P.(MD) No.13164 of 2024 dated 21 June 2024) granted liberty to the Petitioner to file a statutory appeal before the Deputy Commissioner (GST-Appeal) within 30 days from the receipt of the court's order. The Honorable Court noted that the petitioner received an order dated 01.12.2023 for the assessment year 2022-23 and has approached WRIT Court long after the expiry of the Time limit for filing an Appeal u/s 107. The Honorable Court provided a procedural remedy while not addressing the substantive arguments, focusing on facilitating the appeal process despite the lapse in the statutory timeline. The Respondent was further directed to consider and dispose of the appeal on its merits within three months.

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.

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] and in the case of M/s. Abhishek Trading Corporation v. Commissioner (Appeals) and Anr. [Writ Tax No. 1394 of 2023 dated January 19, 2024] has decided 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 is not applicable to give power to First Appellate authority to condone the delay beyond statutory time limit allowed.

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19. Whether the assessment order is valid when GSTR 3B returns and comparison statements are not considered?

No, the Honorable Madras High Court in the case of Murugan Metals vs The State Officer (ST) (W.P.No.16582 of 2024 dated 25 June 2024) set aside the impugned assessment order dated 28.12.2023 on the condition that the petitioner remits 5% of the disputed tax demand within two weeks from the date of receipt of a copy of the order. The Honorable Court observed that the petitioner's reply dated 11.01.2023 included the GSTR 3B returns for the assessment period 2017-18, along with a comparison statement between the GSTR 2A and GSTR 3B returns. However, the assessing officer did not appear to have considered these documents while confirming the tax proposal. Additionally, the petitioner failed to participate in subsequent proceedings or file the reconciliation statement in GSTR 9C.Considering these circumstances, the Honorable Court deemed it necessary to reconsider the case but also to impose conditions on the petitioner. The Honorable Court directed the respondent to provide the petitioner a reasonable opportunity, including a personal hearing, and to issue a fresh order within three months from the date of receipt of the remittance. Consequently, the bank attachment was raised.

Author's Comment

Whether to celebrate such an order that remands back the case to the Proper officer for another round of adjudication (re-adjudication) is a matter of choice and strategy. In the Author's considered opinion, such orders are unable to fetch the desired relief because SCN is not vacated; only a short-term relief (at a cost) is provided in this long battle. The petitioner could have disputed the cause-of-action (2A v 3B) invoked, and the burden to proof would have been on the revenue to prove their case. Important to mention that mismatch/ linear comparison of two data sets (GSTR-2A-whose authorship is not with taxpayer v GSTR-3B) is meaningless in GST. Yes, it could raise suspicion, but without evidence, it is impossible to bring home the allegations leveled against the taxpayer.

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