

Legal Updates

JUNE 2023

Summary of Major Legal Updates

Key Highlights:

- [Section 13\(8\)\(b\) and Section 8\(2\) of the IGST Act are constitutionally valid but cannot levy tax under CGST and MGST Acts.](#)
- [Cash-credit facility is not a debt, thus cannot be attached through provisional attachment order.](#)
- [Refund allowed of any payment made vide DRC 03 if no DRC 04 or SCN or Order issued..](#)
- [SEZ units are not exempt from search and seizure proceedings conducted by GST authorities.](#)
- [Input Tax Credit \(ITC\) cannot be denied to a genuine buyer when the registration of the supplier is cancelled retrospectively.](#)
- [Service of SCN to the petitioner that no document either in the form of notice or any other document has been received by the petitioner at his registered place of his business for Cancellation of GST registration which resulted in violation of principle of natural justice.](#)
- [The genuine check with respect to goods transported is that if the transporter has valid supporting documents like tax invoices, e-way bill etc. Hence, the innocent transporting goods cannot be punished for the inventory being carried upon.](#)
- [An opportunity to pay Pre-Deposit is given to the Petitioner and till then no action shall be taken on confiscated goods.](#)
- [Madras high court gave three weeks' time to file appeal even after the statutory limitation period has expired.](#)
- [Invocation of provisional attachment provisions u/s 83 of the CGST Act for securing the revenue of another taxable person is unsustainable in la](#)

Index

1. **Bombay High Court Upholds Legality of Section 13(8)(b) and Section 8(2) of the IGST Act 3-4**
2. **Cash-credit facility is not a debt, thus cannot be attached through provisional attachment order..... 4-6**
3. **The High Court Directs Interest Payment on GST illegally recovered without issuing SCN6-7**
4. **GST officials can initiate action under GST Acts against SEZ unit8-9**
5. **Input Tax Credit (ITC) cannot be denied to a genuine buyer when the registration of the supplier is cancelled retrospectively.....9-10**
6. **Cancelling GST Registration due to Vague Notice.....11-12**
7. **The Cough Syrup transportation without proper E-way Bill: High court grants bail.....12-13**
8. **An opportunity to pay Pre-Deposit is given to the Petitioner and till then no action shall be taken on confiscated goods.....13-14**
9. **Madras high court gave three weeks' time to file appeal even after the statutory limitation period has expired.....14-15**
10. **provisional attachment provisions u/s 83 of the CGST Act for securing the revenue of another taxable person is unjustified.....15-16**

1. Section 13(8)(b) and Section 8(2) of the IGST Act are constitutionally valid but cannot levy tax under CGST and MGST Acts.

[M/s Dharmendra M. Jani Vs Union of India Writ Petition No. 2031 of 2018

[06.06.2023] [Bombay High Court]

Facts of the Case:

- ✓ Mr. Dharmendra M Jani (“the Petitioner”) is a proprietor of M/s. Dynatex International who is engaged in providing marketing and promotion services to the goods manufactured by the overseas vendors.
- ✓ As per the agreement entered with the overseas vendors, petitioner is responsible for promoting and marketing the goods in India manufactured by them. Subsequently, as a result of services provided by the petitioner, the Indian purchaser i.e., the importer places an order and makes payment directly to the overseas vendor and the sale invoice is also raised in the name of the Indian purchaser.
- ✓ Further the Petitioner raises the invoice to the overseas vendors for the services provided by him and receives the payment in convertible foreign exchange.

Contention of the Petitioner

- ✓ The petitioner’s contention is that since our country is receiving the foreign exchange because of the nature of services provided by the petitioner so the said services should be treated as export of services. Therefore, such transactions are outside the purview of the CGST Act and MGST Acts.
- ✓ The petitioner stated that it has been the policy of the Central Government to promote exports, hence, the inclusion of intermediary services under Section 13(8) of the IGST Act would lead to the closure of business of several such agencies, resulting in loss of jobs for several employees.

Decision Held

- ✓ Hon’ble Justice Abhay Ahuja held that both Section 13(8)(b) and Section 8 (2) of the IGST Act are not unconstitutional and also the said sections of the Act are not ultra vires the IGST Act, CGST

Act, and MGST Act. Therefore, section 13(8)(b) and section 8(2) of the IGST Act are constitutionally valid and operative for all purposes.

- ✓ Hon'ble Justice Ujjal Bhuyan held that Section 13(8)(b) of the IGST Act is not only against the scheme of the CGST Act and IGST Act, but it also violates Articles 245, 246A, 269A and 286(1)(b) of the Constitution of India. The deeming fiction created under Section 13(8)(b) of the IGST Act does not establish any nexus with the taxing regime in India. Hence, Section 13(8)(b) of the IGST Act is ultra vires of the said act apart from being unconstitutional.
- ✓ Due to the difference of opinion between Justice Ujjal Bhuyan and Justice Abhay Ahuja, the Hon'ble Chief Justice directed the matter to the Hon'ble Justice G.S. Kulkarni. Hon'ble Justice G.S. Kulkarni held that Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional. However, they cannot be used to levy tax on intermediary services under the CGST and MGST as no state law can impose or authorise the imposition of a tax on the supply of goods or services. Hence, these provisions of the IGST Act cannot be used to levy tax on intermediary services under the CGST and MGST Acts.
- ✓ Considering the view taken by Justice G.S. Kulkarni and Justice Abhay Ahuja, the Hon'ble Bombay High Court held that the provisions of Section 13 (8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional. However, the provisions of Section 13(8)(b) and Section 8(2) are confined in their operation to the provisions of the IGST Act only and the same cannot be made applicable for the levy of tax on services under the CGST and MGST Acts.

***HNA Comments** – The Hon'ble high court has held that provisions of Section 13 (8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional where IGST can be charged on the intermediary services provided to the persons outside India but the said provisions of the act cannot be used for levy of tax on services under the CGST and MGST Acts.*

2. Cash-credit facility is not a debt, thus cannot be attached through provisional attachment order.

[M/s J. L. Enterprises Vs Assistant Commissioner (Calcutta High Court) WPA- 12132 of 2023 dated 25/05/2023]

Fact of the case:

- ✓ M/s. J. L. Enterprises (“the Petitioner”) a partnership firm. The books of accounts of the petitioner were inspected and verified by the state tax department officers on March 4th 2023. Later FORM INS-01 was issued based on the anomalies found.

- ✓ Thereafter, a show cause notice was issued proposing to disallow the ITC amounting to Rs.1,15,92,650/- (CGST of Rs.57,96,325/-, SGST of Rs.57,96,325/-) along with the interest and penalty alleging that the mobile phone exported were found active in Indian territory, e-invoice were generated after the goods left India and no e-way bill for purchased goods etc.,
- ✓ After the issuance of the SCN, a FORM DRC-14 was issued to the Petitioner's banker for provisional attachment of cash-credit facility under Section 83 of the Central Goods and Services Tax Act, 2017 ("the CGST Act")
- ✓ The Petitioner challenged the provisional attachment order before the Hon'ble Calcutta High Court under Article 226 of the Constitution of India with the contention that cash-credit limit is a facility provided by the bank to its customers to use the money but not a debt to be attached by the Revenue department.

Contentions of the Petitioner and the Department:

- ✓ The Petitioner has contended referring to decision of the Calcutta High court in case of Jugal Kishore Das Vs. Union of India reported in 2013 SCC Online Cal 19941 that the Bank provides the cash-credit facility to its customers to use and utilise the money whenever is needed and the interest will be charged only on the amount utilised by the customers. Therefore, in the instant case cash-credit facility is not a debt to be attached by the respondent authority.
- ✓ Learned counsel appearing for the petitioner further refers to another decision of the Division Bench of Gujarat High Court reported in 2022 (64) GSTL 482 (Guj) wherein it was specifically held that the law is well-settled that a cash-credit account of the assessee cannot be provisionally attached in exercise of powers under Section 83 of the CGST Act.
- ✓ Further, referring to a decision of the Hon'ble Supreme Court in Radha Krishan Industries Vs. State of Himachal Pradesh reported in 2021 (48) GSTL 113 (SC). It is submitted by the learned advocate of the petitioner that the order of provisional attachment before assessment order should be imposed in rarest of rare cases and sparingly.
- ✓ The Revenue Department contended that Section 83 of the CGST Act, provides power to provisionally attach the bank accounts to protect revenue in certain cases. Since the cash-credit facility is also a bank account issued by the bank which was used by the Petitioner for paying GST, thus provisional attachment was correct.

Decision Held:

- ✓ It was held that the cash-credit facility is not a debt and therefore, it cannot be made attachable. In respect of other issue whether the impugned writ petition is maintainable or not, the court has

held that when the remedy is available in the statute, no relief will be granted to the petitioner under Article 226 of Constitution of India. In the instant case the rule 159(5) of the CGST rules 2017 provides for the adequate power to the petitioner to file objection for releasing the bank account or, in the instant case cash-credit facility. When there is efficacious relief in the statute itself, this Court is of the view that the petitioner should adopt such efficacious relief.

- ✓ Court Relied on, the judgement of Mardia Chemicals Limited Vs. Union of India (2004) 4 SCC 311, Overseas Bank Vs. Ashok Shaw Mill reported in (2009) 8 SCC 366 and United Bank of India Vs. Satyawati Tandon reported in (2010) 8 SCC 110.

***HNA Comments:** The Hon'ble High court even though held that the attachment of cash credit facility cannot be made but dismissed the writ. Petition stating that when the remedy is available is under the statute, no relief can be granted under article 226 of the Constitution of India. The impugned judgement could be a troublesome to the tax payers as the rule 159(5) requires objection is required to be made to the Commissioner when the Commissioner himself attached the property where in the most cases the outcome would be not in favour of the tax payer.*

3. High Court Directs Interest Payment on GST illegally recovered without issuing SCN.

[M/s Samyak Metals Pvt Ltd Vs Union of India -CWP No. 26529/ 2022 dated 24/05/2023-GST]

Facts of the Case:

- ✓ M/s. Samyak Metals Pvt Ltd. ,Petitioner, is engaged in the business of manufacturing of aluminium ingots whose premises were searched on February 25, 2021 by the officers of Central GST Commissionerate. During the search, the Revenue Department enquired about the purchases made from one of the supplier named M/s D.G. Enterprises.
- ✓ The Petitioner did not provide any documents in respect of the purchases made from the said supplier to the Revenue Department during the search. Consequently, the Petitioner was forced to deposit the tax of Rs.71,46,294/- in lieu of the input tax credit claimed by it on the purchases made from M/s D.G. Enterprise (including interest and penalty). The Petitioner paid the tax, interest and penalty vide DRC-03 dated February 26, 2021.
- ✓ Later, the Petitioner filed writ before the Punjab and Haryana High Court praying that even after depositing INR 71,46,294/-, no DRC-04 has been issued by the Revenue Department.

Contention of the Petitioner and Respondent

- ✓ The Petitioner contended that he was forced to deposit the tax in lieu of input tax credit of Rs. 71,46,294/- (including interest and penalty) and no GST DRC-04 has been issued by the department. The said amount has been recovered by the department without passing an adjudication order or following any procedure under section 73/74 of the GST Act, 2017.
- ✓ The Revenue Department contended that as per statement recorded under Section 70 of the CGST Act where Mr. Ankur Jain, Director of the Petitioner admitted that they had accepted only bills from M/s. DG Enterprises without goods, for which, he was ready to pay/reverse the duty amount along with interest and penalty as applicable. Hence, he had voluntarily paid total amount of INR 71,46,294/- under Section 74(5) of the CGST Act, 2017.

Decision Held:

- ✓ The Hon'ble high court held referred to the Govt. instructions dated 25.05.2022 issued by the CBIC with respect to the GST investigation where it was said that no recovery of tax should be made during search, inspection or investigation unless, it is voluntary. The referred instructions are given to avoid unnecessary harassment to the person, whose premises has been searched, the voluntary payment in prescribed form i.e. GST DRC-03 can be made after the day of the search.
- ✓ The Hon'ble high court relied upon the judgment of Delhi High court in case of Vallabh Textiles vs. Senior Intelligence Officer and others, 2022 SCC OnLine Del 4508. Where it was held that deposit of tax made by the assessee during search was not voluntary and the amount cannot be retained, if no summons had been issued under Section 74 (1) of the CGST Act within the period of limitation.
- ✓ Therefore, it was held that, the proper officer is bound to issue acknowledgment, accepting the payment made by the said person in DRC-04. However, till date, petitioner has not received either DRC-04 or any notice under Section 74 (1) of the CGST Act. Since the department has not followed the provisions of Rule 142 (2) of the Central Goods and Services Tax Rules, 2017 and has not issued any notice under Section 74 (1) of the CGST Act, the Revenue Department should return the amount to the Petitioner along with simple interest @ 6% p.a. from the date of deposit till the payment is made.

HNA Comments: *The judgment provides a great relief to the tax payers who pay the tax under the undue influence of the officers of the Department. In majority of the cases, department neither issued DRC-04 nor initiated the adjudication proceedings under section 73/74 of the CGST when the payment is made during the course of search. The tax payers using the impugned judgment can go for the refund of tax if paid during the search if no DRC-04 is issued and no adjudicating proceedings are initiated.*

4. GST Officials can initiate action under GST Acts against SEZ unit

RHC Global Exports Private Limited Vs Union of India (Gujarat High Court)

[R/Special Civil Application No. 5978 of 2023 dated 06/06/2023]

Facts of the Case:

- ✓ The Petitioner has principal place of business in Surat SEZ and is engaged in the business of Gem and Jewelry. It was alleged that the Petitioner has availed the fake ITC on the strength of fake invoices issued by non-existent suppliers and utilized the ITC towards payment of output tax .
- ✓ The business premises of Petitioner was subjected to a search and seizure operation and were sealed. The sealing memo, according to the petitioner, appears does not reflect any due process followed by the Officers (respondent) and it was carried out without arriving at any satisfaction as required under Section 67(1) of the GST Act 2017, which provides for power of inspection.
- ✓ The department issued a summons under Section 70 of the CGST Act, 2017, and directed the directors of the petitioner company to appear before the respondent for the recording of statements and the production of books of account and all other relevant documents in relation to the inspection.
- ✓ The action of the Tax Officers (Respondents) was questioned by the petitioner as it was aggrieved by them that the officers were acting extra-territorially and have no jurisdiction with reference to the location of the Unit, being inside SEZ Zone.

Contention of the Petitioner

- ✓ The business premises of the petitioners were situated in an SEZ and were to be treated as foreign territory and not subjected to provisions by state authorities, which have no jurisdiction to carry out any search proceedings at the premises of the petitioners
- ✓ The petitioner submitted that since the petitioner's unit was within the area earmarked and is a SURSEZ unit, which is a distinctly foreign territory, administered under control and directions of the Development Commissioner and as such, is a tax-neutral or revenue-neutral area, it is outside the ambit of the provisions of the CGST Act, 2017 or the SGST Act, 2017.
- ✓ It was propounded that the state authorities are not empowered to initiate any action since every SEZ unit is a tax-neutral zone.

Decision Held:

- ✓ The Court held that any officer or agency who is authorized by Central Government may carry out search or seizure or investigation or inspection in the special economic zone and the authorized officer of Central Government is empowered to carry out such proceeding without any prior approval or intimation.
- ✓ The Revenue Department acted within the authority of law/jurisdiction, provision of the IGST Act are applicable to whole of India and since the Petitioner is registered under the IGST Act and the Petitioner is under misbelief that once business is carried out through and within SEZ, the Petitioner is outside the purview of GST authority and hence these SEZ units are not exempted from any investigation or inspection

HNA Comments: The Court has categorically held that the any officer or agency who is authorized by Central Government may carry out search or seizure or investigation or inspection in the special economic zone and the authorized officer of Central Government is empowered to carry out such proceeding without any prior approval or intimation.

5. ITC cannot be denied to genuine buyer in case GST registration of supplier is cancelled retrospectively.

Gargo Traders Vs. Joint Commissioner, Commercial Taxes (State Tax) & Ors. (Calcutta High Court) W.P.A 1009 OF 2022 dated 12/06/2023

Facts of the Case:

- ✓ The petitioner claimed credit of input tax against supply made from a supplier. As per the ledger account of the petitioner for the period from 01.04.2018 to 31.03.2019, the total purchase credit was Rs. 13,04,586/-. The petitioner has filed a tax invoice cum chalan reflecting a purchase of Rs. 11,31,513 from their supplier (Global Bitumen). The debit note issued in the name of the transporter i.e. the International Transport Corporation for an amount of Rs. 1,73,073/-. The petitioner has made payment to Global Bitumen from the account of the petitioner through bank.
- ✓ Impugned order is passed against the petitioner by not allowing the petitioner to avail ITC on purchase from supplier and petitioner were imposed to pay penalty and interest.
- ✓ On inquiry, the Department became aware that petitioner had purchased the goods from the supplier and all the goods in question are fake and non-existing and the bank account of the

supplier is also created by submitting fake documents and the claim of the petitioner of Input Tax Credit are not supported by any relevant document.

- ✓ Registration of the supplier has already been cancelled with retrospective effect. The petitioner has not verified the genuineness and identity of the supplier whether is a registered taxable person (RTP) before entering into the transaction with the supplier.

Contentions of Petitioner

- ✓ Petitioner's allegation was that the GST authorities refused to grant the ITC benefit for purchases from the supplier where the supplier is later revealed as fraudulent.
- ✓ Petitioner counsel relied up on the Judgments of M/s LGW Industries Limited & Ors Vs Union of India & Ors dated 13th December 2021 and M/s Balaji Exim Vs Commissioner, CGST & Ors and states that allegation of fake credit availed by Global Bitumen cannot be ground for rejecting the petitioners refund application.

Decision Held:

- ✓ The court held that cancellation of the supplier registration with retrospective effect cannot be considered as a grounds for rejecting a genuine buyer's refund application.
- ✓ The name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash.
- ✓ This Court finds that without proper verification, it cannot be said that there was any failure on the part of the petitioner in compliance of any obligation required under the statute before entering in to the transactions in question.
- ✓ Hence respondent Department should consider the grievance of the petitioner afresh by taking into consideration the documents which the petitioner intends to rely in support of his claim.
- ✓ In a similar case of M/s LGW Industries Limited & Ors. Vs Union of India & Ors (Calcutta High Court), the Court held that all the transaction are genuine and valid and also the name of the supplier is available on the government portal at the time of transactions in question. Hence the petitioner shall be given the benefit of input tax credit.

H N A Comments: *This is a Favourable case law which has held recipient can avail refund of ITC being a genuine buyer even though the registration is cancelled retrospectively.*

6. Cancelling GST Registration due to Vague Notice

[Sona Metals Vs State of Gujarat (Gujarat High Court) R/Special Civil Application No. 25221 of 2022 dated 15/06/2023]]

Facts of the Case:

- ✓ The petitioner is registered under the Gujarat Goods & Services Tax Act, 2017. Show Cause Notice is issued by the Respondent stating that the Registration has been obtained by fraud, wilful misstatement, and suppression of fact and later order cancelling the registration in Form GST REG-19 was passed by the respondent stating that Registration of the petitioner was cancelled as per the show cause notice in Form GST REG -17/31 dated 30/06/2022.

Contention of Petitioner:

- ✓ Show Cause Notice is a non-speaking one it only mentioned that *“Registration has been obtained by means of fraud, wilful statement or suppression of fact hence cancelling the GST Registration.”* There were no other grounds and quantifications mentioned in the show cause notice except aforesaid fact
- ✓ Petitioner stated that Notice does not refer to any particular fact and that it mentions only very less points so as to enable the noticee to give reply. Thereafter, an Order was issued by the Department in Form GST REG-19 cancelling the registration.
- ✓ Petitioner referred the case of Aggrawal Dyeing and Printing Works Vs. State of Gujarat & Ors. in Special Civil Application No. 18860/2021 wherein the court quashed and set aside the SCN for not mentioning the reason properly.
- ✓ Petitioner prayed before the court for calling on records of proceedings initiated pursuant to show-cause notice dated 01.07.2022 as well as cancellation order dated 15.07.2022. Also prayed for restoration of registration bearing number 24ZSPM1286G1ZX.

Decision Held:

- ✓ The show cause notice dated 01.07.2022 and the order dated 15.07.2022 are hereby quashed and set aside. However, the departmental authorities were given liberty to issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the petitioner and to pass appropriate order in accordance with law.

- ✓ The Department is also directed to restore the registration of the petitioner forthwith. It is needless to mention that it shall be open for the petitioner to respond to such notice by filing objection/reply with necessary documents, if relied upon. Accordingly, this petition is allowed.

H N A Comments: It has been brought to the Notice of the department that in many cases non-speaking and vague show cause notice are being issued in violation of provisions of the GST Act and Rules. It is important that proper diligence is made before issuance of SCN.

7. Cough Syrup transportation without proper E-way Bill HC grants bail to Driver.

Malay Mukharjee Vs State of Assam (Gauhati High Court)[[Case No. Bail Appln./1232/2023) dated 25/05/2023

Facts of the Case:

- ✓ The case was filed under the Narcotic Drugs and Psychotropic Substances Act, 1985, for the transport of a large number of cough syrup bottles.
- ✓ Counsel for accused argued that the transport was lawful and also have valid documents such as GST Invoice E-way Bill etc, which were also found to be genuine by the Court.

Contention of the Defense Counsel:

- ✓ Defence counsel, submits that accused have been in judicial custody for 137 days.
- ✓ Accused petitioner No.1 is the owner and co-driver of the seized truck and the Accused petitioner No.2 is the driver employed by the accused petitioner No.1. The said truck has been engaged in transportation business under Road Kings Pvt. Ltd. for transportation of consignments of medicines, they have all the e-way bills, Due challans, and other requisite documents.
- ✓ Additional Public prosecutor also submits that case is at investigation stage and all the documents produced by the accused petitioner are genuine.

- ✓ Therefore, the accused petitioners being absolutely /innocent, may be directed to be released on bail.

Decision Held:

- ✓ The Court is of the opinion that subject to final outcome in investigation, and for furtherance of justice, continuation of detention in judicial custody of the accused petitioners in the interest of the ongoing investigation is not required.
- ✓ Accordingly, it was held that each of the accused petitioners, shall be released on bail of Rs.1,00,000/- with two sureties of like amount to the satisfaction of the learned Special Judge (NDPS), Dhubri subject to the following conditions-
 - i) That the accused petitioners shall cooperate with the investigating officer as and when required;
 - ii) That the accused petitioners shall not directly or indirectly make any inducement, threat of promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts either to the investigating officer or to the Court;
 - iii) That the accused petitioners shall refrain from committing any similar offence in future of which they are accused or suspected of commission. Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

***HNA Comments:** The Guwahati High Court's decision in Malay Mukharjee Vs State of Assam delivers a balanced approach, weighing the alleged crime against the validity of supporting documents and the status of the investigation. It also underscores the importance of lawful transport of pharmaceutical goods and the severe consequences of their contravention.*

8. An opportunity to pay Pre-Deposit is given to the Petitioner and till then no action shall be taken on confiscated goods.

[M/S. Tejas Arecanut Traders Versus Joint Commissioner Of Commercial Taxes (Appeals)] [Writ Petition No. 103652 Of 2023 (T-Res)] Dated 14/06/2023].

Facts of the Case:

- ✓ The petitioner filed an appeal to Commissioner (Appels) on 11.03.2023 under section 107 of CGST Act, 2017 against the order of the Department dated 09/01/2023. The Department had

issued an endorsement (in Annexure-L) on 28.03.2023 for paying 10% pre deposit or to appear before him in person within 7 days. However, the Petitioner neither paid pre-deposit, nor had appeared before the Authority. Accordingly, the Department proceeded with auctioning the confiscated goods through auction notice in Annexure-A.

Contention of the Respondent:

- ✓ Petitioner contended that the endorsement in Annexure – L was forwarded to him through e-mail which went unnoticed until notice in Annexure-A was received. The petitioner prayed that he may be granted an opportunity to comply with the requirements of the endorsement in Annexure-L, and till the statutory appeal filed by him before the Department is disposed off, the confiscated goods may not be auctioned.

Contention of the Respondent:

- ✓ Respondent submits that even though the petitioner had thereafter preferred an appeal as provided under Section 107 of the Act of 2017, Petitioner had failed to pay the pre deposit, which is mandatory in nature for considering the appeal nor had he offered any explanation. Further, auction notice was sent since the goods were perishable in nature.

Decision Held:

- ✓ The court has permitted the petitioner to comply with the within a time frame and upon such compliance, the appellate authority shall consider the Appeal filed by the petitioner and dispose of it on merits in accordance with the law.

HNA Comments: This judgement further proves that payment of pre-deposit before filing an appeal is mandatorily to be fulfilled by the assessee.

9. High Court Allows Appeal Filing Despite Expired Statutory Limitation Period.

*[M/s. PRM Constructions Vs Assistant Commissioner of GST & Central Excise
(Madras High Court)*

(W. P No. 14111 of 2023) dated 01/06/2023]

Fact of the case:

- ✓ Petitioner seeks an opportunity to file the appeal, which exceeds the statutory limitation under the Finance Act, 1994.

Contentions of the Petitioner:

- ✓ “Concept of Natural Justice is considered to be one of the most essential elements in the administration of Justice’. Though this concept is not provided by the Constitution of India expressly, this is an indispensable part of it to ensure the Rights of the common people to get a ‘just and fair trial.” By considering the principle of natural justice petitioner requests the court for three-week extension to file the appeal.

Decision Held:

- ✓ The Court was considerate of Petitioner’s plea for an opportunity to file a statutory appeal, even though the statutory limitation period had expired. The petitioner is granted three weeks from today to file an appeal as against the impugned order dated 28.09.2022. Appeal if filed within the period as aforesaid, shall be entertained by the receiving Registry without reference to limitation but ensuring compliance with all other statutory pre-conditions, including pre-deposit.

***HNA Comments:** This ruling highlights the flexibility of the judiciary in ensuring that the principles of natural justice are upheld. However, although the Courts are flexible about time limits, it is to be ensured that all other procedures required under law, such as pre-deposit shall require to be adhered to by the taxpayers.*

10. Provisional attachment u/s 83 of the CGST Act for securing the revenue of another taxable person is unjustified

[M/s. Zhudao Infotech Private Limited Vs Principal Additional Director General &Anr (Delhi High Court) [25-05-2023]

Facts of the Case:

- ✓ The petitioner (ZIPL) has filed the petition under Article 226/227 of the Constitution of India against the orders dated 10.10.2022 and 06.10.2022 passed by the Department.

- ✓ In terms of the impugned orders, ZIPL's bank accounts were attached u/s 83 of the CGST, 2017. By a communication dated 10.10.2022 addressed to the Branch Manager of Yes Bank Ltd., the Department also directed the Branch Manager of Yes Bank to hold at least ₹643 crores in ZIPL's Escrow / Nodal Account.

Contentions of Petitioner

- ✓ Petitioner states that the orders passed under Section 83 of the CGST Act are illegal as there is no ground for the respondents to believe that it was necessary to attach ZIPL's bank accounts in the interest of the Revenue.

Decision Held:

- ✓ It was held that the bank accounts of ZIPL cannot be attached for securing the revenue of another taxable person. Bank accounts and assets of only those taxable persons specified in Section 122(1A) of the CGST Act can be attached who may be liable for payment of any government revenue and the Commissioner is of the opinion that it is necessary to attach their assets in the interest of government revenue.
- ✓ A debt owed by any person to the taxable person, whose assets or bank accounts are liable to be attached under Section 83, can be attached as being an asset of such a person. But the bank account of the person owing such debt cannot be subject to a provisional attachment order under Section 83.
- ✓ Permitting the Petitioner to rectify the error was acceded, as the mistake committed vide filing of the GSTR-1 was inadvertent in nature. Further, there will be no loss whatsoever caused to the Ex-chequer.
- ✓ Hence the Court permitted the Petitioner to resubmit the corrected GSTR-1 for the aforementioned periods.

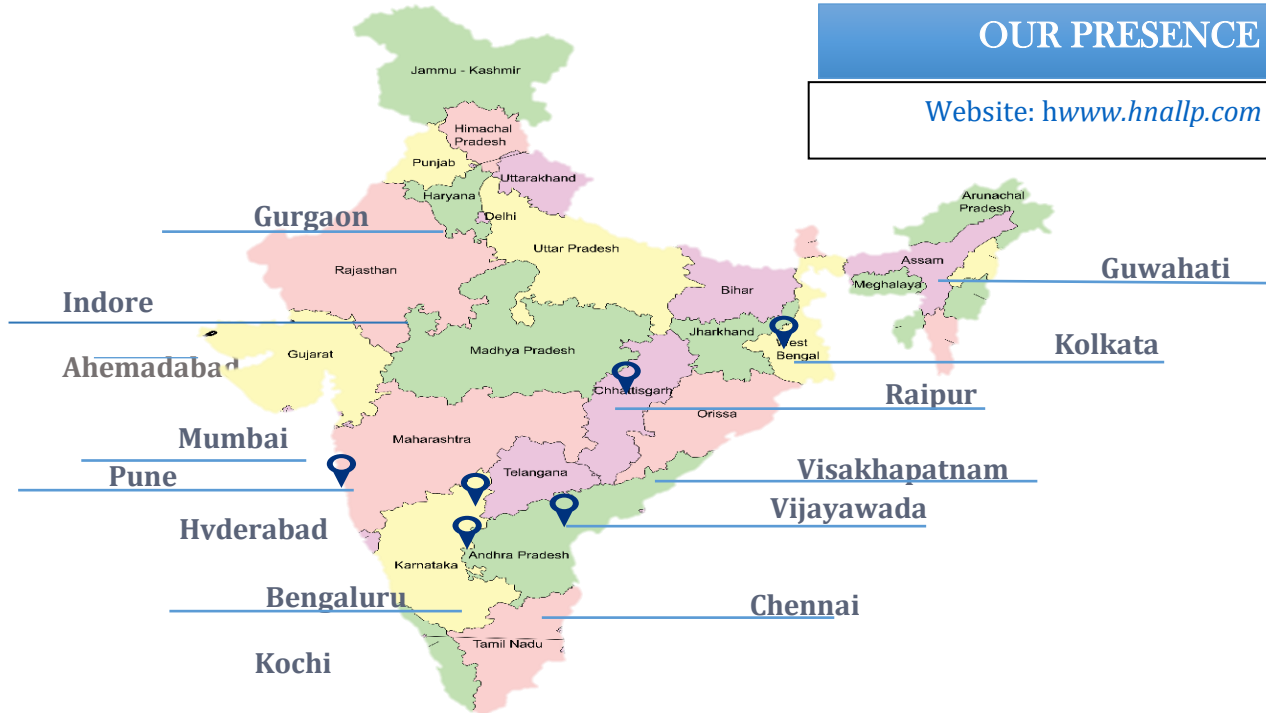
***H N A Comments:** This is a favourable order to petitioner also It shows the arbitrary power of provisional attachment, We hope there will be some guidelines provide by the government to ensure the department does not use such power arbitrary*

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