Legal Updates

Summary of Major Legal Updates

Key Highlights:

1. Correction of an invoice for the purpose of availing input tax credit.
2. Amendment in Section 50 shall be made with retrospective effect.
3. Tax Research Unit (TRU) not authorised to issue clarification relation to classification of goods.
4. Transfer of unutilised ITC in ECL given non availability of ITC -02 on the GST Portal.
5. Value of diesel provided by recipient FOC is to be included in the taxable value.
6. Transfer of TDS deducted in erstwhile law not allowed as ITC under GST.
7. Refund for Export of Telecom Service.
8. Exemption on premium paid for allotment of institutional plot.
9. Levy of interest on transitional credit claimed as ITC in GSTR-3B.
10. Seizure of cash is beyond the powers of GST Authorities.

Contents

A. Some Relevant Judgements

1. Correction of an invoice for the purpose of availing input tax credit

M/S. VISHWANATH IRON STORE VERSUS THE UNION OF INDIA[1]
[Hon'ble Patna High Court]

The petitioner is engaged in the business of sale and purchase of scrap materials. A tender was issued by the East Central Railways for sale of scrap and other material by way of an e-auction. Pursuant to the tender, application made by the petitioner against the tender, material was successfully auctioned to the petitioner against which invoice was issued by the Railways levying CGST and SGST of Jharkhand at 9% each. Currently, the petitioner registered in Bihar is denied the input tax credit of CGST and SGST of Jharkhand. The petitioner states that the possession of goods was taken in Jharkhand and moved to Bihar, i.e., outside the State. Hence, IGST should have been levied instead of CGST and SGST.

Now, the petitioner seeks a writ of mandamus to the authorities of the Railways for issuing of a fresh invoice for the purpose of availing input tax credit. The petitioner also points out to the various notifications issued by the Railways, which states that the tax charged as CGST and SGST shall be deemed to be collected as IGST.

The Hon'ble High Court in the above case observed that:

- The petitioner received the goods at Jharkhand. If the petitioner had intended to move the material to its own state (Bihar), the petitioner should have specified it and insisted that the sale be treated as an Inter-State one.
- There is nothing to prove the movement of goods to the State of Bihar. The mere statement of the Railways that the invoice issued should be deemed to have been issued under the IGST Act, cannot enable the petitioner to seek input tax credit.
- The transaction between the Railways and the petitioner would not regulate the tax liability and in any event, the tax levied and collected as CGST and SGST would have been credited to the respective head of account.

[1] 2023 (10) TMI 640 - PATNA HIGH COURT

- The invoice was issued in assessment year 2017-18. The petitioner has filed the above writ petition in the year 2021 when the enabling provision for claiming input tax credit would not have been available in any event. As per section 16(4), the input tax credit has to be claimed before 28.11.2017 or furnishing of the annual return for the assessment year 2017-18, whichever is earlier. There is absolutely no possibility of the input tax credit being availed of at this point.
- There is no reason to direct the Railways to issue a revised invoice nor can the same be permitted.

Comments: -

It is important to note that the burden is on the recipient to communicate beforehand to the supplier if the movement would be caused to other state after possession. Further, the ITC cannot be availed post the time-limit under section 16(4). Thus, in cases wherein the recipients intend to move the goods to another state after purchasing the same, the relevant documents i.e. the contracts, the invoices, the purchase order and other communications should contain a stipulation for such a movement. There are various other instances of HC's allowing the rectification of errors in returns but the present case is different in not following the mandate of GST in informing the delivery location which is crucial for POS determination.

2. Tax Research Unit (TRU) not authorised to issue clarification relation to classification of goods.

ASSOCIATION OF TECHNICAL TEXTILES MANUFACTURERS AND PROCESSORS & ANR. VERSUS UNION OF INDIA & ORS[2]
[Hon'ble Delhi High Court]

The petitioner is aggrieved by the classification of ***polypropylene woven and non-woven bags including those laminated with Biaxially Oriented Polypropylene (BOPP)*** clarified by a Circular No. 80/54/2018-GST dated 31.12.2018 issued by a Tax Research Unit (TRU). The circular classifies the item under Tariff Heading 3923 of Chapter 39, while as per the petitioner

[2] 2023 (11) TMI 666 - DELHI HIGH COURT

it should fall under Tariff Heading 5603 of Chapter 56. Moreover, the petitioner also challenged the validity of the circular as its issuance is beyond the power of the TRU.

The Hon'ble High Court in the above case observed that:

- TRU does not have any authority or jurisdiction to render a clarification with respect to classification of goods and articles.
- Section 168 states the authority or power to issue directions or instructions and hence, nothing authorizes TRU to issue any circular on the same.
- Accordingly, the circular is liable to be quashed and set aside on this ground alone.
- The circular while purporting to convey a position with respect to the classification of non-woven polypropylene bags has rested its conclusions solely on the basis of the provisions contained in Chapter 39 and not referred chapter 56.
- The impugned circular also fails to advert to the Notes placed in Chapter 39, and which in unambiguous terms, exclude textiles from the ambit thereof.
- Courts should avoid expressing an opinion on questions of classification unless they are directly raised, and adequate material placed on the record.

Comments: -

The decision stipulates that the circular cannot be issued by any person other than the persons authorized under section 168 of the GST Act, i.e., the Board, or the commissioner. It is important to note that the judgement brings into question all the circulars relating to classification issued by the TRU. These include the following:

Circular No.	Date
191/03/2023-GST	27-03-2023
189/01/2023-GST	13-01-2023
179/11/2022-GST	03-08-2022
164/20/2021-GST	06-10-2021
163/19/2021-GST	06-10-2021
114/33/2019-GST	11-10-2019
113/32/2019-GST	11-10-2019
86/05/2019-GST	01-01-2019

Circular No.	Date
84/03/2019-GST	01-01-2019
80/54/2018-GST	31-12-2018
54/28/2018-GST	09-08-2018
52/26/2018-GST	09-08-2018
48/20/2018-GST	06-06-2018
34/8/2018-GST	01-03-2018
332/2/2017-TRU	07-12-2017
20/20/2017-IGST	22-11-2017

Circular No.	Date
13/13/2017-GST	27-10-2017
11/11/2017-GST	20-10-2017

Circular No.	Date
6/6/2017-CGST	27-08-2017

In light of the above, the taxpayers may take caution in basing their tax positions on circulars issued by RU.

3. Transfer of unutilised ITC in ECL given non availability of ITC -02 on the GST Portal

M/S. TIKONA INFINET PRIVATE LIMITED VERSUS STATE OF GUJARAT[3]
[Hon'ble Gujarat High Court]

The petitioner sought permission to transfer its business and unutilized Input Tax Credit (ITC) from its Electronic Credit Ledger. The petitioner argued that a show-cause notice it received was unwarranted because Form ITC-02, was not available on the GST Portal. Despite the non-availability, the petitioner manually filed the form and contended that the notice was erroneous.

- The Hon'ble High Court while making the decision in the given case, has relied upon the decision of Allahabad HC on the similar issue. Allahabad HC had held that rejecting the claim of the petitioner cannot be justified in the wake of the admitted fact that the relevant form was not online on GST common portal.
- The court disposed of the petition, directing the respondents to consider the case in accordance with the facts in Allahabad High Court's decision, especially regarding the non-availability of Form ITC-02 on the online portal of GST.
- The court set aside the order, allowing the authorities to pass a fresh order taking into consideration the petitioner's objections and affording them a proper hearing.

Comments: -

The judgment emphasized that the officer shall give the assessee an opportunity of being heard before passing on an order. Consideration must be placed on the facts of the case while acknowledging the challenges posed by in the early stage of the GST Portal's implementation.

[3] 2023 (11) TMI 775 - GUJARAT HIGH COURT

Cases where facility on portal was not available, decision should be in favour of the taxpayer. Similar judgements have been seen in for Tran-1 forms as well.

4. Value of diesel provided by recipient FOC is to be included in the taxable value.

M/S. SHREE JEET TRANSPORT VERSUS UNION OF INDIA[4]
[Hon'ble Chhattisgarh High Court]

In this case, the petitioner, a Goods Transport Agency (GTA), challenges the validity of an order passed by the AAAR, Chhattisgarh. The dispute is related to the inclusion of the value of diesel provided by the recipient free of cost (FOC) in the consideration. As per the agreement between the GTA and the recipient, the recipient was responsible for providing fuel on an FOC basis.

The Hon'ble High Court in the above case observed that:

- The court, analysed various legal provisions, including Section 15(2)(b) of the CGST Act, and considered the nature of the petitioner's business.
- The court concluded that, despite the diesel has been supplied FOC by the service recipient, it is an integral part of the GTA's business and essential for the survival of the business, and therefore, it should be added to the value for the purpose of GST.

Comments: -

The judgement provides that in a supply before ascertaining that whether an amount should be included in the consideration or not, one should focus on whether the supplier is liable to pay that amount considering the business model of the supplier. In this case, generally GTA is liable to pay for the diesel/fuel used in the vehicle used in the business. Hence, it was held such fuel cost should be included in the taxable value. However, the plain language of section 15(2)(b) do not suggest such interpretation and clarification by Circular No. 47/21/2018-GST, dated 8-6-2018 provides that sec 15(2)(b) applies to the cases of supplier contractual obligation being fulfilled by recipient not all cases of FOC from recipient. It is for the contracting parties to decide

[4] 2023 (11) TMI 206 - CHHATTISGARH HIGH COURT

the terms and price not the GST department/law to decide how a price to be agreed and such contracting prices and terms shall not be ignored unless it was done with fraudulent intent, which is again have to be established by the department by showing the conduct & documents. Hence, with utmost respect, the HC erred in not considering these essentials.

5. Transfer of TDS deducted in erstwhile law not allowed as ITC under GST.

M/S. INDIABULLS CONSTRUCTION LIMITED vs THE ASSISTANT COMMISSIONER (ST)[5]

[Hon'ble Madras High Court]

The petitioner claims entitlement to TDS from the Pre-GST era and transfer and utilization thereof as Input Tax Credit (ITC) under the Tamil Nadu Goods and Services Act. The show cause notice was passed, but no order was passed. The Hon'ble High Court in the above case observed that:

- The petitioner relies on a prior court order (DMR Constructions vs. Assistant Commissioner) stating that the transfer of TDS from the Pre-GST era to the post-GST era is permissible.
- The court holds that the issuance of the show cause notice denying the transfer of TDS is illegal and contrary to the precedent set by the court.
- The court quashes the impugned show cause notice dated 29.09.2023.

Comments: -

Many taxpayers have carried forwarded the credits of VAT TDS giving them the same treatment as transitional credits. The GST department has questioned a transition of such an amount during the assessments finalised for FY 2017-18. All such litigations can be put to rest by the above judgements.

6. Refund for Export of Telecom Service.

VODAFONE IDEA LIMITED VERSUS UNION OF INDIA & ORS.[6]

[Hon'ble Delhi High Court]

[5] 2023 (10) TMI 862 - MADRAS HIGH COURT
[6] 2023 (10) TMI 934 - DELHI HIGH COURT

The petitioner supplies International Inbound Roaming Services (IIR) and International Long-Distance Services (ILD) to inbound subscribers of Foreign Telecom Operators (FTOs). The petitioner has International Roaming Agreements with FTOs. Refund claims were filed for various periods, indicating the date of filing and the amount claimed. Adjudicating Authority rejected claims on the grounds that services provided did not qualify as export of services and that claims were time-barred. The petitioner argues that the services qualify as export since FTOs are located outside India. The Revenue contends that the presence of inbound roamers in India makes it a domestic service.

The Hon'ble High Court in the above case observed that:

- The court relies on a precedent (Verizon Communication India Pvt. Ltd. v. Assistant Commissioner of Service Tax, Delhi-III) and analogous provisions in the ST Rules to establish the criteria for export of services. The court emphasized that the physical presence of the service recipient's subscribers (and not the service recipient themselves) in India did not negate the export nature of the services.
- The court concludes that the present case is covered by the precedent, and as the Revenue has not challenged the refund in previous cases, the petitioner is entitled to a refund.
- The court allows the petition and directs the respondents to refund the claimed amounts.

Comments: -

The above judgement provides a breather for treatment of export of services wherein the person paying the consideration is different from the person consuming the services. Although the service recipient is relevant for establishing a service as an export of services, the department has had a history of relying on the status of the consumers of services. In all such cases, the above judgement can be relied and the refund claims can be substantiated.

7. Exemption on premium paid for allotment of institutional plot

M/S RAM KAMAL HEALTHCARE PVT. LTD. VERSUS UNION OF INDIA[7]
[Hon'ble Allahabad High Court]

[7] 2023 (10) TMI 286 - ALLAHABAD HIGH COURT

The petitioner sought to quash a communication from the Advisor to Yamuna Expressway Industrial Development Authority (YEIDA) dated 24.08.2018. The communication demanded the petitioner to deposit Goods and Services Tax (GST) at the rate of 18% on a premium of Rs. 3.80 crores charged by YEIDA for an institutional plot allotted to the petitioner. The petitioner argued that the transaction fell within the exemption granted by the Central Government under Section 11 of the Goods and Services Tax Act, 2017.

The Hon'ble High Court in the above case observed that:

- The court noted that the Authority for Advance Ruling had already clarified, in response to YEIDA's specific query, that GST was not applicable on the upfront amount paid by the petitioner for the long-term lease of the institutional plot. The court found the communication from YEIDA to be unfounded in law and facts.
- It emphasized that the exemption, as per the original Notification and the ruling, was unconditional. The court allowed the writ petition, quashing the communication, and directing the refund of any deposited amount by the petitioner, with interest at the rate of 8% if not refunded within one month.

Comments: -

The court emphasized that the entries in the exemption notification is required to be considered strictly along with the specified conditions for the grant of the exemption., In the absence of any specific condition in the Notification, the exemptions may be granted unconditionally.

8. Levy of interest on transitional credit claimed as ITC in GSTR-3B.

M/S. PMA CONTROLS INDIA LIMITED REPRESENTED BY ITS DIRECTOR R. RAMESH VERSUS THE JOINT COMMISSIONER OF CENTRAL TAX (APPEALS-II)[8]

[Hon'ble Madras High Court]

The petitioner challenged an Order in Appeals, which partially allowed an appeal against Order-in-Original. The latter order issued included demands related to Input Tax Credit (ITC) for various periods. The petitioner sought to transition unutilized Input Tax Credit under Section 140 of the CGST

[8] 2023 (10) TMI 578 - MADRAS HIGH COURT

Act, 2017, a process affected by technical glitches. Despite initial difficulties, attempts were made in 2021 to transition the credit, ultimately successful on 17.08.2021.

The Hon'ble High Court in the above case observed that:

- If the petitioner had been allowed to successfully transition the credit under Sections 138 to 140 of the CGST Act, 2017, the amount would have available for being utilization.
- The court highlighted the revenue-neutral nature of the petitioner's actions, emphasizing their entitlement to transition the credit.
- The court found the imposition of interest and penalties unjustified, considering that the petitioner had not caused any loss to the revenue.

Comments: -

This judgement establishes a precedent, underlining the importance of considering technical challenges faced by taxpayers during the transition of Input Tax Credit. The ruling reflects that in cases where the issue is revenue-neutral, the court will favour the taxpayer.

9. Seizure of cash is beyond the powers of GST Authorities

T.H. FAZIL, T.A. HASSAN, NOUFAL HASSAN VERSUS STATE TAX OFFICER, THE INTELLIGENCE OFFICER UNIT-II, OFFICE OF THE INTELLIGENCE OFFICER[9]
[Hon'ble Madras High Court]

The writ petition challenges the seizure of cash from the petitioner's premises by GST authorities. The petitioners argue that such seizure is beyond the powers granted under the GST Act and Rules, asserting that the seized cash is not part of their 'stock in trade'. The counsel relies on a recent Kerala High Court decision in Shabu George & another v. State Tax Officer, supporting the petitioner's legal position.

The Hon'ble High Court in the above case observed that:

- The court allows the writ petition, emphasizing the absence of legal authority for GST authorities to seize cash not constituting 'stock in trade'.

[9] 2023 (9) TMI 958 - KERALA HIGH COURT

- Referring to the precedent in Shabu George, the court orders the immediate release of the seized cash to the petitioners, directing the respondents to credit the amount to the petitioners' account within five days from the judgment.

Comments: -

The Hon'ble Court in the above case has clarified that the GST authorities do not have the legal authority to seize cash from dealers unless it constitutes part of their 'stock in trade'. Thus, if in a search proceedings, the GST authorities intent to seize cash then, such an act can be questioned in the grab of legality.

10. Specific services to be considered as input services or not as per CENVAT Credit Rules 2004.

COMMISSIONER OF CENTRAL EXCISE, DELHI-III VERSUS MARUTI SUZUKI INDIA LTD.[10]
[Hon'ble Punjab and Haryana High Court]

Maruti Suzuki India Ltd. had taken CENVAT credit for various input services such as training and coaching services, IT (software) services, CHA and cargo handling services for export, warehouse and storage services, land survey service, and hotel Broadway services. A show cause notice was issued to the company on, questioning the CENVAT credit taken by the company in 2008-09 for various input services. The notice alleged that the credit had not been used in relation to the manufacture of goods or for clearance of goods.

The Hon'ble High Court in the above case observed that:

- The Punjab and Haryana High Court ruled in favour of Maruti Suzuki India Ltd., stating that the input services were used directly or indirectly in relation to the manufacture of the final product and for the clearance thereof up to the place of removal, and therefore eligible for credit.

[10] 2023 (11) TMI 724 - PUNJAB AND HARYANA HIGH COURT

- The court held that the services of training and coaching, IT (software), Customs House Agent (CHA) and cargo handling, warehouse and storage, land survey, and hotel Broadway were eligible for CENVAT credit under Rule 2(l) of the CENVAT Credit Rules, 2004.

Comments: -

The recent court decision reinforces a broad interpretation of 'input service,' affirming that services indirectly linked to manufacturing and crucial for efficient business operations are eligible for Cenvat credit. This judgement is relevant under GST regime as well since the services could be argued to have been linked with the course and furtherance of conducting the business.

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11. Classification of "flavoured milk" under HSN.

M/S. PARLE AGRO PVT. LTD., REPRESENTED BY ITS MANAGER, G. MADHAVAN
VERSUS UNION OF INDIA
[Hon'ble Madras High Court]

The case involves a dispute over the classification of "flavoured milk" under the HSN code for the purpose of GST. The petitioner contested the decision of the GST Council to classify flavoured milk under HS Code No. 2202 instead of 0402. The petitioner argued that this classification was contrary to the decision of the Hon'ble Supreme Court in *COMMISSIONER OF CENTRAL EXCISE VERSUS M/S AMRIT FOOD*. The petitioner sought a Writ of Certiorarified Mandamus to quash the decision of the GST Council and to classify flavoured milk under HS Code 0402 in accordance with the Supreme Court's decision.

The Hon'ble High Court in the above case had following observations:

- Reference was placed upon the various judicial precedents and rulings of appellate authorities[11] including the submissions made by the petitioner.

[11] Commissioner of Central Excise Versus M/s Amrit Food (A. Division of Amrit Corporation Ltd) – 2015 (9) TMI 1269 - Supreme Court
- Nestlé India Ltd versus Commissioner of Central Excise, New Delhi, 2017 (6) GSTL 483
- Britannia Industries Ltd. 2020 (36) GSTL 582 (AAR-GST-T.N.)
- Sri Chakra Milk Products LLP2020 (32) GSTL 206

- Petitioner submitted its license under FSS Act in the state of Tamil Nadu wherein the "flavoured milk" was classified as a "Dairy product" based on which it was contended that the flavoured milk should be classified under Heading 0402.
- Court also relied upon the principle of "Noscitur - a Sociis" which states that the words must take colour from words with which they are associated. Accordingly, meaning of the expression "Beverage Containing Milk" has to be there be ascertained from similar products under the heading 2202 90 of Customs Tariff Act, 1975.
- Notifications issued under the Central Excise Act, 1944 which classified "Flavoured Milk" / "Flavoured Milk of Animal Origin" as "Beverage Containing Milk" were erroneous which were never contested by the assesses since the same was favourable for them.
- GST Council cannot impose a wrong classification of "Flavoured Milk" as a "Beverage Containing Milk" under the residuary item as "Non- Alcoholic Beverages".
- In the absence of any enactment under GST, for rates and for classification of the "goods" and "service", the Parliament and State Legislatures have left it to the wisdom of respective Governments to fix rate of tax on recommendations of GST Council.
- Further, considering that the recommendation by the GST Council are not binding on the States, classification ought to be independently determined by the Assessing Officer.

Comments: -

The case emphasised on the powers GST Council and provided that the Council does not have the authority to determine the classification of goods under GST. It has been held that the GST Council has the limited authority to prescribe the tax rate on supply of goods or services but not the classification. This order can be used in cases wherein the GST council has disturbed settled principles of classification under GST.

B. Judgements on Parallel Proceedings:

12. Overlapping GST Investigations and Remedies in Tax Disputes

M/S. YASH ALLOYS INDIA THROUGH YASHPAL B. PICHOLIYA AND YASH METAL IMPEX PVT. LTD. THROUGH YASHPAL B. PICHOLIYA VERSUS UNION OF INDIA & ORS.[12]
[Hon'ble Bombay High Court]

The primary grievance raised by the petitioners was in relation to investigating under Maharashtra Goods and Services Tax Act, 2017 (MGST Act) on a subject matter already under investigation under the CGST Act, 2017. The contention was based on Section 6(2)(b) of MGST Act, which prohibits proceedings under the MGST Act when initiated by the proper officer under the CGST Act on the same subject matter.

The Hon'ble High Court in the above case observed that:

- While the investigation under the CGST Act covered the period from July 1, 2017, to March 31, 2021, the investigation under the MGST Act pertained to the period from April 1, 2021, to October 4, 2023.
- The petitioners had themselves requested the State Authorities to investigate from April 1, 2021, onwards to avoid duplication of proceedings.
- The scope of the MGST Act investigation was related to illegal refunds, as informed by the Additional Government Pleader.
- The court disposed of the petitions while keeping all contentions of the parties under the CGST Act and the MGST Act expressly open. It rejected the argument that Section 6(2)(b) of the MGST Act was applicable in this case.

Comments: -

The Judgement provides that section 6(2)(b) is not violated if documents are being sought for a period investigated under any state GST Act, different from the period for which the investigation is going on under CGST Act.

[12] 2023 (10) TMI 1206 - BOMBAY HIGH COURT

13. Proceedings to be initiated chronologically in case of simultaneous notices from different tax authorities.

M/S. BAIBHAW CONSTRUCTION PRIVATE LIMITED VERSUS THE UNION OF INDIA[13]
[Hon'ble Patna High Court]

In this case, the petitioner is aggrieved by notices issued by two different tax authorities, leading to simultaneous proceedings for identical assessment years. The petitioner argues that the first inquiry should be prioritized, and the summons issued by the other authority should be stayed until the conclusion of the initial proceedings. The key point revolves around Section 6 of the GST Act, which addresses the authorization and jurisdiction of proper officers under both state and central GST enactments.

The Hon'ble High Court in the above case held that:

- The Circular dated 5th October 2018 from the CBIC states that officers from both central and state tax authorities are **authorized to initiate intelligence-based enforcement actions** irrespective of the administrative assignment of taxpayers.
- The circular clarifies that the initiating officer has the authority to complete the entire process of investigation without transferring the case to the officer under the other enactment.
- Since the notice issued by the Central Tax Authorities and State Tax Authorities are for different tax periods, simultaneous proceedings can be initiated.
- Considering the nature of the notices and the chronological order of investigations, the Court has decided that the proceedings initiated by the central tax authority be continued, and the proceedings initiated by the state tax authority be kept in abeyance until the central tax authority completes its inquiry.

Comments: -

It is important to note that where the notices are issued for multiple tax periods, simultaneous proceedings can be initiated. The court's decision emphasizes that when one tax authority

[13] 2023 (10) TMI 856 - PATNA HIGH COURT

initiates proceedings against a taxpayer, it has the authority to complete the entire investigation without transferring the case to the other tax authority.

C. Pronouncement on Common/repetitive Issues

14.1. Cancellation of Registration

(i). **The petitioner made an application for change in the principal place of its business. However, the application filed by the petitioner application was rejected on 0905-2023 stating that the required documents were not submitted without giving any SCN in this regard. Further, an SCN proposing to cancel the GST registration was issued without providing any reasons for the same. The court considered apposite to set aside the order dated 09.05.2023 whereby the petitioner's application for amendment of the GST registration was rejected.** Concerned officer shall satisfy that the petitioner is carrying on the business at its principal place of business as claimed by the petitioner.

M/S. SAI ALUMINIUM EXIM VERSUS PR. COMMISSIONER OF GOODS AND SERVICE TAX NORTH DELHI[14]
(Hon'ble Delhi High Court)

(ii). **The petitioner's registration was cancelled through the order dated 23.05.2022 with retrospective effect. The said order was passed pursuant to a Show Cause Notice wherein nothing related to fraud alleged to have been committed by the petitioner or any facts that were allegedly suppressed by the petitioner, was stated. There is no explanation as to why the buyers and suppliers have been found to be suspicious. Closing of the petitioner's shop is not a valid ground for cancellation of petitioner's GST registration. Therefore, the impugned order is set aside.**

VAB APPAREL LLP VERSUS COMMISSIONER, DELHI GST AND ORS[15]
(Hon'ble Delhi High Court)

[14] 2023 (11) TMI 599 - DELHI HIGH COURT
[15] 2023 (11) TMI 598 - DELHI HIGH COURT

14.2. E-Way Bills

(i). **The petitioner engaged in manufacturing and sale of basic iron and steel, dispatched a consignment to Rajasthan, facing a breakdown in Uttar Pradesh. A show cause notice was issued, and despite the petitioner's response and supporting documents, an order was passed imposing a penalty of Rs. 8,43,456. The court observes that the goods had valid documents, and the breakdown was beyond the petitioner's control. As there was no intent to evade tax and the penalty is unjustified, the court quashes the impugned orders and directs the refund of any deposited amount.**

M/S SUN FLAG IRON AND STEEL COMPANY LIMITED VERSUS STATE OF U.P. AND 3 OTHERS[16]
(Hon'ble Allahabad High Court)

(ii). **The petitioner, engaged in manufacturing and sale of laminated papers, faced detention and penalty during the transit of goods from Muzaffarnagar to Rajasthan. The detention was based on discrepancies between the goods and accompanying documents, leading to the issuance of a show cause notice and subsequent penalty orders. The petitioner rectified the mistake by producing another tax invoice before the detention. The court held that the authorities did not consider the rectification and if genuine documents are produced before seizure, proceedings are not justified. Hence the impugned orders are not justified.**

M/S GALAXY ENTERPRISES VERSUS STATE OF U.P. AND 2 OTHERS[17]
(Hon'ble Allahabad High Court)

(iii). **The allegation revolves around the misuse of E-way Bills by two consignors, with a prima facie implication of the petitioner in the misuse. The petitioner's argument that the proceedings originated from a survey conducted after the surrender of its**

[16] 2023 (11) TMI 456 - ALLAHABAD HIGH COURT
[17] 2023 (11) TMI 359 - ALLAHABAD HIGH COURT

business registration is rejected, as the relevant tax period is August 2018 to March 2019, during which the petitioner was a registered entity.

M/S BAJRANG TRADING COMPANY VERSUS COMMISSIONER OF COMMERCIAL TAX AND ANOTHER[18]

(Hon'ble Allahabad High Court)

14.3. Opportunity of being heard.

(i). **The petitioner seeks relief against a notice and subsequent actions by the respondents. The impugned actions include freezing the petitioner's bank account and denial of transfer ITC under the GST regime. The court directed to de freeze the accounts and also directed the petitioner to furnish a bank guarantee for Rs. 1.5 crores for defreezing the blocked ITC credit ledger balance. The court suggests the petitioners use Rule 159(5) of the CGST Rules to file objections as part of the opportunity of being heard against the attachment of property, providing an opportunity for the property's release.**

SHAH COAL PRIVATE LIMITED & ANR. VERSUS UNION OF INDIA & ORS.[19]

(Hon'ble Bombay High Court)

(ii). **The court has observed a fundamental breach of natural justice principles in the deficiency memos issued to the petitioner, as they failed to provide an opportunity to explain or notice regarding the authorities' view on the nature of services rendered. Emphasizing that a deficiency memo is not a substitute for a show cause notice (SCN), the court underscores the importance of adherence to the principles of natural justice in such proceedings. The court highlighted the authority's power to reassess duties based on verification. Referring to the Supreme Court's stance in ITC Limited, the court asserts that unless a self-assessed return is questioned or reassessed, a refund claim cannot be denied. The court quashes the impugned**

[18] 2023 (11) TMI 50 - ALLAHABAD HIGH COURT
[19] 2023 (10) TMI 944 - BOMBAY HIGH COURT

order, emphasizing that, in the absence of a challenged self-assessment, the refund claim should not have been rejected by the authorities.

BT (INDIA) PRIVATE LIMITED VERSUS UNION OF INDIA & ANR.[20]

(Hon'ble Delhi High Court)

(iii). **The petitioner was alleged to have claimed ITC with respect to supplies from a firm that was claimed to be non-existent. The court, upon perusing the records, noted that the appellate order did not consider the material provided by the petitioner, rendering it a non-speaking order and violative of Article 14 of the Constitution of India. The court quashed the order and remanded the matter back to the appellate authority, directing them to pass an order after giving the petitioner an opportunity of hearing and considering the material on record, in accordance with the law.**

MITTAL AGRO PRIVATE LTD. THRU. ITS DIRECTOR SHRI SUKKHU LAL CHANDWANI VERSUS COMMISSIONER, COMMERCIAL TAX, U.P. LKO. AND 2 OTHERS[21]

[Hon'ble Allahabad High Court]

D. Advance Rulings-

(i). **IN RE: M/S. THE VARACHHA CO-OP. BANK LTD**[22]

M/s. The Varachha Co-Op. Bank Ltd. sought an advance ruling on Input Tax Credit (ITC) eligibility for services during the construction of their new administrative building. This included items like Central Air Conditioning Plant, Lift, Electrical Fittings, Roof Solar Plant, Fire Safety Extinguishers, Architect Service Fees, and Interior Designing Fees. The Gujarat Authority for Advance Ruling (GAAR) ruled ITC admissible for New Locker Cabinet and Generator but blocked it for other items under Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.

The Appellate Authority for Advance Ruling affirmed the GAAR's decision, except for the Roof Solar Plant, where it allowed ITC. The decision hinged on interpreting CGST Act, 2017 provisions and the nature of supplies. Central Air Conditioning Plant, Lift, Electrical Fittings, and Fire Safety Extinguishers, deemed immovable property post-installation, faced ITC blocking under Section 17(5)(c). Architect Service Fees and Interior Designing Fees were ineligible for ITC under Section 17(5)(d) due to their link

[20] 2023 (11) TMI 478 - DELHI HIGH COURT
[21] 2023 (10) TMI 945 - ALLAHABAD HIGH COURT
[22] 2023 (10) TMI 473 - APPELLATE AUTHORITY FOR ADVANCE RULING, GUJARAT

to immovable property construction. However, the Roof Solar Plant, categorized as plant and machinery, received ITC approval.

(ii). **M/s. Geekay Wires Limited**[23]

- The Applicant claims that it suffered a loss of finished goods during fire incident and now, the destroyed goods can be sold only as a scrap. Since the Applicant has already claimed ITC on all raw materials utilized for manufacturing the final goods, he claims that ITC will not be required to be reversed in the event of destruction of finished goods when inputs are fully utilized in the manufacturing of finished goods.

- Authority while considering the case observed that
  - input tax credit is available to a taxable person only when such taxable person makes taxable supplies"
  - Sale of leftover scrap after the fire accident is nothing but a destroyed goods" and therefore sale of destroyed goods are not eligible for ITC.
  - On a combined reading of section 17(2) and section 18(4), it can be construed that once the output becomes non-taxable for any reason, the input tax already utilized pertaining to the corresponding inputs has to be reversed or paid back.
  - Hence, in this case, input tax credit is not available under Section 17(2) and 17(5)(h) and if the ITC is already utilized, such credit needs to be paid back as given under Section 18(4).

(iii). **Versatile Auto Components Pvt Ltd**[24]

- Applicant is a manufacturer of low speed electric two wheeler (below 250 Watts/0.25 KV) and is seeking clarification on HSN and applicable rate of GST on electrically operated vehicles.

- The Low-Speed Electric Vehicle (LSEV) or electrically operated 2 and 3 wheeler vehicle is to be classified under Heading No. 8703, attracting 5% GST w.e.f. August 01, 2019. However, electrical & mechanical spare parts of electric vehicle are not covered by any description in the Notification No. 01/2017, therefore they fall under residual entry and liable to 18% GST.

(iv). **Eastern Common Effluent Treatment Company Pvt Ltd.**[25]

- Applicant is rendering service of hazardous waste treatment and disposal services by treating the effluent water and supplying treated water for reuse by member units.

[23] TS-477-AAR(TEL)-2023-GST
[24] TS-478-AAR(TEL)-2023-GST
[25] TS-479-AAR(TN)-2023-GST

Applicant proposes to purchase effluent water and after treating the same, supply the resultant products to their member units so as to classify their activities as supply of goods.

- It claims that treated water is partly demineralized, which is used for industrial purposes and not suited for human consumption and so it would fall under Chapter heading 2201 and applicable tax would be 18% and so benefit of exemption i.e. Sl. No. 99 of Notification No. 02/2017- CTR dated June 28, 2017 cannot be claimed.

- While the Central jurisdictional authority opined that treated water would be eligible for exemption, State Jurisdictional Authority's report on taxability of the treated water stated that it is purely service only taxable under "Services by way of treatment of effluents by a Common Effluent Treatment Plant" at 12% GST as taxpayer is only purifying the water containing the dye impurities and no change of nature of goods is involved in the process.

- At the outset, looking at ultimate intention behind effluent treatment process, legislative & environmental regulations and objective for setting up a ZLD, AAR observes that "effluent treated water is eligible for exemption as per Notification No. 2/2017…" since process involves conversion of effluent water into treated water to make it suitable for reuse by the member units, simultaneously holding that, treated water cannot be put into any other usage, as the same is not completely free of impurities, bacteria and other harmful micro-organisms and chemicals.

(v). **M/S. IMMENSE CONSTRUCTION COMPANY**[26]

The applicant is a sub-contractor, and he claims that the manpower services provided to main contractor is exempted as per entry number 3A of exemption notification. The AAR highlights that the exemption does not explicitly cover supplies made by sub-contractors to works contractors. The ruling concludes that the exemption extended to a works contractor supplying services to the government or local bodies is not applicable to a taxable person supplying services to such works contractor.

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[26] 2023 (11) TMI 592 - AUTHORITY FOR ADVANCE RULING, TELANGANA