



GST Insights- Judicial Pronouncements

- ❖ **Validity of Order of Prohibition passed by DC**
- ❖ **Best Judgement assessment**
- ❖ **The ex-parte assessment order passed during lockdown period**
- ❖ **GST on Whole Time Director's salary**
- ❖ **Time limit to claim TRAN-1 GST Credit is 30.06.2020 ?**

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A. Order of Prohibition passed by DC without authorization invalid- HC

As per Section 67 of CGST Act, 2017 the power to conduct inspection, search, seizure and confiscation of goods lies with an officer not below the rank of Joint Commissioner. The said officer for the purpose of search may authorize in writing any other officer of Central Tax for inspection, search or seizure.

In the case of **Mahendra Kumar Indermal Vs Deputy Assistant Commissioner (ST) reported at 2020-VIL-189-AP**, in the absence of the authorization in writing by the competent authority, Hon'ble AP HC set aside the Order of Prohibition passed by Deputy Assistant Commissioner on the ground of competency of the authority and having found that the power so exercised by Deputy Assistant Commissioner (ST) is not in conformity with the provisions of the Act without reference to the order of authorisation in writing, which has proved to be illegal and without jurisdiction.

B. Best Judgement assessment cannot be invoked on failure to file GSTR-3B- GST Appellate Authority

In the case of **M/S Omsai Professional Detective And Security Services Private Limited** reported at **2020-VIL-17-GSTAA**, the Appellate Authority decided on following issues:

- Non-filing of GSTR-3B returns, is certainly an omission on the part of the appellant, but such non filing shall not lead to penalty under Section 122, because there is no prima-facie suppression by the appellant regarding his outward taxable supplies.
- Since, the returns in Form GSTR-1 filed by appellant are found to be not rejectable due to lack of any additional contra evidence, hence the turnover and tax liability disclosed through these GSTR-1 returns, is to be confirmed as the real turnovers of the appellant, thereby rejecting the best judgement assessment done on estimated value
- Any levy basing on mere presumptions, but not substantiated by any incriminating material to establish the suppression indubitably, shall be seen as bad in law and in violation to the principles of natural justice

Comments: The Order has missed the aspect that after a retrospective amendment w.e.f. 1st July 2017, GSTR-3B has also been notified as return under Section 39(1). Hence, the argument that best judgement assessment cannot be invoked on failure to file GSTR-3B is not in line with relevant legal provisions.

C. The ex-parte assessment order passed during lockdown period quashed by AP-HC.

In case of **M/S Walchandnagar Industries Limited Vs The Commercial Tax Officer reported at 2020-VIL-209-AP**, Hon'ble HC held that rejection of petitioner's requests for adjournment and personal hearing during prevalent COVID-19 pandemic is failure of the rules of natural justice. It is not valid to make ex-parte assessment and levy penalty proceeding by rejecting requests for personal hearing and adjournment. It appears that the respondent's understanding of the law as declared by the Hon'ble Supreme Court of India is clearly misconceived.

Comments: While the Government has taken various relief measures during COVID-19 but still the officers at ground level are ignoring the instructions and measures and keep making life difficult for businesses with notices and order during lockdown period as well.

D. No GST on Whole Time Director's salary- Karnataka AAR.

After two recent negative rulings, we have got a favourable advance ruling by Karnataka AAR in the case of **M/s Anil Kumar Agrawal reported at 2020-VIL-118-AAR**. Amongst various questions raised before AAR, AAR inter-alia observed that the remuneration received by the applicant as Executive Director is not includable in the aggregate turnover, as it is the value of the services supplied by the applicant being an employee. Further if the applicant receives the remuneration as a Non-Executive Director, such remuneration is liable to tax under reverse charge mechanism under section 9(3) of the CGST Act 2017.

E. Time limit to claim TRAN-1 GST Credit is 30.06.2020 –Delhi HC.

In the recent case of **Brand Equity Treaties Ltd. & Others Vs The Union of India & ORS**, Hon'ble Delhi HC held as under:

Rule 117 of the CGST Rules, 2017 whereby the mechanism for availing the credits has been prescribed is procedural and directory and cannot affect the substantive right of the registered tax payer to avail of the existing/acrued and vested CENVAT credit - procedure could not run contrary to the substantive right vested under sub-section (1) of section 140 of the Act. The HC has read down the Rule 117 of CGST Rules, 2017 as being directory in nature insofar as it prescribes the time-limit for transitioning the credit and, therefore, the same would not result in the forfeiture of the rights in case the credit is not availed within the period prescribed

Accordingly, since all the petitioners have filed or attempted to file form TRAN-1 within the aforesaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them - They are thus, permitted to file relevant TRAN-1 form on or before 30.06.2020 - respondents are directed to either open the online portal so as to enable the petitioners to file the declaration TRAN-1 electronically or accept the same manually - Respondents shall thereafter process the claims in accordance with law

Comments: After the passing of this judgment, now retrospective effect to the amendment in Section 140 of CGST Act, 2017 to provide for enabling provision for time-line in law itself to claim TRAN-1 credit made by Section 128 of the Finance Act, 2020 has been given by way of CGST Notification No. 43/2020 dated 16th May 2020. Further, the judgment of Delhi HC has also been challenged in Supreme Court. It will be interesting now to see the final outcome of the issue in Supreme Court after a favourable ruling by SC in case of Adfert Technologies in case of TRAN-1 credit.

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