GST Latest Case laws-2020

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SEC. 54 (REFUND OF TAX)

(3) Subject to the **provisions of sub-section (10)**, a **registered person** may claim **refund of any unutilised input tax credit** at the end of any **tax period.**

2(62) & 2(63)

Provided that **no refund of unutilised input tax credit** shall be allowed in cases other than—

I. zero-rated supplies made **without payment of tax**;

II. where the credit has accumulated on account of rate of tax on **inputs being higher than the rate of tax on output supplies** (other than *nil* rated or fully exempt supplies), **except supplies of goods or services or both as may be notified** by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the **goods exported** out of India are subjected to **export duty:**

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of **drawback** in respect of central tax or claims refund of the integrated tax paid on such supplies.

i.e. Export/ Supply to SEZ under Bond/ LUT

N.N. 5/2017 for goods
N.N. 15/2017 for services**(Services as specified in 5(b) of schedule II)(construction)**

Para 40 of circular 125/44/2019

Recent Case Laws on Refund

[2020] 118 taxmann.com 81 (Gujarat) VKC Footsteps India (P.) Ltd. *v.* Union of India

Explanation (a) to Rule 89(5) of CGST Rules, 2017 which denies the refund of "unutilized input tax " paid on "input services" as part of "input tax credit" accumulated on account of inverted duty structure is held to be ultravires the provisions of sub section (3) of section 54 of CGST ACT, 2017

Refund - Tax - Rule 89(5) as originally introduced was substituted vide Notification No. 21/2018-Central Tax, dated 18-4-2018 prescribing a revised formula for determining refund on account of inverted duty structure; **revised formula inter alia excluded input services from scope of 'net input tax credit' for computation of refund amount under rule and, thus, substituted rule 89(5) denied refund on input tax credit availed on input services and allowed relief of refund of input tax credit availed on inputs alone –**

- Section 54(3) allows refund of any unutilized ITC but Rule 89(5) restricts refund to Inputs. [Para 23]
- Clause (ii) of proviso to section 54(3) also deals with both supply of goods and services and not only supply of goods [Para 23].
- Law in section 54(3) has been wrongly interpreted in Circular No. 79/53/2018 dated 31-12-2018 to deny refund of ITC on input services. [Para 24]
- Explanation (a) to Rule 89(5) which denies refund of unutilized Input tax on input services is ultra vires the provisions of section 54(3) [Para 25].
- Therefore refund of input services be also allowed under inverted duty structure [Para 27].
- Court drew support from first discussion paper on GST issued by empowered committee dated 10-11-2009 [Para 16]; International VAT/GST Guidelines published on Feb 2006 [Para 17]; FAQ on GST dated 31-03-207 {Para 18].
- Court also drew support from Delhi High Court in Intercontinental Consultants & Technocrats affirmed by Supreme Court to hold that rule which goes beyond statute is ultra vires.
- Supreme Court decision in Lohara Steel Industries quoted to lay down that offending portion which is severable can be struck down.

No Refund on entire unutilized ITC accumulated on account of being subjected to an inverted Duty Structure

Tvl. Transtonnelstroy Afcons Joint venture v. Union of India [Madras High Court]

(1) Section 54(3)(ii) does not infringe Article 14.

(2) Refund is a statutory right and the extension of the benefit of refund only to the unutilized credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilized input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.

(3) Therefore, there is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii).

(4) Section 54(3)(ii) curtails a refund claim to the unutilized credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.

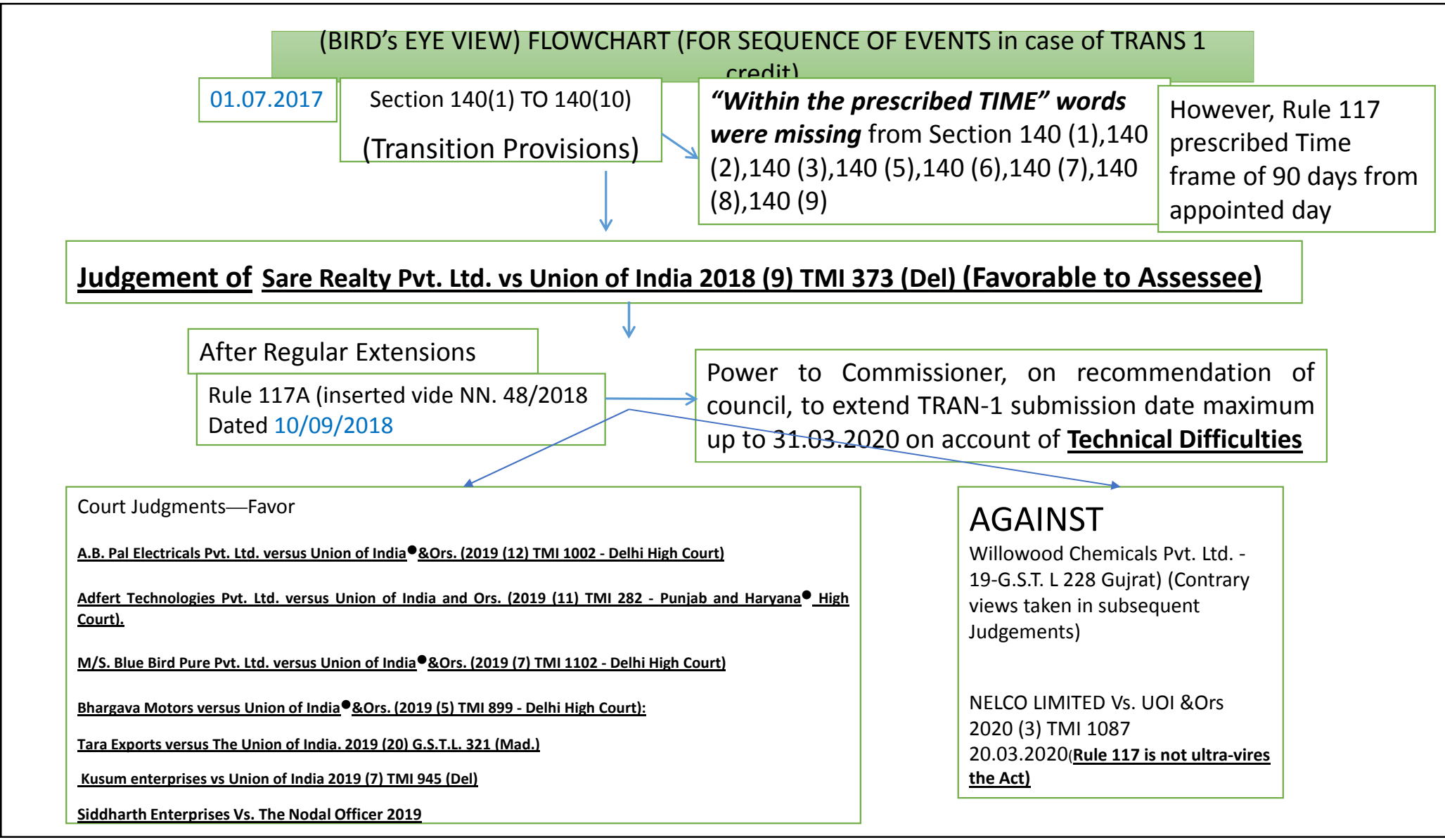
(5) As a corollary, Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii). Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

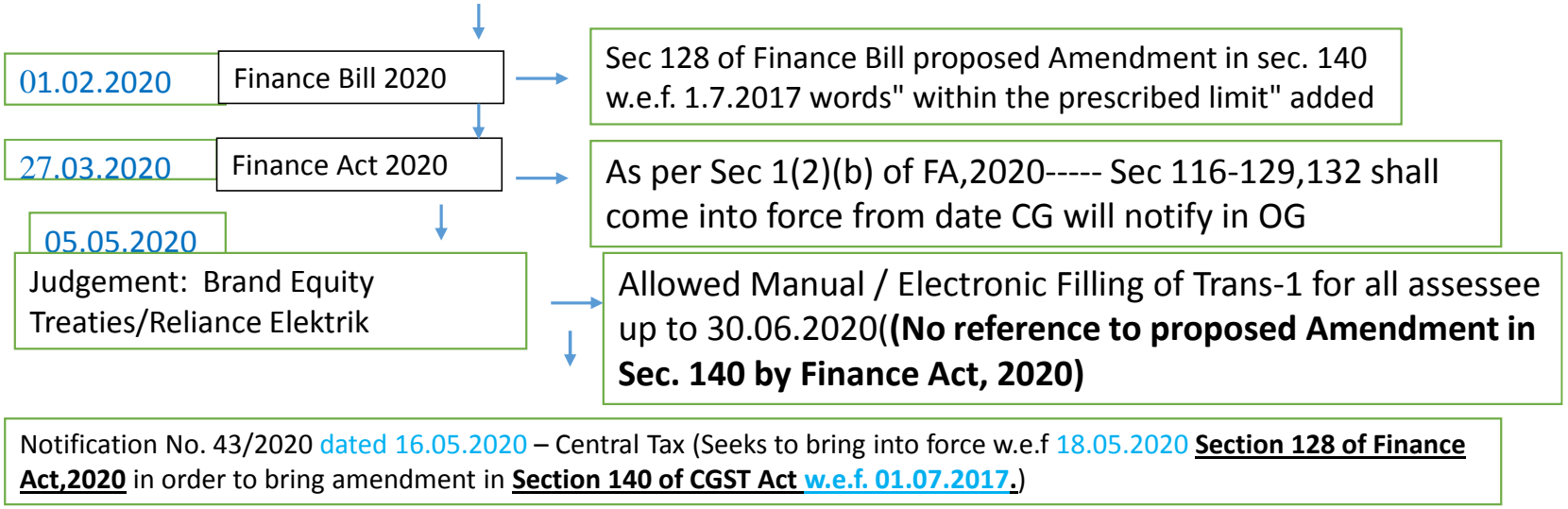
[2020] 116 taxmann.com 415 (Delhi) Brand Equity Treaties Ltd. *v.* Union of India

- On introduction of GST from 1-7-2017, assessee attempted to file FORM GST TRAN-1 for purpose of availing input tax credit within period of three years from appointed date, but failed to file said FORM –
- It filed writ **petition seeking directions to GST authorities to permit it to avail input tax credit of accumulated Cenvat credit as of 30-6-2017 by filing FORM GST TRAN-1** –
- Revenue contended that delay **arose owing to technical difficulties at end of assessee** –
- Assessee did not have any concrete evidence in its hand to convincingly exhibit that it faced a technical issue on GSTN portal while uploading Form GST TRAN-1 –

- Whether in case **input tax credit was not availed within period prescribed under rule 117**, in absence of any specific provisions in this regard under Act, it is to be held that in terms of residuary provisions of Limitation Act, **period of three years should be guiding principle** and, thus, a period of three years from appointed date would be maximum period for availing such input tax credit –
  - Yes –
- Whether since assessee had attempted to file Form **GST TRAN-1 within period of three years from appointed date,** it would be entitled to avail input tax credit accruing to it –
  - Held, yes

GST : On introduction of GST, in case input tax credit was not availed within period prescribed under rule 117, in absence of any specific provisions in this regard under Act, it is to be held that in terms of residuary provisions of Limitation Act, period of three years should be guiding principle and, thus, a period of three years from appointed date would be maximum period for availing such input tax credit


(BIRD's EYE VIEW) FLOWCHART (FOR SEQUENCE OF EVENTS in case of TRANS 1 credit)
01.07.2017
Section 140(1) TO 140(10)
(Transition Provisions)
"Within the prescribed TIME" words were missing from Section 140 (1),140 (2),140 (3),140 (5),140 (6),140 (7),140 (8),140 (9)
However, Rule 117 prescribed Time frame of 90 days from appointed day
Judgement of Sare Realty Pvt. Ltd. vs Union of India 2018 (9) TMI 373 (Del) (Favorable to Assessee)
After Regular Extensions
Rule 117A (inserted vide NN. 48/2018 Dated 10/09/2018
Power to Commissioner, on recommendation of council, to extend TRAN-1 submission date maximum up to 31.03.2020 on account of Technical Difficulties
Court Judgments—Favor
A.B. Pal Electricals Pvt. Ltd. versus Union of India &Ors. (2019 (12) TMI 1002 - Delhi High Court)
Adfert Technologies Pvt. Ltd. versus Union of India and Ors. (2019 (11) TMI 282 - Punjab and Haryana High Court).
M/S. Blue Bird Pure Pvt. Ltd. versus Union of India &Ors. (2019 (7) TMI 1102 - Delhi High Court)
Bhargava Motors versus Union of India &Ors. (2019 (5) TMI 899 - Delhi High Court):
Tara Exports versus The Union of India. 2019 (20) G.S.T.L. 321 (Mad.)
Kusum enterprises vs Union of India 2019 (7) TMI 945 (Del)
Siddharth Enterprises Vs. The Nodal Officer 2019
AGAINST
Willowood Chemicals Pvt. Ltd. - 19-G.S.T. L 228 Gujrat) (Contrary views taken in subsequent Judgements)
NELCO LIMITED Vs. UOI &Ors 2020 (3) TMI 1087 20.03.2020(Rule 117 is not ultra-vires the Act)



Notification No. 43/2020 dated 16.05.2020 – Central Tax (Seeks to bring into force w.e.f 18.05.2020 **Section 128 of Finance Act,2020** in order to bring amendment in **Section 140 of CGST Act w.e.f. 01.07.2017.**)

16-06-2020 SKH SHEET METALS COMPONENTS VS. UOI (DH) **denied venturing into LEGALITY of Retrospective Amendment** and **allowed Filing of Tran 1 till 30.06.2020**

18.06.2020 Amba Industrial Corporation Vs. UOI (P&H) petitioner was to be **permitted to revise TRAN-1 Form.**

19.06.2020 Brand Equity Treaties Limited SLP No. 7425-7428/2020---**Hon'ble SC has granted stay of operation of Delhi High Court Judgement**

22.06.2020 Kreative Solutions vs. UOI W.P.(c) 3459/2019(Delhi HC)-- Dismiss Early Hearing Application and **no interim relief** as prayed for was granted to Petitioner

2020-TIOL-901-HC-DEL-GST Bharati Airtel Ltd. vs. UoI

- Delhi High Court held that the failure of the Government to operationalize the statutory returns, GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee.
- The GSTR 3B which was merely a summary return as an alternative did not have the statutory features of the returns prescribed under the Act.
- Therefore, if there were errors in capturing ITC on account of which cash was paid for discharging GST liability instead of utilising ITC which could not be captured correctly at that time, **the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund.**
- The High Court read down the circular which did not permit such rectification as being contrary to the scheme of the CGST Act.

[2020] 117 taxmann.com 968 JIAN INTERNATIONAL versus COMMISSIONER OF DELHI GOODS AND SERVICES TAX

Facts of the case

•Petitioner Stated that in accordance with section 54(6) read with rule 91 of CGST Rules 2017 , Proper officer was required to refund at least 90% of the refund claimed on account of zero rated supply of goods or services or both made by registered persons within 7 days from the date of acknowledgment issued under Rule 90.

• He stated that despite the period of 15 days from the date of filing of the refund application having expired, the respondent had till that date neither pointed out any deficiency/discrepancy in FORM GST RFD-03 nor it had issued any acknowledgement in FORM GST RFD-02

Held

•HC found that Rules 90 and 91 of the CGST Rules provide a complete code with regard to acknowledgement, scrutiny and grant of refund. The said Rules also provide a strict time line for carrying out the aforesaid activities.

•Rules 90 states that within 15 days from the date of filing of the refund application, the respondent has to either point out discrepancy/deficiency in FORM GST RFD-03 or acknowledge the refund application in FORM GST RFD-02.

•In the event deficiencies are noted and communicated to the applicant, then the applicant would have to file a fresh refund application after rectifying the deficiencies.

•In the event default or inaction to carry out the said activities within the stipulated period, consequences like payment of interest are stipulated in Section 56 of CGST Act.

•Admittedly, till the date of the Court hearing, the petitioner's refund application had not been processed.

• Also neither any acknowledgment in FORM GST RFD-02 had been issued nor any deficiency memo had been issued in RFD-03 within 15 days

Held

•Therefore, the refund application would be presumed to be complete in all respects in accordance with Rule 89 of CGST Rules.

•To allow the respondent to issue a deficiency memo today would amount to enabling the Respondent to process the refund application beyond the statutory timelines as provided under Rule 90.

•This could also be construed as rejection of the petitioner's initial application for refund as the petitioner would thereafter have to file a fresh refund application after rectifying the alleged deficiencies.

•This would not only delay the petitioner's right to seek refund, but also impair petitioner's right to claim interest from the relevant date of filing of the original application for refund as provided under the Rules.

•Also, the respondent's prayer to raise a deficiency memo is a hyper-technical plea as admittedly, all the relevant documents have been annexed with the present writ petition and the respondent is satisfied about their authenticity.

Consequently, High Court was of the view that the respondent had lost the right to point out any deficiency, in the petitioner's refund application , at this belated stage . Accordingly , the court directed the respondent to pay the petitioner the refund along with interest in accordance with law within two weeks

2020 (9) TMI 294 - GUJARAT HIGH COURT
M/S. *BRITANNIA INDUSTRIES LIMITED* VERSUS UNION OF INDIA

Refund of unutilized IGST credit lying in Electronic Credit Ledger - It is the case of the petitioner that being a SEZ unit making zero rated supplies under the GST, the petitioner was not able to utilize the credit of the Input Tax Credit of IGST from its ISD and it was lying unutilized in the Electronic Credit Ledger of the petitioner - applicability of Rule 89 or 96 of CGST Rules.

HELD THAT:-

- In the present case, instead of Rule 96, Rule 89 would be applicable which is pertaining to refund of the input tax credit.
- Rule 89 of the CGST Rules provides for procedure for application for refund of tax, interest, penalty, fees and prescribes that in respect of supplies to a SEZ unit, the application for refund has to be filed by the supplier of goods or services.
- The contention of the respondents that as the petitioner is not the supplier of the goods and services, the petitioner would not be entitled to file application for refund is not tenable because in facts of the present case, input service distributor i.e. ISD as defined under section 2(61) of the CGST Act is an office of the supplier of goods and services which receives tax invoices issued under section 31 of the CGST Act towards the receipt of input services and issues a prescribed document for the purpose of distributing the credit of CGST, SGST Or IGST paid on such goods or services.
- Therefore, in facts of the case, it is not possible for a supplier of goods and services to file a refund application to claim the refund of the input tax credit distributed by ISD.
- **Therefore, the stance of the department that the petitioner is not entitled to seek the refund of the ITC paid in connection with goods or services supplied to SEZ unit is not tenable.**

- This aspect is further fortified by notification no. 28/2012 dated 20th June, 2012 which was in connection with service tax attributable to the services used in more than one unit to be distributed pro-rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units
- and similarly, in facts of the present case also, credit of service tax is distributed to all the units by the ISD and therefore, the claim of refund made by the SEZ unit of the petitioner is required to be granted.
- In view of the decision in case of M/s. Amit Cotton Industries **[2019 (7) TMI 472 - GUJARAT HIGH COURT]**, the petitioner is entitled to claim refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as input tax credit is distributed by the input service distributor.
- The impugned order is quashed and set aside. The respondents are directed to process the claim of refund made by the petitioner for unutilized IGST credit lying in Electronic Credit Ledger under section 54 of the CGST Act, 2017 - Petition allowed.

M/s Vianar Homes Pvt Ltd. [**2020 (11) TMI 150 - DELHI HIGH COURT] [03.11.2020]**

Upheld the power to conduct ST audit Post GST Regime

The Hon'ble Delhi HC in this case has held that section 174(2)(e) of the CGST Act, 2017, specifically empowers the authorities to institute any investigation, inquiry, verification, assessment, proceedings etc. including service tax audit under Rule 5A of the Service Tax Rule 1994, as said Rules framed under the repealed or omitted chapter V of Finance Act 1994.

Assistant Commissioner of Central Excise vs. Sutherland Global Sevices P Ltd(**[2020] 120 taxmann.com 295 (Madras)]**

Madras HC disallowed cess transition into GST

GST: The Madras High Court held that the assessee was not entitled to carry forward and set off of unutilized credit of Education Cess, Secondary and Higher Education Cess, and Krishi Kalyan Cess against the Output Liability of GST in terms of Section 140 of the CGST Act, 2017. The appeal of the revenue is allowed and the judgment of the single judge dated 05-09-2019 has been set aside

UFV India Global Education V. Union of India [2020 (9) TMI 583 - PUNJAB AND HARYANA HIGH COURT](19.0.2020)

Provisional attachment of bank account' patently illegal' if search proceedings concluded

Facts

- GST authority passed the order of partly releasing the Bank Account for payments under the Amnesty Scheme
- but rejected the prayer to release the provisional attachment holding that the petitioner does not have any property other than the Bank Account from where the Government revenue can be protected.

Held

- The effect of Section 83 of the Act shall come to an end as soon as the proceedings pending in any of the aforesaid Sections **i.e. 63 or 64 or 67 or 73 or 74 are over because pendency of the proceedings is the *sine qua non*** and
- in case the Commissioner still feel or is of the opinion that **it is necessary so to do in the interest of protecting the Government revenue**, it still can pass an order in writing to attach any property or even the bank account of the taxable person if the proceedings are initiated in any of the aforesaid provisions and are pending but for the provisions in which the proceedings have earlier been initiated and are over.
- The impugned orders passed by the respondents **are patently illegal specially when the proceedings initiated under Section 67 of the Act has already been over** - impugned orders are hereby set aside with a direction to the respondents to release the aforesaid bank account of the petitioners forthwith which has been provisionally attached vide order dated 29.07.2020.

[2020] 120 taxmann.com 301 (Gujarat) Bharat Oman Refineries Ltd. *v.* Union of India

GST on Ocean Freight under CIF is ultravires the IGST Act

GST Authority pursuant to Entry No. 10 of Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 levied IGST on ocean freight paid by assessee - Assessee filed writ petition seeking directions to Authority to grant refund of IGST so paid by it - **Whether in view of fact that Entry No. 10 of Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 was declared as ultra vires to Integrated Goods and Services Tax Act by Gujarat High Court in case of Mohit Minerals (P.) Ltd. v. Union of India [2020] 113 taxmann.com 436/78 GST 519 Competent Authority was to be directed to sanction refund and pay requisite amount of IGST already paid by assessee** - Held, yes [Para 6] [In favour of assessee]

GST/IGST : Where Competent Authority pursuant to Entry No. 10 of Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 levied IGST on ocean freight paid by assessee, said authority was to be directed to sanction refund and pay IGST already paid by assessee inasmuch as Entry No. 10 of aforesaid Notification was declared as ultra vires to IGST Act by Gujarat High Court in an earlier decision

Goods and Services Tax Network v. Leo Distributors([2020] 117 taxmann.com 672)(Kerala HC)

Substantive benefit could not be denied only due to technical lapse

Facts

- Assessee's claim for **availing input tax credit was rejected** as assessee failed to upload GST TRAN-1 within prescribed time limit due to **system error that occurred at hands of Department**.
- Thereafter assessee filed a writ petition against said order where single Judge held that a substantive benefit of carrying forward credit by assessee under erstwhile regime could not be denied only due to technical lapse on part of Department.
- Revenue authorities filed **instant appeal contending that assessee could not upload prescribed form for reason of details having been filed in wrong column.**

Held

- **Substantive benefit of carrying forward credit by assessee under erstwhile regime could not be denied only due to technical lapse on part of Department**.
- Revenue authorities filed instant appeal contending that assessee could not upload prescribed form for reason of details having been filed in wrong column.
- It was noted that assessee had attempted uploading of form within prescribed time period as established by system log –
- However, **rejection of return was due to wrong table having been filled up, which was not with any ulterior motive ; but was only for reason of inadvertence prompted by inexperience - Whether in view of aforesaid, impugned order passed by Single Judge did not require any interference - Held, yes**

Aarel Import Export (P.) Ltd., In re vs [2019] 106 taxmann.com 292

No separate Registration required on port of Import

Registration - Persons liable for - Assessee, a company having its head office at Mumbai, Maharashtra and also registered under GST Act in State of Maharashtra, wishes to import coal from Indonesia at Paradip Port in State of Odisha - Further it wishes to sell coal directly from Paradip Port Warehouse (Ex-BOND) to customers in Odisha by raising bills from Mumbai office –

Whether applicant can clear goods on basis of bills issued by Mumbai Head Office and it need **not** take separate registration in State of Odisha - Held, yes –

Whether assessee can do **transaction on Mumbai Head Office GSTIN** and can mention GSTIN of Mumbai Head Office in E-way Bill and dispatch place as Customs Warehouse, Odisha, Paradip Port - Held, yes [Para 5] [In favour of assessee]

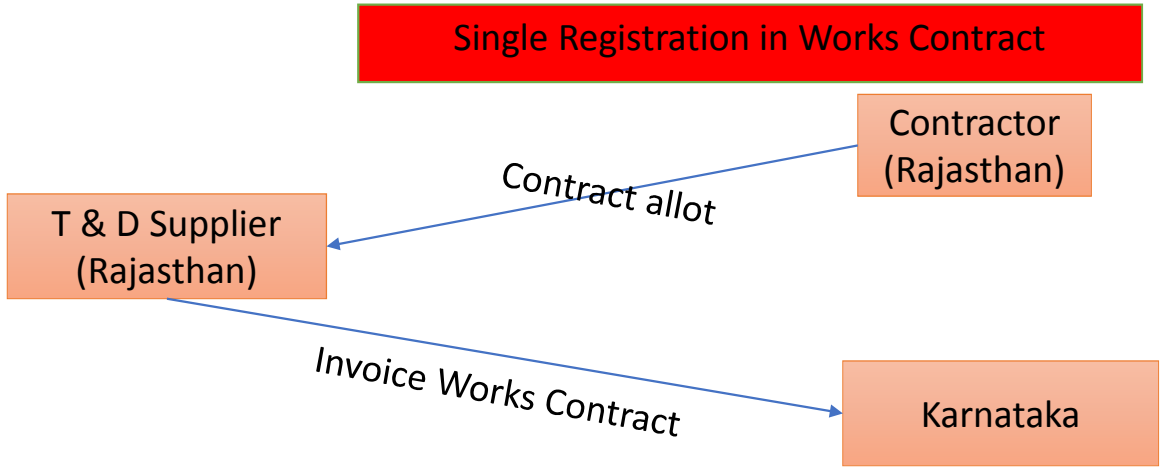
Other Cases:

- **M/S Kardex India Storage Solution Private Limited [2020 9(3) TMI 1044] (GST AAR Karnataka)**
- **Gandhar Oil Refinery (India) Ltd. ., In re [2019] 106 taxmann.com 291 (AAR- MAHARASTRA)**
- **M/S SONKAMAL ENTERPRISE Private Limited = 2018 (12) TMI 532 - (AAR , MAHARASTRA)**

2020] 116 taxmann.com 390 (AAR - KARNATAKA) T & D Electricals

Single Registration in Works Contract

Que 1:- Separate Registration required for Karnataka?
Que 2:- Purchases at Rajasthan, whether CGST/SGST or IGST leviable?
Que3:- Purchases at Rajasthan, whether CGST/SGST or IGST leviable?



Held

Location of supplier

Location of the **supplier from where** the supply is made.

Registered office = Rajasthan
Fixed Establishment in Karnataka= NO
Most directly connected= Rajasthan
So No separate registration

For Input Tax Credit

10(1)(b) Bill To ship To

Bill to Rajasthan T&D Ship to Karnataka

Rajasthan Purchases

C+S to T&D and T&D will charge IGST

Karnataka Purchases

I to T&D and T&D will charge IGST

[2020] 117 taxmann.com 409 Essel Propack Ltd. *v.* Commissioner of CGST, Bhiwandi(Mumbai CESTAT)

Facts

Credit on CSR activities allowed

Applicant

Appellant manufacturer of multi-layer plastic laminates had made certain payments to a trust for imparting training to students from underprivileged sections of society and availed Cenvat credit on such payments under Corporate Social Responsibility (CSR)

Cenvat credit availed by appellant was denied mainly on grounds that CSR was a charity unrelated to production; no direct service was availed by appellant from said Trust as it had made expenditure itself and sought reimbursement from appellant; and, it was outside scope of input service defined under rule 2(l) of Cenvat Credit Rules 2004

Adjudicating Authority had also imposed interest and penalty on appellant that was confirmed by Commissioner (Appeals)

However, it was found that CSR was no longer a charity and it had got a direct bearing on manufacturing activity of company as it facilitated a smooth supply of raw materials and augmented credit rating of company as well as its standing in corporate world

Further, CSR which was a **mandatory requirement** for public sector undertakings had also been made obligatory for private sector and unless same was treated as input service in respect of activities relating to business and production, sustainability of company itself would be at stake

Held

- Whether therefore, CSR could be considered as **input service** and be included within definition of activities relating to business for **availing Cenvat Credit** –
  - **yes**
- Whether therefore, order passed by Commissioner (Appeals) demanding duty, interest and penalty against input service availed by appellant company towards fulfilment of CSR activity was to be *set aside* -
  - Held, yes

Corporate Social Responsibility (CSR) can be considered as Input service and be included within definition of 'activities relating to business' for availing Cenvat Credit

[2020] 116 taxmann.com 262 (Jharkhand)
Mahadeo Construction Co. *v.* Union of India*

Interest cannot be recovered without SCN. No garnishee proceedings unless Demand quantified vide adjudication.

Assessee, a partnership firm, filed its monthly return for month of February, 2018 and March, 2018 - Revenue Authorities directed petitioner to make payment of interest on ground of delay in filing of GSTR-3B return for said months - Revenue further exercised powers under section 79 by initiating garnishee proceedings for recovery of said amount of interest by issuing notice to assessee's Banker - Whether since petitioner disputed computation or very leviability of said interest, liability of said interest was required to be adjudicated by initiation of adjudication proceedings under section 73 or 74 - Held, yes - Whether, therefore, without initiation of any adjudication proceedings, no recovery proceeding under section 79 could be initiated for recovery of interest amount - Held, yes [Para 22] [In favour of assessee]

GST : Where Revenue Authorities exercised powers under section 79 by initiating garnishee proceedings for recovery of certain amount of interest by issuing notice to assessee's Banker and assessee disputed computation or very leviability of said interest, it was to be held that liability of said interest was required to be adjudicated by initiation of adjudication proceedings under section 73 or 74; thus, without initiation of adjudication proceedings, no recovery proceeding under section 79 could be initiated for recovery of interest amount

[2020] 116 taxmann.com 876 (AAR- TELANGANA)
Penna Cement Industries Ltd., *In re*

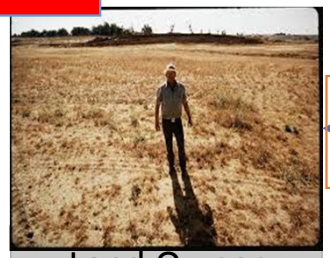
Ex-Works 10(1)(a) IGST will be charged

Applicant, manufacturer of cement, makes inter-State sales of cement on ex-factory/work basis - Applicant's case is that when they make ex-factory sales from their plant, delivery terminates at their factory gate itself - In such a case, applicant seeks advance ruling on question as to what tax should be charged on ex-factory inter-State supplies made by them - Whether in terms of section 10(1)(a), movement of goods in case of ex-factory inter-State sales does not conclude at factory gate but it terminates at place of destination where goods finally are destined as per billing address - Held, yes - Whether, therefore, place of supply in respect of goods where supply involves movement of goods whether by supplier or by recipient or by any other person authorized by him, has to be determined with reference to location where movement of goods ultimately terminates - Held, yes - Whether in view of aforesaid, applicant's contention that in case of ex-factory inter-State sales effected by them, goods are made available to recipient at factory gate, can not be accepted - Held, yes - Whether, consequently, "location of supplier" and "place of supply" falling under different States, supply in question qualifies as inter-State supplies of goods and, as a result, applicant is liable to charge IGST in respect of ex-factory inter-State supplies made by them - Held, yes (Paras 8.4 and 8.5) [In favour of revenue]

GST: As per section 10(1)(a), movement of goods in case of ex-factory inter State sales does not conclude at factory gate but it terminates at place of destination where goods finally are destined as per billing address

[2020] 116 taxmann.com 702 (AAAR-KARNATAKA) Maarq Spaces (P.) Ltd., *In re*

Facts



Land Owner

JDA with landowners for Development of Land

Sale of Developed Plots

Appellant builder

Cost of development to be borne by Builder

Question:- Whether activities undertaken by appellant amount to a supply of service to landowners

Held

- There **are two activities involved, viz: development of land and sale of plots.**
- The transaction relating to the sale of land is not a supply of either goods or service under GST (entry 5 of Schedule III of the CGST Act refers).
- **On the other hand, the activity of development of land is a supply in terms of Section 7 of the CGST Act.**
- A **combination of two activities one of which is not a supply under GST** cannot be said to be a composite supply
- **Activity of developing plot is supply of service from the Developer to Land owner liable to Tax Valued @25% of Market Value as per agreement being the total amount received by applicant .**

National Anti-profiteering Authority Vs. Hardcastle Restaurants Pvt. Ltd. - 2020-TIOL-59-SC-GST

Constitutional Validity of Sec. 171 Anti Profiteering

Held

- GST - Anti-Profiteering - Section 171 of the **CGST Act, 2017** - Constitutional validity of Section 171 of the Act read with Rule 126 of the CGST Rules and other cognate provisions is under challenge and the petitions in this regard are pending before the High Courts of Delhi, Bombay and Punjab & Haryana –
- **Twenty writ petitions** are pending before the Delhi High Court and two writ petitions which are the subject matter of the present Transfer petitions are pending before Bombay High Court. –

Held: Bench considers it appropriate and proper that in the interests of a uniform and consistent view on the law, all the writ petitions should be transferred to the High Court of Delhi, where earlier writ petitions are already pending - Registries of the respective High Courts are requested to immediately transfer the papers of the proceedings of the writ petitions to the High Court of Delhi. –

Petitions transferred.

[2020] 117 taxmann.com 978 (AAR - MADHYA PRADESH)
Atriwal Amusement Park, *In re*

ITC Eligibilty on Activity of Construction

Section 16 read with section 17, of the Central Goods and Services Tax Act, 2017/Section 16, read with section 17 of the Madhya Pradesh Goods and Services Tax Act, 2017 - Input tax credit - Eligibility and conditions for taking credit - Applicant has a proposed activity of construction of a water park - In order to carry out said activity, various components and services will be used which are taxable under GST –

Applicant files instant application seeking advance ruling on question as to whether it will be eligible to avail ITC on various components so used in proposed activity - Activity of Construction of Water Park
1)ITC eligibility on Purchase of Water Slides made of Strong PVC 2) ITC eligibility on Support Structure of Water Slides 3) ITC eligibility on Area Development and preparation of Land on which water slide erected 4) ITC eligibility on Input Goods or Services for construction of Swimming or Wave pool

-**Held,** Plant has a very wide definition **Where applicant proposes activity of construction of water park, PVC water slides shall fall within meaning of term apparatus, equipment and machinery and, therefore, applicant shall be eligible to claim ITC.**
1)Water Slide- P&M-Eligible
2) Support Structure of Steal- P&M-Eligible
3) Machine installed for Wave pool- Eligible
4) Machine Room for Machines-Not Eligible
5) Swimming Pools/Wave Pools are not support structure or foundation for a plant, but are independent items *per se.- Not eligible*
6) transformers, sewage treatment plant, Electrical Wiring and Fixtures. Surveillance systems, D.G. Sets, Lifts, Air Handling Units etc. are *sine qua* non for a commercial mall and hence cannot be considered separate from the building or civil structure.- Not eligible

Healthcare

AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH J C Genetic India (P.) Ltd., *In re*[2019] 104 taxmann.com 88]

Classification of services - Madhya Pradesh Goods and Services Tax Act, 2017 - Healthcare services - Heading 9993 (Healthcare services by clinical establishment) –

- **Whether mere involvement in sophisticated testing and providing consultancy would not be a sufficient criterion, though necessary, for qualifying as a Clinical Establishment per se** - Held, yes –
- **Applicant is a Healthcare company, engaged in diagnosis, pre and post-counselling therapy and prevention of diseases by providing necessary sophisticated tests - Applicant has a collaboration with diagnostic companies accredited by NABL and DS1R –**
- Whether since **applicant do not have their own authority for giving clear report/opinion on their own for tests,** and they have to get all **tests conducted and certified by NABL accredited laboratory, applicant are functioning as sub-contractors to accredited companies and not as an independent Clinical Establishment -** Held, yes –
- Whether since **applicants have failed to prove their own authority and recognition for testing and giving clear report/opinion on their own, which can only be done by a NABL accredited laboratory, applicants are not qualified to avail benefit as envisaged under exemption Notification of 12/2017-Central Tax (Rate), dated 28-6-2017 [S.No.74 and Para 2(s)] and corresponding notification issued under MPGST Act, for 'healthcare services' and 'clinical establishment' is not applicable to them -** Held, yes –
- Whether thus, though services provided by applicant maybe healthcare services but they do not qualify to be a clinical establishment - Held, yes [Paras 7.3, 7.4, 7.6 and 7.8] [In favour of revenue]

GST: Healthcare services provided by a company which is not an independent clinical establishment are not exempt from GST. The Applicant has neither come forward with the names of such companies with which the Applicant claims to have collaboration, nor have the Applicant produced any document evidencing their own status of accreditation by NABL, which obviously is the sole accreditation body for testing and calibration laboratories. In absence of anything brought on record by the Applicant, we are compelled to believe that the Applicant is making a vain attempt to circumvent the essential condition for qualification of Clinical Establishment.

Ernakulam Medical Centre (P.) Ltd., In re vs.([2019] 103 taxmann.com 182 (AAAR-KERALA)/[2019] 74 GST 49 (AAAR-KERALA)(MAG)/[2019] 23 GSTL 418 (AAAR-KERALA))

Supply of Medicines to In Patients & Out Patients

Classification of services - Kerala State Goods and Services Tax Act, 2017 - Healthcare services -

•**Heading No. 9993 [Healthcare services by clinical establishment] -** Section 2(30) of the Central Goods and Services Tax Act, 2017/Section 2(30) of the Kerala State Goods and Services Tax Act, 2017 - Supply - Composite supply

QUESTION:

•Whether **since invoice/bill raised for treatment as an in patient is a single bill charging for all facilities/services utilized for treatment** in hospital including room rent, nursing care charges, laboratory, consumables, medicines, equipment charges, doctor's fee, etc., incase of an inpatient, **hospital has provided a bundle of supplies which is classifiable under health care services and is exempt from tax?**

Answer

•Held, yes –Exemption available. Composite Supply for In patients.

QUESTION:

• Whether however, **in case of out patients health care service provided by hospital is restricted to consultation of doctor and medicines bought by outpatients from pharmacy owned by hospital is billed separately** and cannot be considered as composite supply to extend exemption and, hence, **supply of medicines and allied items to outpatients is liable to GST being a taxable supply**

Answer

•Held, yes [Para's 10, 14 and 15] [In favour of revenue]

•GST: **Supply of medicines and allied items to out patients by Hospital is not bundled with doctor's consultation and is liable to GST being a taxable supply.**

Healthcare

In re M/s. Medivision Scan and Diagnostic Research Centre P. Ltd. (GST AAR Kerala) [2019] 105 taxmann.com 226]

M/s. Medivision Scan and Diagnostic Research Centre Pvt. Ltd. is a clinical establishment engaged purely in diagnostic sentinels such as clinical biochemistry, micro biology, chemotology, clinical pathology, radiology, ECG, radiometry, pulmonary function test etc. They are coming under the purview of Clinical Establishment Act and are rendering services through qualified laboratory technicians, paramedical technicians, doctors and radiologist. Moreover, as per Sec23(1)(a) of the CGST Act, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or exempt from tax are not liable to get registration. In the circumstances they sought advance ruling on the fallowing:

Question

(i) Whether diagnostic service provider has to take registration under GST.

(ii) Whether the applicant is exempt from GST considering the exemption provided in the Notification No.12/2017-CT (Rate) dtd.28-06-2017.

Answer

(i)By virtue of section 23 of State Goods and Services Tax Act, any person engaged exclusively in the business of supplying goods or services or both, that are not liable to tax or wholly exempt from tax under GST Act, are not liable to take registration. However, such persons are liable to obtain registration if they are receiving any goods or services liable to tax under reverse charge as per notifications issued under Section 9(3) of the State Goods and Service Tax Act.

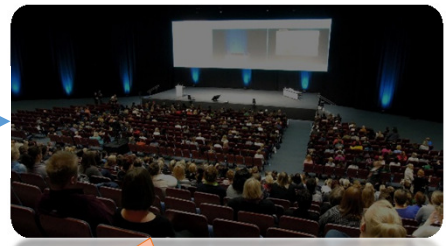
(ii)As per SL. No.74 (Notification No.12/2017-CT Rate Dt: 28/06/2017, services by way of diagnosis come under the category of health care services covered under SAC 9993 in connection with health care services provided by a clinical establishment and are, therefore exempted.

Emrald Heights International School, In re vs.[[2019] 109 taxmann.com 377 (AAR - MADHYA PRADESH)]

Classification of service - Madhya Pradesh Goods and Services Tax Act, 2017 - Educational conference – Heading No. 9992 [Education services] - Applicant-school is a member of an **association which is a charitable organization** - Applicant and said association **intend to enter into an agreement for hosting and managing conference/gathering for students and staff of other member (participant) schools of said association** –

- **Many of member school are based outside India** as per agreement, applicant is responsible to hold an educative conference engaging skilled personnel and sufficient financial and material resources for planning conference, inviting participants, arranging accommodation, food etc. –
- Consideration for performing above mentioned functions would flow from **participant schools in form of fee along with list of individual student and staff –**
- **Whether consideration received by applicant from participant schools would not be exempted under Entry No. 66 or Entry No. 1 or Entry No. 80 of Notification No. 12/2017 - Central Tax (Rate) - Held, yes** –
- **Whether various services provided for organizing said conference shall be liable to tax at rate applicable to respective services - Held, yes [Para 8.1]**
- GST : Where applicant-school and an association (a charitable organization), of which applicant is a member, intend to enter into an agreement for hosting and managing an educative conference/gathering for students and staff of other member schools **(many of which are based outside India)** of said association, **consideration received by applicant from said schools in form of fee for participation of their students and staff would not be exempted under Entry No. 66 or Entry No. 1 or Entry No. 80 of Notification No. 12/2017 - Central Tax (Rate).**

Applicant school is hosting conference also for schools outside India



This service is **not covered by Entry No. 66 or 80** of N.N. 12/2017. Hence the **same is not covered by exemption**

Arivu Educational Consultants (P.) Ltd., In re vs.[[2019] 110 taxmann.com 426 (AAR - KARNATAKA)/[2020] 77 GST 25 (AAR - KARNATAKA)/[2020] 32 GSTL 353 (AAR - KARNATAKA)]

- **Section 15 of the Central Goods and Services Tax Act, 2017 read with rule 33 of the Central Goods and Services Tax Rules, 2017 /Section 15 of the Karnataka Goods and Services Tax Act, 2017 read with rule 33 of the Karnataka Goods and Services Tax Rules, 2017 - Supply - Taxable supply, value of - Applicant provides coaching, learning and training services in relation to under-graduate, graduate and post-graduate degree, diploma and professional courses on a standalone bases to students –**
- **In this process, applicant collects certain amount as examination fee from students and remits same in bulk to respective institute or college or university without any additional charges or profit element –**
- **Whether activity of collecting examination fee (charged by any university or institution) from students and remitting same to that particular university or institution without any value addition to it is a service as a pure agent and hence value is excluded from taxable value of applicant as per rule 33 - Held, yes [Para 9] [In favour of assessee]**
- **GST : Where applicant provides coaching, learning and training services and collects certain amount as examination fee from students and remits same to respective college or university without any profit element, activity of collecting examination fee is a service as a pure agent.**

Remitting exam fees to institutes

Collecting exam fees from students

As the exam fees is remitted to institute without charging any profit element, so it is considered as service as pure agent

➢ **2020 (5) TMI 602 - AUTHORITY FOR ADVANCE RULINGS, KARNATAKA IN RE: M/S. MAHALAKSHMI MAHILA SANGHA,**

Applicability of TDS under GST - catering services to educational institutions sponsored by State/ Central / Union territory - Sl. No. 66 of the Notification No.12/ 2017-Central Tax (Rate) dated 28.06.2017 - Circular 65/ 39/ 2018 –

- HELD THAT:- The agreements for the supply of services are entered **between the Heads of the Residential Schools and the applicant and the recipient of service is hence, the Residential Schools.**
- The **nature of the contract is verified and found that the successful bidders have to prepare the food** in the respective schools only and there is no provision of providing **food cooked outside the premises or from one school to another.** Hence the applicant has to prepare the food in the school premises and supply it to the students of the school for a monthly consideration. Further, it is seen that the students to whom the service is provided are from the Primary School category. **Hence the service is a catering service provided to an educational institution which is a primary school and hence is covered under the Entry No.66 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time and is exempted from the payment of GST.**

The provision of tax deduction at source is applicable on the payment made to a supplier of taxable services and since the applicant is supplying exempt services, the said provisions are not applicable to the payments made to him by the educational institutions.

Contract is to prepare the food in the premises of school

School

caterer

The service is covered under entry 66 of N.N. 12/2017 Ct- Rate

2020 (4) TMI 597 - AUTHORITY FOR ADVANCE RULING GUJARAT IN RE: M/S. *STATE EXAMINATION BOARD*

Requirement of registration - examination to get admission for study at Rashtriya Military College, Dehradun etc. held by the State Examination Board - activities of conducting various types of examinations - N/N. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended - HELD THAT:- Notification no. 12/2017-Central Tax (Rate) dated 28.06.17 (Sr.No.1), as amended, clearly provides exemption to Services by an entity registered under section 12AA of the Income-tax Act, 1961(43 of 1961) by way of charitable activities. However, the applicant do not fall in the category of Charitable activities - The benefit of exemption is not available to the State Examination Board under entry no. 66 (b)(iv) to the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 as the exams conducted by the applicant are planned and conducted by the State Examination Board on its own accord and its not the services provided to an educational institute - State Examination Board is liable for registration as it does not falls under Section 23(a) of Central Goods and Services Tax Act, 2017 - State Examination Board is liable for registration as provided under Section 22 of Central Goods and Services Tax Act, 2017.

Whether the applicant is required to be registered under the Act. - HELD THAT:- Yes, the applicant is required to be registered under the Act.

Whether any tax liability arises from the work done by it? - HELD THAT:- Yes, the amount will be taxable.

Service provider	SERVICE	Service Recipient
Any Person	• **admission to, or conduct of examination by, such institution**	•**Educational institution**

Benefit of exemption is **not available** to the State Examination Board **under entry no. 66 (b)(iv) to the Notification No. 12/2017-**Central Tax (Rate) dated 28.06.2017 read with Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 **as the exams conducted by the applicant are planned and conducted by the State Examination Board on its own accord and its not the services provided to an Educational Institute.**

APPELLATE AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL Global Reach Education Services (P.) Ltd., *In re* [[2018] 96 taxmann.com 107 (AAAR-WEST BENGAL)]

Section 2(13) of the Integrated Goods and Services Tax Act, 2017 - Intermediary - Appellant promotes courses of foreign Universities, finds suitable prospective students to **undertake courses, and, in accordance with University procedures and requirements, recruits and assists in recruitment of suitable students** –

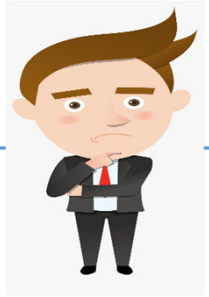
Question :- Whether appellant is to be considered as an 'intermediary', in terms of section 2(13) and, therefore, services of appellant are not 'Export of Services' under GST Act, and are eligible to tax –

Answer:- Held, yes [Paras 23 & 24]

IGST : Where appellant promotes courses of foreign university in India, finds suitable prospective students to undertake courses, and assists in recruitment of suitable students, appellant is to be considered as an intermediary in terms of section 2(13) and, therefore, services of appellant are not 'Export of Services' under GST Act, and are eligible to tax.

Foreign University

Promotes the courses offered by university in India



Finds suitable prospective students

This is **not Export of service.** This is considered as intermediary services u/s 2(13) and therefore liable to tax & Place of Supply is as per 13(8).

[2020] 117 taxmann.com 865 (AAR - ANDHRA PRADESH) DKV Enterprises (P.) Ltd.

Facts

non-exclusive consultant for sale of products of a Singapore based company to oil refineries in India

India

Applicant

Singapore Based Company

Singapore

Place of supply of service being outside India

Third parameter of definition of export of service is not applicable in instant case because applicant renders its marketing and consultancy services to overseas client in India

Held

- Whether, on facts, services rendered by applicant would not fall within meaning of term 'export of services' –
  - Ans:- yes
- Whether having regard to nature of activities of applicant, services rendered by them would qualify for services rendered by 'intermediary' under clause (13) of section 2 –
  - Ans:- yes
- Whether thus, services in question are not 'export of services' but 'intermediary services'
  - Ans:- Yes

[2019] 110 taxmann.com 182 (AAR - MAHARASHTRA)
Rotary Club of Mumbai Western Elite, *In re*

GST on membership fee recovered by club from their members

- The applicant-club receive fees from their members to meet their expenditure on meetings and communication, RI per capita dues, subscription fees to the Rotarian or Rotary regional magazine, district per capita dues, club annual dues, and any other Rotary or district per capita assessment.
- It seeks clarification on issue: Since the amount collected by club is for convenience of members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single bank account and there is no furtherance of business in this activity and neither any services are rendered nor any goods being traded, whether the above transaction can be considered as supply of goods or services to its Members under GST?.

Section 7 of the Central Goods and Services Tax Act, 2017/Section 7 of the Maharashtra Goods and Services Tax Act, 2017 - Supply - Scope of - Whether only membership fee recovered by applicant-club from their members, spent towards incurring various administrative expenses will be exempted from GST - Held, yes - Applicant-club received membership fee from its members to meet their expenditure on meetings and communication, club annual dues, and any other Rotary or district per capita assessment –

- Whether since income and expenditure statement shows that said fee is used for expense other than administrative expenses, said fees is against supply of services and is liable to GST - Held, yes [Para 5]

GST : Only membership fee recovered by club from their members, spent towards incurring various administrative expenses will be exempted from GST

With regard to the expenses other than the administrative expenses, this Authority has already held in similar cases that the amount collected by the Rotary clubs are towards convenience of members and pooled together for paying various expenses and are leviable to GST. Since the amount collected by individual Lions clubs and Lions District is for convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single bank account. As there is no furtherance of business in this activity and neither any services are rendered nor any goods being traded, the said transaction is supply of goods/services and is liable to GST". [Para 5]

[2019] 110 taxmann.com 47 (SC)

State of West Bengal *v.* Calcutta Club Ltd.

GST on clubs (Concept of Mutuality)

I. Section 2(30) of the West Bengal Sales Tax Act, 1994, and article 366 of the Constitution of India - Sale - Period quarter ending 30-6-2002 - Whether doctrine of mutuality continued to be applicable to incorporated and unincorporated members' clubs even after 46th Amendment adding article 366(29-A) to Constitution of India and thus sales tax could not have been levied on clubs, whether incorporated or unincorporated for supply of food and drinks to permanent members - Held, yes [Paras 30, 32, 33, 41 and 49] [In favour of assessee]

II. Section 65(25a) of the Finance Act, 1994 - Club or association services - Whether from 2005 onwards, Finance Act of 1994, does not purport to levy service tax on members' clubs in incorporated form - Held, yes - Whether, incorporated clubs or associations prior to 1-7-2012, were not included in service tax net and said scheme of not taxing members' clubs when they are in incorporated form continued under negative list regime post-2012 - Held, yes - Whether, if doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person to another for consideration - Held, yes - Whether in view of fact that clubs could not be treated as separate in law from their members, there could not have been demand of service tax from incorporated members clubs - Held, yes [Paras 73, 76, 82 and 84] [In favour of assessee]

ST: Doctrine of mutuality is applicable to incorporated and unincorporated members' clubs even after 46th Amendment adding article 366(29-A) to Constitution of India and thus sales tax could not have been levied on such clubs for supply of food and drinks to permanent members

GST/EXCISE/ST/VAT: From 2005 onwards, Finance Act of 1994, does not purport to levy service tax on members clubs in incorporated form

[2020] 117 taxmann.com 746 (AAR - MAHARASHTRA) Apsara Co-operative Housing Society Ltd.

Facts

Applicant is a co-operative housing society, registered under Maharashtra State Co-operative Societies Act, 1960

Main objects of applicant society are to obtain conveyance from builder in accordance with provisions of Ownership Flats Act, to undertake and provide for institution, social cultural or recreation activities and, to do all things necessary or expedient for attainment of objects of society, specified in bye-laws

Issue on which advance ruling sought — whether aforesaid activities carried out by them would qualify as 'supply' under section 7(1)

It is undisputed that in terms of section 2(84), there are two distinct persons in instant case, one applicant society and another, members thereof, thus, there is supply mad by a person i.e. applicant

Further, membership fee collected by applicant from its members for achieving various objects as mentioned in by-laws of society will be treated as 'consideration' paid for supply of services under section 2(31)

It is also found that various activities undertaken by applicant for benefit of its members will come under scope of business under section 2(17)

Held

- Whether in view of aforesaid, activities carried out by applicant for its members qualify as 'supply' under section 7
  - Ans:- yes

NOTICE PERIOD RECOVERY

- Whether notice period recovery by employer from employee is liable to GST?
- Under service tax provisions in the following cases it is held as not liable to GST –

GE T&D India Limited – **[2020] 119 taxmann.com 55 (Madras)**

- Section 9 of the Central Goods and Services Tax Act, 2017/ Section 66E of the Finance Act, 1994 - Levy of tax - **Whether notice pay, in lieu of sudden termination , does not give rise to rendition of service either by employer or employee - Held, yes** –
- An option was provided to employees to effect that if they were not in a position to stay and serve out notice period, then in lieu of same, employee will be required to pay equivalent pay of salary for period for which notice was not served - Adjudicating Authority held that in view of provisions of section 66E(e) amount received by assessee from outgoing employee would attract service tax - Assessee filed writ petition seeking relief in this regard - It was found that clause (e) of section 66E was not attracted in subject case, as assessee (employer) had not tolerated any act of employee but had permitted a sudden exit upon being compensated by employee in this regard - Whether therefore, petition was to be allowed - Held, yes

- HCL Learning Limited (**[2020] 115 taxmann.com 170 (Allahabad – CESTAT)** (Service Tax Appeal No.70580 of 2018 Allahabad CESTAT pronounced on 25.11.2019):-
  - **Where assessee had recovered certain amount out of salary already paid to employee because he had breached contract and Adjudicating Authority served on assessee notice demanding service tax on said amount, amount recovered by assessee was not covered by provisions of service tax**

[2019] 102 taxmann.com 371 (AAR)National Aluminum Company Ltd., *In re*

Repair, renovation to residential accommodation for its employees in colony

Facts

Appellant (manufacturer of aluminium metal)

refinery located at Damanjodi & Smelter Plant at Angul (Odisha

Townships & Hospital at Angul, Damonjodi and Bhubaneswar for employees & guests

Que 1:- **Whether appellant is entitled to input tax credit of tax paid on goods and services procured by it for management, repair, renovation, alteration or maintenance services pertaining to residential accommodation for its employees in townships/colony**

Que 2:- **Whether services availed in relation to plantation and gardening within the plant area including mining area and the premises of other business establishments will qualify for input tax?**

Held

- The provision of residential accommodation through transit house/trainee hostel is also a perquisite in favour of the employees**. Hence tax paid on inward supplies of goods and services for the transit house/trainee hostel cannot be allowed the benefit of input tax credit.**
- The guest house of the appellant is used for temporary accommodation of its employees as well as non-employees. Though the provision of guest house may not be treated as a perquisite, it cannot also be treated as an activity integrally related to the business of the appellant. That means, the **guest house service provided by the appellant to its employees as well as non-employees cannot be treated as an activity in course or furtherance of its business.**

- Creation and maintenance of green area/zone inside plant/mining/office premises is a business necessity for controlling pollution as well as atmospheric temperature.
- This is also mandated in various laws. Therefore, such activities are integral to the business activity of the appellant and can be treated as activities in course or furtherance of its business. Therefore ITC Allowed.

NOTICE PERIOD RECOVERY

PROPERTY LEASED FOR PAYING GUEST ACCOMMODATION

- Leased property used for providing paying guest accommodation do not qualify as residential dwelling: Taghar Vasudeva Ambrish,In re - [2020] 120 taxmann.com 104 (AAAR-KARNATAKA) –
- The applicant along with four other owners ('lessor') have given the building on lease to M/s D Twelve Spaces Pvt. Ltd ('lessee').
- The lessee has sub-leased the building to individuals including students for long stay accommodation. –
- The Authority for Advance Ruling ('AAR') held that lease services in the given case, cannot be treated as renting of residential dwelling for use as residence and hence, shall be liable to GST.
- The applicant filed an appeal before the Appellate Authority for Advance Ruling ('AAAR'). –
- Lessee is using the property for running the business of paying guest accommodation.
- **The exemption is available only if the residential dwelling is used as a residence by the person who has taken the same on lease**.
- However, the lessee is not using the leased property for use as residence but is using the same for operating its business of providing paying guest accommodation to students. Hence, the applicant is not eligible for exemption, ruling of AAR has been upheld.

[2020] 117 taxmann.com 797 (AAR- RAJASTHAN) Hazari Bagh Builders (P.) Ltd.

Facts

Applicant is successful bidder and it deposits certain amount with RLDA in terms of lease agreement

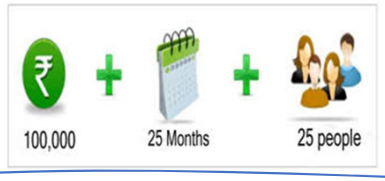
Proposal for residential development of railway land on lease for 99 years

Held

- Whether , on facts, RLDA is supplying rental or leasing services involving own land and said service is classifiable under Heading No. 9972 –
  - Ans:-yes –
- Whether since applicant is recipient of said service of leasing or renting of immovable property, it is liable to pay GST under Reverse Charge Mechanism - Whether, further, in view of fact that RLDA is just providing a parcel of land which is in its ownership, same cannot be categorized as meeting condition of leasing an industrial plot for purpose of financial business and, thus, **lease agreement in question is not exempt from GST** in terms of Notification No. 04/2019-C.T. (Rate) dated 29-03-2019 –
  - Ans:- yes

[2020] 117 taxmann.com 827 (AAR - ANDHRA PRADESH) Ushabala Chits (P.) Ltd

Facts



Applicant is engaged in conducting chits

Sometimes applicant collects penal interest/penalty for delayed payment of instalments from members

It is undisputed that additional amount being charged on delayed payment termed as interest, late fee, fine or penalty cannot be bifurcated such additional payment does not have its own classification and it takes colour from original supply i.e. supply of financial and related services

held

- Whether in view of aforesaid, additional amount being charged for delay in payment by whatever name called, has to be classified **as per principal supply and classification of same cannot differ from original supply**
  - Ans:-yes –
- Whether, therefore, interest/penalty collected for delay in payment of monthly subscription of chit fund by members has to be classified under Heading No. 9971 as 'financial and related services'
  - Ans:- yes

[2020] 117 taxmann.com 754 (AAR - MAHARASHTRA) Posco India Steel Distribution Center (P.) Ltd.

Facts

Transportation services to 'POSCO' group of companies

Provides service

On its own A/c

or

Third party transporters

In both situations, it is applicant who issues consignment notes which are stamped by receiver of transported goods

Applicant submits that third party transporters also issue consignment notes which are filed in their respective offices and which are not stamped by consignee of said goods

Issue on which advance ruling sought

Classification of transportation services where applicant issues consignment notes, however, actual transportation is done through third party transporters

Held

- Whether since applicant is providing services in relation to transport of goods by road to 'POSCO' group of companies and they are also issuing consignment notes for such transactions, applicant can be considered as Goods Transport Agency (GTA) and, thus, services rendered by applicant are classifiable under Heading No. 9965 –
  - Ans:- yes

Where applicant, engaged in providing transportation services to 'POSCO' group of companies, issues consignment notes, however, actual transportation is done through third party transporters, applicant can still be considered as Goods Transport Agency (GTA) and, thus, services rendered by applicant are classifiable under Heading No. 9965.

[2020] 117 taxmann.com K.M. Trans Logistics (P.) Ltd., *In*

Facts

Appellant is engaged in providing transport services by using its own vehicles/lorries to various manufacturers of motor vehicles for carrying their vehicles from factory to various cities in India where authorised dealers are located

Appellant stated that goods are transported under E-way bill and there will be no generation of consignment note

AAR by order ruled that appellant is a registered GTA Service provider and service of transportation without issuance of consignment note is not exempted from GST

On appeal, appellant submitted that since they do not issue consignment note, service of transportation of goods by own vehicle are out of purview of GST

Held

•Whether a consignment note is only a document by which responsibilities and rights are reduced in writing and its non-issuance does not affect rights of parties –

Held, yes –

•Whether if lien of goods is transferred and appellant becomes responsible for goods till its safe delivery to consignee, services will be classifiable as goods transport agency services; mere non-issuance of consignment note in such cases does not make them entitled for exemption from payment of GST

Held, yes

Consignment note is only a document by which responsibilities and rights are reduced in writing and its non-issuance does not affect rights of parties, hence GST on services provided by Goods Transport Agency cannot be avoided by mere non-issuance of consignment note

Facts

[2020] 117 taxmann.com 917 (AAR - ANDHRA PRADESH) Pulluri Mining & Logistics (P.) Ltd.

Valuation

Applicant

S' is providing HSD Oil to equipments and vehicles used by applicant for executing mining contract

S Cement Company

work order from cement company 'S' for carrying out mining work for them

service provider rendering support services relating to mining

Held

- **Whether HSD Oil issued free of cost by service recipient, i.e., 'S' to applicant would form part of value of supply of service by applicant –**
  - **Yes**

- **Where applicant, engaged in carrying out support services in mining, receives work from cement company 'S' for executing mining for them and applicant also receives HSD Oil from 'S' for equipments and vehicles used for executing mining contract, in terms of section 15(2)(b), value of said HSD Oil would form part of value of supply of service by applicant**

[2020] 117 taxmann.com 942 Lakshmi Tulasi Quality Fuels, *In re*

Facts

Applicant is owner of a non-residential building - She leased it out to a company which is engaged in commercial activity of renting of rooms for dwelling and providing boarding and hospitality services to inmates - Lessee has right to sub-lease to any third party - There are 73 rooms in building with all amenities like exhaust fans, geysers, lights and fittings, curtain rods, sanitary fittings, etc. provided by lessor applicant -

Apart from renting of rooms, inmates are also provided with food and hospitality services

Held

- Whether it appears that said building is constructed for purpose of running a lodge house and applicant has rented out her dwelling for commercial activity –

Held, yes –

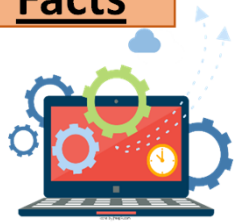
- Whether supply of such services are classifiable as 'rental or leasing services involving own or leased non-residential property' under SAC 9977212 and, hence, under entry no.16 of Notification No. 8/2007 (Integrated Tax)(Rate), dated 28-6-2017, liable to 18 per cent IGST-

Held, yes

Where applicant construct building for purpose of running a lodge house and rent it out to a lessee for running commercial activity, supply of such services is classifiable as 'rental or leasing services involving own or leased non-residential property' under heading No. 9977212, liable to 18 per cent IGST

[2020] 118 taxmann.com 98 (AAR - KARNATAKA) Solize India Technologies (P.) Ltd.

Facts



Applicant-company is engaged in business of supplying of the shelf software

Held

•Whether supply of software by applicant which is not designed and developed specific to any customer and sold without a any customisation, qualifies as supply of computer software as goods which is classifiable under Heading No. 8523

- **Held, yes –**
- Whether benefits of Notification No. 45/2017-Central Tax (Rate) and Notification No. 47/2017-Integrated Tax (Rate), both dated 14-11-2017 are applicable to supplies made if same are made to recipients if they are covered under column (2) of said Notification and if conditions as specified in column (4) of said Notifications are satisfied –

  Held, yes

Supply of software by applicant which is not designed and developed specific to any customer and sold without any customisation, qualifies as 'supply of computer software as goods' Classifiable under heading No. 8523

Patanjali Ayurved Ltd. v. Union of India [2020] 117 taxmann.com 969 (Delhi)

Facts

Writ petition was filed by petitioner challenging constitutionality and legality of National Anti-profiteering Authority as well as section 171 and rules 122, 126, 127 and 133 of the CGST Rules, 2017 - Petitioner also challenged order passed by National Anti-profiteering Authority in DGAP v. Patanjali Ayurveda Ltd. [2020] 115 taxmann.com 270 (NAA) on ground that same authority could not be both complainant and Adjudicating Authority and claimed that said order passed by Authority was without jurisdiction and contrary to statutory provisions

Held

•Whether proceedings initiated by GST Authorities for levying interest and penalty were to be stayed till further orders – **Held, yes** –

- Whether since no ground of financial hardship having been pleaded in instant writ petition, petitioner was to be directed to deposit principal profiteered sum in six equated monthly instalments –

Held, yes

Anti-profiteering penalty proceedings against petitioner were stayed till further orders, however, principal profiteered sum was directed to be paid in EMIs

Panbase Resources (P.) Ltd., In re [2020] 117 taxmann.com 275

Facts

Applicant

Providing intermediary services to overseas clients and **earning commission thereon**

Overseas Clients

Transactions executed by **overseas clients are export of goods to importers in India**

Issue on which advance ruling sought

whether commission received by it in convertible foreign exchange for rendering services as an 'intermediary' from overseas clients would fall under section 2(6) and outside purview of section 13(8)(5) attracting zero-rate tax under section 16(1)(a)

Held

- Whether since 'place of supply of service' does not find mention in section 97(2) of CGST Act, 2017 as an issue on which advance ruling can be sought**, instant application for advance ruling has to be rejected being non-maintainable –**
  - yes

Question as to whether commission earned by rendering intermediary services to overseas clients in respect of export of goods to importers in India attracts zero rate tax under IGST, requires discussion on place of supply of services; hence, application for advance ruling on such question is not maintainable as per provisions of section 97 of CGST Act

[2020] 117 taxmann.com 290 YKK India (P.) Ltd., *In re*

Facts

Applicant

engaged various transporter on contractual basis who provided transportation services to ensure that employees of applicant reached factories situated in remote area in time

Held

- Whether applicant is eligible to take input tax credit on GST charged by contractor for hiring of buses having approved seating capacity of more than thirteen persons for transportation of employees after amendment in CGST Act vide Central Goods and Services Tax (Amendment) Act, 2018 with effect from 30-8-2018; prior to 30-8-2018 Input Tax Credit on hiring of buses was not admissible –
  - Held, yes -
- Whether applicant is not eligible to take input tax credit on GST charged by contractor for hiring of cars for transportation of employees –
  - Held, yes –
- Whether restrictions on 'Rent-a-Cab' service specified in Section 17(5)(b)(iii) at relevant time is applicable to input tax credit on GST charged by contractor for hiring of buses for transportation of employees; however, after amendment in CGST Act, with effect from 30-08-2018, there is no such restriction on hiring and renting of motor vehicles having approved seating capacity of more than thirteen persons –
  - Held, yes –
- Whether restrictions on 'Rent-a-Cab' service specified in Section l7(5)(b)(iii) is applicable to input tax credit on GST charged by contractor for hiring of cars for transportation of employees; further, even after amendment of CGST Act, with effect from 30-8-2018, input tax credit is not available on GST charged by contractor for hiring/renting of motor vehicles having approved seating capacity of not more than thirteen persons (including Driver) for Transportation of passengers –
  - Held, yes

After amendment in CGST Act with effect from 30-8-2018, hirer would be eligible to take input tax credit on GST charged by contractor/transporter for hiring of buses having approved seating capacity of more than thirteen persons for transportation of its employees; however, input tax credit would still not be available for motor vehicles having approved seating capacity of not more than thirteen persons

[2020] 117 taxmann.com 521 Subhas & Company *v.* Commissioner of CGST and CX, Kolkata North Commissionerate

- In order to claim **transitional credit in case of stock of goods as on appointed date**, petitioner tried to file **a GST TRAN-II but same could not be filed because utility was made available only after due date** –
- Government extended time limit - Even then due to technical issues, Form GST TRAN-I and TRAN-II could not be filed –

- Whether Rule 117 being directory in nature, would not result in forfeiture of rights in case credit is not availed within period prescribed –
  - Held, yes –
- Whether in absence of any specific provisions under Act, in terms of residuary provisions of Limitation Act, a period of three years from appointed date would be maximum period for availing of such credit –
  - Held, yes –
- Whether authorities was to be directed to reopen or accept manual filing of form GST TRAN II to allow petitioner to claim transitional credit held in stock as on appointed date –
  - Held, yes

Rule 117 being directory in nature, would not result in forfeiture of rights in case transitional credit could not be availed within period prescribed due to technical issues

[2020] 117 taxmann.com 638 Ceamen Electronics *v.* Union of India

- On introduction of GST, petitioner registered trader was **entitled to claim credit of duties paid on inputs and credit of Value Added Tax in respect of inputs held in stock and excess ITC** –
- It was required to furnish information in Form GST TRAN-1 –
- However **Petitioner failed to upload TRAN-I by last date i.e. 31.12.2017 on account of technical difficulties** –

❑ Whether it would not be appropriate to declare Rule 117(1A) invalid as petitioner was entitled to carry forward Cenvat Credit accrued under Central Excise Act, 1944 –

- ❑ Held, yes –

❑ Whether denial of unutilized credit to those dealers who are unable to furnish evidence of attempt to upload TRAN-I would amount to violation of Article 14 as well Article 300A of Constitution –

- ❑ Held, yes –

❑ Whether Respondents should permit petitioner to upload TRAN-I on or before 30.06.2020 and in case respondent fails to do so, petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020 –

- ❑ Held, yes

Denial of unutilized credit under transitional provision to those dealers who are unable to furnish evidence of attempt to upload TRAN-I but failed due to technical glitches would amount to violation of Article 14 as well Article 300A of Constitution

[2020] 117 taxmann.com 569 L & T Hydrocarbon Engineering Ltd. *V* State of Karnataka

Assessee was moving goods from its SEZ unit to its bonded warehouse

In course of transportation, vehicle was intercepted and goods therein were confiscated on ground that wrong quantity of goods was mentioned in documents on record

An order was passed under section 129 demanding tax and penalty

Assessee filed instant petition challenging validity of said order on ground that wrong quantity of goods transported was mentioned in documents due to a typographical error

Held

- **Whether since an remedy of appeal was available to assessee against impugned order as per section 107, there was no necessity to examine and adjudicate matter in writ jurisdiction –**
  - **Held, yes**

Where goods were confiscated on ground that wrong quantity of goods in transportation was mentioned in documents, while assessee claimed it was a typographical error, assessee should avail statutory remedy of appeal as per section 107

[2020] 120 taxmann.com 442 Mfar Hotels & Resorts (P.) Ltd., *In re*

Facts

The Applicant owns and manages Hotels & Resorts.

Issues

- Rate of tax on supply of soft beverages and tobacco when supplied independently and not as composite supply in the restaurant
- Whether supply of liquor is considered as exempt supply for the purpose of reversal of ITC under Rule 42 of CGST Rules
- The applicant supplies free food to the employees. Whether such free supply warrant reversal of ITC under Rule 42 of CGST Rules

Held

In case of the beverage the AAR ruled that it is in nature of restaurant service will be taxable at 18% since the hotel is a 5 star hotel and that room rent is more than Rs. 7000/-

In case of the tobacco products the AAR ruled that supply of cigarette is not simply the supply of goods but of service at a restaurant/room as well. And since it is not naturally bundled the same is a mixed supply. Therefore the highest rate of the cigarette i.e. 28% shall be applicable

On the question of alcoholic liquor the AAR ruled that since it is not taxable as per CGST Act, GST on the same is not to be charged.

On supply of free food to employees, the AAR ruled that employees are related persons. Thereby under Para 2 to Sch 1 the supply of food to employees is a supply of service and taxable at the rate of 18%.

[2020] 121 taxmann.com 1 Tamil Nadu Textbook & Educational Services Corporation, *In re*

Facts

The Applicant supplies educational aids such as school bags, footwear, geometry box etc to students at Govt. and govt. aided schools

Issues

The question is whether the supply of educational aids constitutes as supply under GST. And if yes then whether ITC on the procurement is available or not?

Further the applicant also supplies raincoats, ankle boots and socks to students for which no consideration form Govt. is received. Whether the same is taxable under GST?

whether the applicant is liable to pay GST on penalty and liquidated damages levied by them on suppliers due to violation of contract terms.?

Held

On the issue of supply of educational aids such as school bags, geometry boxes etc, the AAR held that the said constituted as a supply of goods, however they are specifically exempt under Sl. No. 150 of Not. No. 2/2017-CTR. Further since the supply is exempt, ITC is not available.

In case of the supply of ankle boots, rain coats which the applicant claimed were not from Govt. funds, the AAR observed that though separate allocation for the same was not made, the Govt. had directed the applicant to use the general funds for the same. This makes it same as the supply of educational aids thereby this is also a supply but specifically exempt. Accordingly ITC is also not available

On the issue of GST applicability on Penalty and Liduidated damages, the Authority gave no ruling as in its view it was outside its purview as per section 95(a) of CGST Act.

[2020] 120 taxmann.com 369 M/S Ambara

Facts

The applicant is a partnership firm engaged in providing health care services and running a hospital

Held

Whether input tax credit was required to be restricted on medicines used in supply of health care services provided to inpatients –
Held, yes

Whether input tax credit was required to be restricted on medicines used in supply of health care services provided to outpatients and, further, in case medicines were supplied independent of health care services then assessee was eligible to claim input tax credit subject to payment of taxes on such independent supply of such medicines –
Held, yes

Also AAR observed that in case of the food supplied to inpatients, the same is naturally bundled as the applicant does not allow inpatients to consume outside food. Therefore the ITC on such Foods is also not available

THANK YOU

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