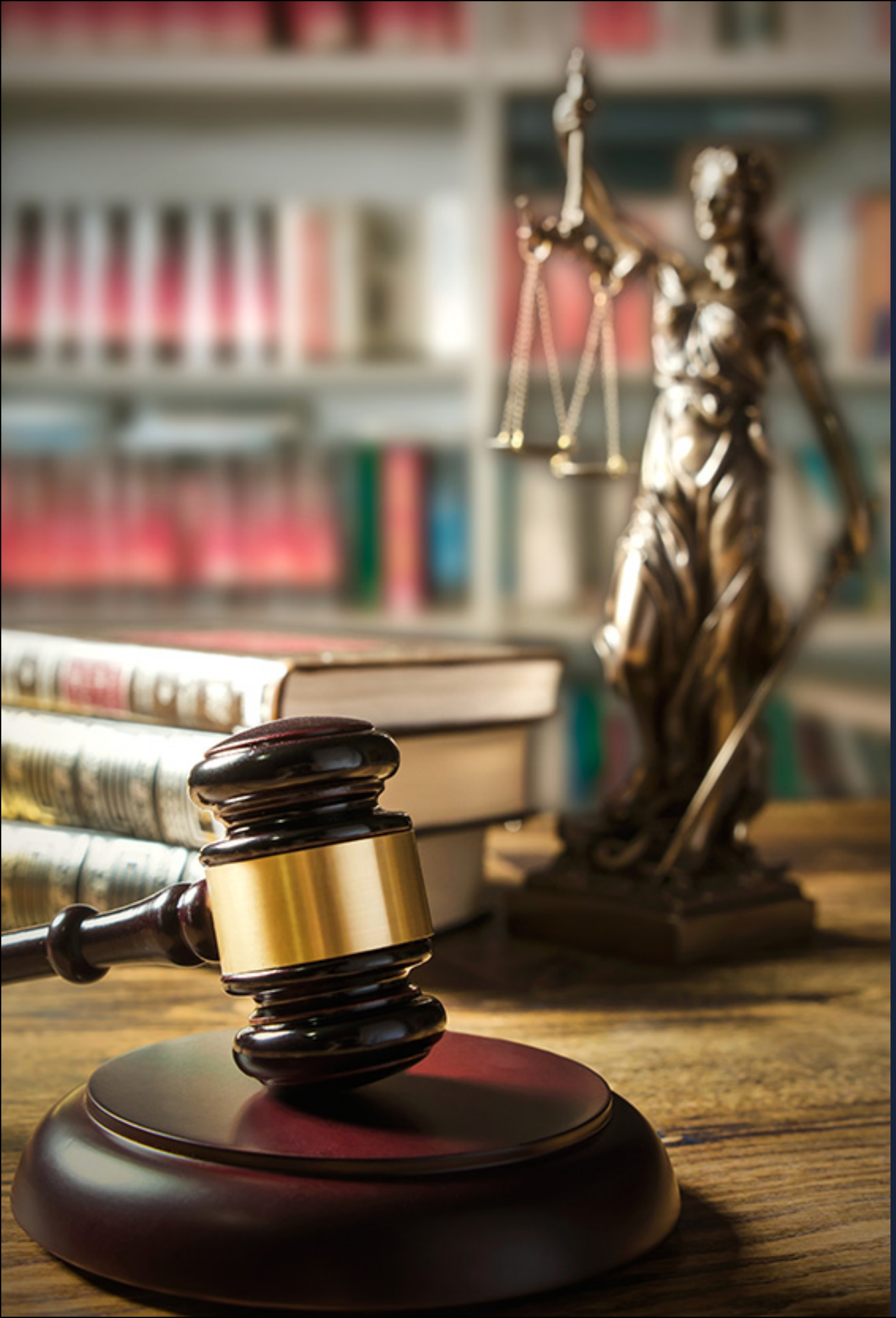

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GST High Court Jurisprudence in 2020 & Outlook for 2021 (HC Cases)

AGENDA Today

Decisions by HC

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01. **Rule 96(10)**
Refund of GST paid on exports

02. **Anti-profiteering**
Section 171 of the CGST Act, 2017

03. **Input Tax Credit**
Section 16(2)(c), Rule 36(4) Rule 86A, Section 17(5)(c) & (d).

04. **Budgetary support**
Hero Motocorp Decision

05. **Payment in installments**
Kerala High Court

06. **RCM on Ocean freight**
Mohit Minerals decision

07. **Refund of GST**
Inverted Duty Structure

08. **Rectification of Returns**
Bharti Airtel & Sun Dye Chemical

09. **Intermediary**
Material Recycling Association

10. **Miscellaneous**
Detention , provisional attachment, Transitional issues,, IBC related, scope of AAR, interest, etc

Rule 96(10)

Relevant Provisions

NN 39/2018 Dated 04-09-2018

- Rule 96(10) substituted wherein Exporter denied refund of IGST paid on exports if availed benefit under specified notifications.
- Retrospective effect from 23-10-2017

NN 53/2018 Dated 09-10-2018

- Sub-clause (a) and (b) of Rule 96(10) merged.

NN 54/2018 Dated 09-10-2018

- Rule 96(10) amended to exclude restriction where capital goods imported under EPCG scheme

Specified Notifications inserted by NN 39-2018

- **Exemption of goods imported by EOU** (NN 78/2017-Cus)
- **Import of goods under AA/EPCG Scheme** (NN 79/2017- Cus)

Circular No/ 70/44/2018-GST

Net effect of changes: Exporter who imported under specified notifications eligible to claim refund of the IGST paid on exports till the date of the issuance of NN 54/2018-CT i.e., 09-10-2018.

Decisions under Rule 96(10)

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Cosmos Films Ltd. – Gujarat HC

- Petitioner challenged Rule 96(10) restricting refund of IGST paid on export when supplier imported goods under Advance Authorisation Scheme.
- The court held that the contentions raised by government that there is no discrimination qua the petitioner is tenable in law.
- Also, the court observed as

"Notification No. 54/2018 is required to be made applicable w.e.f. 23rd October, 2017"

Decisions under Rule 96(10)

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Zaveri and Co. Pvt. Ltd. – Gujarat HC

- Writ petition admitted against earlier order of Gujarat HC that Notification No. 54/2018-CT has prospective effect and not retrospective effect.
- Proceedings initiated against petitioner stayed.

Anti-profiteering

What is Anti-profiteering?

Section 171 of the CGST Act – Anti-profiteering measure

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

Factors to be considered in Section 171

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Reduction in rate of tax

- Reduction in GST rate compared to pre-GST rate
  - ✓ Excise + VAT less than GST rate
  - ✓ Service tax less than GST rate
- Reduction in rate under GST regime
  - ✓ Reduction from 28% to 18%

Benefit of input tax credit

CST Benefit:	Elimination of CST whose credit was not available in earlier regime
Entry tax/ Octroi:	Elimination of Entry tax / Octroi whose credit was not available in earlier regime
Service Benefit:	Non-reversal of service tax credit which was required earlier on account of trading of goods
VAT benefit:	Availability of VAT credit on purchase of goods which was not available to service providers
Capital asset benefit:	Availability of VAT credit on capital assets which was not available to service providers

Issues pending before HC

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- Constitutional Validity of Section 171
- Absence of judicial member in NAPA
- GST law acting as price regulator/ controller
- Increase in Credit ≠ Benefit of Credit
- Comparing two unrelated figures is absurd
- No fixed Investigation Period
- Extra GST collected is considered as profiteering
- Benefit passed not considered on irrelevant grounds
- Benefit passed by Grammage
- No prescribed methodology to comply
- Profiteering computed beyond the complainant
- Quorum of Members

Batch of 40 writ petitions (approx.) pending before Delhi HC

Input Tax Credit

Rule 86A : Blocking of Credit

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- Invoice issued by non-existent person or person not conducting business
- ITC taken without receipt of goods or services or non-possession of tax invoice
- Tax charged in respect of supply against which ITC taken has not been paid to the Government
- Person availing tax found to be non-existent

- **Credit shall be blocked where officer has reason to believe that credit fraudulently availed.**
- **Reasons are to be recorded in writing**
- **Maximum period: 1 year**

Decisions under Rule 86A

SS Industries – Gujarat HC

- Invocation of Rule 86A justified if there is prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.
- Rule 86A has very drastic and far-reaching power and should be used sparingly and only on subjective weighty grounds and reasons.
- Rule 86A should neither be used as a tool to harass nor should it be used in a manner which may have an irreversible detrimental effect on the business.

Decisions under Rule 86A

- Availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit.
- The Government needs to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned. In this regard, the Government needs to act promptly.
- Question regarding constitutional validity of Rule 86A not raised before Court.

Issues in Rule 86A

- Constitutional Validity of Rule 86A
- Rule 86A is invoked after availment of credit. Vested Rested is indefeasible.
- Violation of principles of natural justice: no opportunity of being heard
- Bonafide Recipients penalized for non-compliance by suppliers
- Arbitrary usage of power by Officers
- Simultaneous proceedings against suppliers and recipients

Kalpsutra Gujarat vs. The Union of India [SCA No. 10562 of 2020] (Writ Petition Admitted) among others

Section 16(2)(c)

Restriction on Credit

Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(c) subject to the provisions of section 41, **the tax charged in respect of such supply has been actually paid** to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;

Petitions filed in GST regime before HC

- *Bharti Telemedia Ltd. – Delhi HC*
- *LGW Industries Ltd. - Calcutta HC*

Past Jurisprudence in VAT

- *Gheru Lal Bal Chand – P&H HC*
- *Arise India Ltd. – Delhi HC*
- *Mahalaxmi Cotton Ginning Pressing & Oil Industries – Bombay HC*
- *Infirmity Wholesale Ltd. – Madras HC*

Rule 36(4): Credit restricted with GSTR-1 of supplier

*(4) Input tax credit to be availed by a registered person **in respect of invoices or debit notes**, the details of which have **not been uploaded** by the suppliers under sub-section (1) of section 37, **shall not exceed 10 per cent. of the eligible credit available** in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.*

Issues in Rule 36(4)

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- Section 43A not notified.
- No restriction under Section 16 *(Proposed amendment in Section 16: 39th GSTCM Agenda)*
- Bonafide Recipients penalized for non-compliance by suppliers
- Basis of Rule 36(4): GSTR-2A or GSTR-2B

Gr Infraprojects Limited vs. Union of India [D.B. Civil Writ Petition No. 6337/2020] and other WP admitted

Section 17(5)(c)/(d)

Blocked Credit

- Section 17(5)(c) – Works Contract Services when supplied for construction of immovable property except where it is an input service for further supply of works contract service
- Section 17(5)(d) – Goods or services or both received by taxable person for construction of immovable property on his own account

ITC Availability?

- Civil Work
- Plant and Machinery
- Equipment
- Foundation or Structural Support
- Architect Services
- DG Sets
- Fire fighting equipments
- Furniture
- Electrical equipment

Section 17(5)(c)/(d)

Safari Retreats Pvt. Ltd. vs. Chief Commissioner of CGST 2019-VIL-223-ORI

Issue:

Availment of input tax credit on construction services of shopping mall which is to be used for leasing.

Decision:

- Restriction unjust & contrary to basic rationale of GST
- ITC restricted if property sold after OC/CC. If property is sold prior to OC/CC, ITC eligible. But here, not using for his own purpose but letting out property, still ITC denied.
- Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted.

SC admitted SLP without any stay of order.

Other similar WP pending before HC

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- RR Kabel Limited Versus Union of India 2019 (10) TMI 207 – Gujarat HC
- Delhi International Airport Ltd. 2020 (7) TI 696 – Delhi HC

Writ petition admitted for ITC on Towers

Bharti Airtel Limited vs. Union of India & Ors. [W.P. (C) 5817/2020]

- The Delhi High Court has admitted the writ challenging the restriction of ITC under CGST Act on telecommunication towers.
- The petitioner submitted that the towers are based on a rudimentary "screwdriver" technology and hence, cannot be considered as "immovable property". Accordingly, it would be decided whether ITC should be allowed on telecommunication towers.
- The matter will be heard next on 20 November 2020

Budgetary Support

Budgetary Support

- Various exemption in previous regime
- GST council decided exemption of previous regime not to be continued
- Discretion of Central and State Government to notify schemes
- Notification issued by Department of Industrial Policy and Promotion (DIPP)

Budgetary Support Scheme

Scheme coverage

- Units located in state of J&K, Uttarakhand, HP and NE.
- Units availing benefit of area-based exemption under excise regime immediately before 01.07.2017
- Valid uptill 30.06.2017

Benefit

- 58% of CGST paid by cash
- 29% of IGST paid by cash

Conditions

- Conditions notified in previous regime

Relevant Sections

Section 174(2)(c) of IGST Act

Repeal of act shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

Decisions on validity of Budgetary Support Scheme

Hero Motocorp – Delhi HC

- No vested right for budgetary support of entire CGST and IGST
- Budgetary Support Scheme is not in lieu of exemptions that were under previous regime.
- It is measure of goodwill, not an admission of right

- ➢ Various WP filed before other HC
- ➢ Violation of Promissory Estoppel?
- ➢ Claim of exemption : vested right or grant?
- ➢ Justification for reduction in exemption?

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Payment of GST in Installments

Relevant Provisions

Section 80 of CGST Act

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Decision under Section 80

Similar decision by Kerala HC in the case *of Pazhayidom Food Ventures (P) Ltd*

Malayalam Motors Pvt. Ltd. – Kerala HC

- Petitioner engaged in the business of automobile sales.
- Filed GSTR-1 returns for the months of February, 2020 to May, 2020.
- Due to COVID pandemic, it was not in a position to generate the funds necessary for making a lump sum payment of the admitted tax for the said period.
- Intends to pay the arrears of tax dues without contesting the same.
- The court allowed payment of tax in instalments under Section 80 and directed department to accept the belated return filed by the Petitioner for the period from February, 2020 to May, 2020, without insisting on payment of the admitted tax declared therein.

RCM liability on ocean freight in CIF Import

Relevant Provisions

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Section 5(1) of IGST Act

There shall be levied a tax called IGST on all **inter-State supplies** of goods or services or both

Section 5(3) of IGST Act

The Government may notify specific categories of supply of goods or services or both, **the tax on which shall be paid on reverse charge basis by the recipient** of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

S. No 10 of RCM Notification

Services: Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

Supplier: A person located in non- taxable territory

Recipient: **Importer**, as defined in clause (26) of section 2 of the Customs Act, 1962, located in the taxable territory.

Decisions on validity of RCM Notification

SLP filed by department

Mohit Minerals Pvt. Ltd. – Gujarat HC

- A person who is neither a supplier nor a recipient cannot be made liable to IGST as per Section 5 (except e-commerce operator).
- Recipient is a person who is liable to pay consideration and importer of goods in case of CIF import has neither availed services nor liable to pay consideration.
- Location of recipient i.e., foreign exporter is not in India and thus transaction does not qualify as import of services/ inter-state supplies.
- Double taxation through delegated legislation, unless statue does not provide, is not permissible.
- RCM notification held as unconstitutional.

MPCI Ltd – Calcutta HC decision on basis of Mohit Mineral

Rajshila Synthetics Pvt. Ltd. – Delhi HC decision pending

Discussion areas

- Discussion in 39th GST Council meetings on Mohit Minerals decision.
- Similar decision rendered by Gujarat HC for service tax RCM notification.
- Credit eligibility of IGST paid on ocean freight?
- Refund eligibility for IGST paid on ocean freight?

Refund of Unutilized ITC under Inverted Duty Structure

Relevant Provisions

Proviso to Section 54(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. 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:

Rule 89(5)

As on 01.07.2017

Maximum Refund Amount = [Turnover of inverted rated supply of goods × (Net ITC ÷ $Adjusted\ Total\ Turnover$)] $-$ $Tax\ Payable\ on\ Inverted\ Rated\ supply\ of\ goods$

Net ITC included ITC on input and input services

April 2018

Net ITC included ITC on inputs only

June 2018

Retrospective effect to the amendment from 01.07.2017

Decisions on validity of Rule 89(5)

VKC Footsteps India Pvt. Ltd. – Gujarat HC

- Section 54(3) allows refund of any unutlised input tax credit. However, rule restricted refund only to input excluding input services from the purview of input tax credit.
- Explanation to Rule 89(5) denying refund on input services is ultra vires the provisions of S. 54(3).

Transtonnelstroy Afcons Join Venture – Madras HC

- Proviso to Section 54(3) uses the word ‘accumulated on account of’.
- Proviso prescribing the condition as well as limiting the quantum of refund.
- Gujarat HC did not consider the scope, function and impact of proviso to S. 54(3).
- Rule 89(5) us intra vires to CGST Act and the Constitution of India.

Discussion areas

- Refund of ITC on capital goods?
- Matter expected to be appealed in Supreme Court?
- Interpretation of proviso and use of words ‘on account of’ are critical
- Validity of Retrospective amendment?

Rectification of Returns

Relevant Provisions

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Section 39(9): GSTR3/3B

If after furnishing a return, any omission or incorrect particulars are discovered, registered person shall **rectify in the return to be furnished for the tax period in which such omission or incorrect particulars are noticed.**

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Section 37(3): GSTR 1

Any registered person, who has furnished the details under Section 37(1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, **rectify in the return to be furnished for such tax period.**

Provided that no rectification of error or omission in shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Decisions on Rectification of Return

Bharti Airtel Ltd. – Delhi HC

- No provision under the CGST Act restricting rectification of GSTR-3B in the relevant month.
- System of GSTR-1, GSTR-2 and GSTR-3 whereby authenticity of information submitted in returns is verified by supplier and confirmed by recipient in same month not operationalised.
- The assessee should not suffer due to this.
- Para 4 of Circular 26/26/2017-GST dated 29-12-2017 which stated that GSTR-3B can b corrected only in the month in which errors were noticed read down by Court.

Decisions on Rectification of Return

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Sun Dye Chemicals– Madras HC

- Error in reporting credit in GSTR-1 and wrongly reported intra-state sales as inter-sate.
- HC held that Statutory procedure contemplated for returns is unavailable
- Mismatch might have been noticed and timely action could have been taken if return forms were notified
- In the absence of enabling mechanism, the assessee should not be prejudiced from availing credit which is legitimately eligible.
- GSTR-3B permitted to re-submit for correct distribution of credit between IGST, CGST and SGST.

Intermediary

Relevant Provisions

Section 13(8)(b) of IGST Act

- The place of supply of intermediary services shall be the location of the supplier of services

Section 2(13) of IGST Act

- Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

Decisions on validity of Section 13(8)(b)

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Material Recycling Association of India – Gujarat HC

- The basic logic or inception of section 13(8)(b) of the IGST Act considering POS of intermediary to be the location of supply of service is in order to levy CGST and SGST and such intermediary service therefore, would be out of the purview of IGST.
- **No distinction between the intermediary services provided by a person in India or outside India.**
- Only because, the invoices are raised on the person outside India with regard to the commission and foreign exchange is received in India, it would not qualify to be export of services.
- Similar situation was also existing in service tax regime and same situation is continued in GST regime also.
- No case of double taxation since intermediary services would not be taxable in the hands of recipient. Further, if it is not taxable in India, then such services would not be taxable anywhere.
- **It cannot be said that the provision of Section 13(8)(b) r.w. Section 2(13) of the IGST Act, 2017 are ultra vires or unconstitutional in any manner.**
- It would however, be open for the respondents to consider the representation made by the petitioner so as to redress its grievance in suitable manner and inconsonance with the provisions of CGST and IGST Act.

Detention and Confiscation

Precaution 1 - Clerical Errors – Circular 64/2018

01

Spelling Mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct

02

Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill

03

Error in the address of the consignee to the extent that the locality and other details of the consignee are correct

04

Error in one or two digits of the document number mentioned in the e-way bill

05

Error in 4 or 6 digit level of HSN where the first two digits of the HSN are correct and the rate of tax mentioned is correct

06

Error in one or two digits/characters of the vehicle number

Judicial Pronouncement

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1. **Incorrect distance mentioned in the E-way bill due to typographic error resulting in expiry of the validity period**

Held: Typographic error may be treated as a minor one and in such case, if the demand and penalty have been levied by the proper officer u/s 129, the same need to be refunded to the supplier.

Godrej Consumer Products Ltd. Vs.. ACST&E-Cum- GIB/HP/ Godrej Consumer/11-02-2020/HC-67

2. **Detention of goods on the ground of under- valuation of goods**

Held: The under valuation of goods in the invoice could not be a ground for the detention of the goods and vehicle u/s129 of the CGST Act. r/w Rule 138 of CGST Rules. Accordingly, the order is quashed, and Authorities were directed to release the goods.

K.P. Sugandh Limited v. Commissioner, SGST, 2020-VIL-142- CHG

Judicial Pronouncement

3. Detention of goods on the ground that tax on invoice shown as CGST: SGST as against IGST but e-way bill declared correct tax as IGST

Held: The High Court observed that a clerical error on the invoice will not prejudice the Revenue. Since there is no question of evasion of tax; goods to be released on executing a simple bond instead of issuing bank guarantee for the demand raised.

Umiya Enterprise Vs.. Assistant State Tax Officer, 2020-VIL-50-KER

4. Other Decisions in favour of taxpayers on Detention of goods on following issues

- Misclassification of goods (Mohammed Shereef – Kerala HC)
- Non-mentioning of tax details (M.S. Steel and Pipers – Kerala HC)

Earlier Judicial Pronouncement

Shameer Chinganam Poyil vs Assistant State Tax Officer

Detention of goods valid where instead of carrying the original invoice, the transporter showed invoice in electronic format at checkpost

Relcon Foundations (P) Ltd. Vs Assistant State Tax Officer

Goods were detained by the officer due to the reason that GSTR 3B and GSTR 1 has not been filed by the supplier. Court held the detention invalid.

Provisional Attachment

Section 83

*(1) Where during the pendency of any proceedings under **section 62 or section 63 or section 64 or section 67 or section 73 or section 74**, the Commissioner **is of the opinion** that for the purpose of **protecting the interest of the Government revenue**, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

- Scope of Section 83?
- Interpretation of usage of words “or” ?
- Interpretation of ”is of the opinion”

Decision under Section 83

Valerius Industries – Gujarat HC

Guidelines by Court

- Power to be excericed only when sufficient material on record to justify assessee is about to dispose the property to avoid tax
- Power not to be used as a tool to harass and which may have irreversible detrimental effect on business
- Attachment of Bank account and trading assets a last resort or measure
- Mere initiation of Section 67 proceedings is not sufficient for provisional attachment
- Power under Section 83 should take into consideration revenue neutrality and statement of outward liability or input tax credit.

Decision under Section 83

UFV India Global Education– P&H HC

- Provisional attachment only when proceedings under S. 62 or 63 or 54 or 67 or 73 or 74 is pending.
- Property cannot be remain attach when proceedings under S. 67 is culminated into proceedings under S. 63 or 67.
- Pendency of proceedings is an essential conditions

Similar view expressed by Gujarat HC in Kushal Limited which has been stayed.

Decision under Section 83

Bindal Smelting Pvt. Ltd. – P&H HC

- ‘Opinion’ should be in good faith and must have a rationale connection with direct nexus or live link with protection of interest of revenue and no to ruin business.
- Section 83 cannot be used to attach an account having debit balance

Time limit to file Tran-1

Relevant Provisions

Rule 117

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit of eligible duties and taxes, as defined in Explanation 2 to section 140]to which he is entitled under the provisions of the said section: Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 7[31st March, 2020], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.

Decision by different High Courts

Name of Petitioner	High Court	Decision by HC
Siddharth Enterprises	Gujarat HC	Due-date under Rule 117 is procedural and no mandatory
Brand Equity Treaties Ltd.	Delhi HC	
SKH Sheet Metal Components	Delhi HC	
Nelco Limited	Bombay HC	Time limit prescribed in Rule 117 is not ultra vires and transition cannot be allowed beyond the due date.
P.R. Mani electronics	Madras HC	

IBC related Judgements

Section 31 of IBC

Approval of resolution Plan

*(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which **shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.***

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1)-

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

Section 31 of IBC

Amended vide gazette notification dated 6.8.2019 in the following terms:-

Approval of resolution Plan

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, ***including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.***

FM Speech in Upper House of Parliament

"……..The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So,that is going to be a major, major sense of assurance for the people who are using the resolution plan."

Decision under Section 31 of IBC

Ultratech Nathdwara Limited– Rajasthan HC

- Dues arising under any law for the time being in force brought under the umbrella of the resolution plan approved by the adjudicating officer which is binding on governments and local authorities.
- GST authorities have no right to claim the pending tax dues which have been given a haircut under the resolution plan approved by NCLT.
- Thus, the same could not be recovered by the GST authorities. .

Electrosteel Steels Limited – Jharkhand HC

- VAT collected from the customers and used for business purposes instead of depositing it with government exchequer. Criminal misappropriation of Government money, not fall within 'operational debt' under the IBC.
- State GST authorities had no knowledge of CIRP of the Corporate Debtoron account of no public notice having been made in State of Jharkhand and thus they were deprived of making a claim.
- The case pertains to the period before amendment of Section 31 of IBC and thus the resolution plan was binding only on the stakeholders involved in the resolution process. Therefore, State GST authorities could not be said to be involved in the resolution process and thus the resolution plan was not binding on them.

Other Decisions

Decision on Interest

Name of the case	High Court	Decision
Refex Industries Ltd.	Madras HC	Where assessee filed its return belatedly, interest could be demanded only on cash component of tax remitted belatedly and not on ITC available.
Mahadeo Construction Co.	Jharkhand HC	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
ShreeNanak Ferro Alloys (P.) Ltd.	Jharkhand HC	Where petitioner had inadvertently paid tax under head CGST, instead of IGST, and as such it was not a case of short payment and this mistake had occurred in early phase of implementation of GST, petitioner could not have been saddled with liability to pay interest on such amount

Decision on Interest

Name of the case	High Court	Decision
Maansarovar Motors (P.) Ltd.	Madras HC	Section 50 of CGST Act deals with levy of interest on delayed remittance of output GST liability - Section 100 of Finance (No.2) Act, 2019 inserted a Proviso to section 50 which stated that interest is leviable only on that portion of output liability which is discharged by way of cash and effective date of amendment was not specified, which was later discussed in 39th GST Council held on 14-3-2020 meeting where recommendation was made for retrospective applicability of interest on net cash liability only with effect from July 1, 2017 - Thus, amendment by insertion of Proviso to section 50 was intended to be retrospective and accordingly, recovery of interest will be on net cash tax liability from 1-7-2017

Decision on Refund

Name of the case	High Court	Decision
Britannia Industries Ltd.	Gujarat HC	Where it was not possible for a supplier of goods and services to file a refund application to claim refund of input tax credit distributed by ISD, assessee, situated in Special Economic Zone (SEZ), could claim refund with regard to credit of IGST distributed by Input Service Distributor (ISD) for services pertaining to SEZ unit
Pitambra Books (P.) Ltd.	Delhi HC	Where petitioner had been deprived of benefit of availing refund claim of unutilised input tax credit owing to restriction imposed in paragraph 8 of Circular No. 125/44/2019 which inhibited refund claims for a period of two separate (not successive) financial years, rigour of paragraph 8 of Circular No. 125/44/2019-GST, dated 18-11-2019 was stayed and respondents were directed to either open online portal so as to enable petitioner to file tax refund electronically, or to accept same manually
Precot Meridian Ltd.	Madras HC	Where petitioner exported cotton through seven shipping bills and paid a No. 37/18 - Customs, dated 9-10-2018 towards IGST, respondent authorities relying on circular could not refuse refund of IGST paid by petitioner for goods exported from India, which were zero rated supplies

Decision on Cess

Name of the case	High Court	Decision
Sutherland Global Services (P.) Ltd.	Madras HC	Assessee 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.
Bharat Heavy Electricals Ltd.	CESTAT Hyderabad	Where assessee filed application under section 11B of Central Excise Act for cash refund of cenvat credit pertaining to Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess, which remained un-utilized as per ST-3 Return for month of June, 2017, there was no legal provision under which assessee's claim could be entertained

Other Miscellaneous Decision

Name of the case	High Court	Decision
Abbott Healthcare (P.) Ltd.	Kerala HC	Where applicant supplied medical instruments to hospital/laboratory, for their use, without any consideration for a specified period and it also supplied supplied specified quantities of reagents, calibrators, disposables, etc., through its distributors on payment of applicable GST, since supplies were made by two different taxable persons, supply of instrument being by applicant and supply of reagents, calibrators and disposables being by distributor and there was also no material to suggest that said two supplies were so bundled and supplied in conjunction with each other in 'ordinary course of business' to constitute composite supply, matter was remitted back to AAR for further decision
Sutherland Mortgage Services INC.	Kerala HC	Even though determination of place of supply of service is not expressly enumerated in any clause under section 97(2), said issue being crucial issue to be determined as to whether or not it fulfills definition of place of service, would also come within ambit of larger issue of 'determination of liability to pay tax on any goods or services or both' as envisaged in clause (e) of section 97(2)

Other Miscellaneous Decision

Name of the case	High Court	Decision
Mahavir Enterprise	Gujarat HC	Rule 142 of 2017 Rules, made in exercise of power exercised by Central Government under section 164, is constitutionally valid
Shri Shyam Baba Edible Oils	MP HC	Show-cause notice/order was communicated to petitioner on his E-mail address. The court held that there is no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue since notice/order not uploaded on portal. The demand deserves to be and is struck down.

THANK YOU

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