FOR MEMBERS / SUBSCRIBERS / VOL. 27 - NO. 11 MAY 2024

# C.V.O.CA'S NEWS & VIEWS

## From President's Desk...

***Dear Professional Colleagues and Readers,***

We wish everyone a very happy financial year 2024-25. The month of April was full of enthusiasm as first of its kind to CVOCA, Entrepreneurship and Leadership Awards 2024 were held on April 6, 2024. 18 Awards were given in Entrepreneurship, Leadership and CVOCA members category along with two lifetime achievement awards. An event was attended by 1100+ people and had 5000+ you tube viewers. Renowned and distinguished jurors assessed the nominations ensuring the fairness, transparency, objectivity is followed throughout the process.

CVOCA launched virtual office automation course for the first time which got overwhelming response of 125+ registrations which included beginner's, learners' and advanced course. The objective of this course was to upskill participants by using AI technology and automation tools.

Students committee had organized a seminar on capital gains under income tax on April 25, 2024. Value investing club of Capital market committee had organized its 10th seminar on Old age business: Dying/ Worth Investing on April 25, 2024.

As part of its golden jubilee celebrations, 50 year celebration committee has announced a grand members get-together called 'Dholida- A spectacular Garba Night' on June 8, 2024 at Nalanda Banquet Hall, Chembur which shall be preceded by AGM. We request all CVOCA members and their families to join these grand celebrations.General elections are being held in India from 19 April to 1 June 2024 in seven phases, to elect 543 members of the Lok Sabha. The votes will be counted and the results will be declared on 4 June 2024.This is the largest-ever election in history, surpassing the 2019 Indian general election and shall last for 44 days, second only to the ––1951-52 Indian general election. The incumbent prime minister Narendra Modi, who completed a second term, is running for a third consecutive term. In Maharashtra election will be held in five phases between 19 April and 20 May 2024 to elect 48 members of 18th Lok Sabha and in Mumbai it is held on May 20, 2024.

We request everyone to exercise voting right as a responsible citizen as it important to participate in the democratic process and contribute to the future direction of our nation.

*Thank you all..... Always in Gratitude*

CA Jeenal Savla

**May 1, 2024**

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# Recent Case Laws in IDT

# WORLD WAR 3: A DELICATE BALANCE

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## FROM THE DESK OF CHAIRMAN

Today, when we start our TV to watch any news channel, one though very important news now does not grab our attention. I am taking about the wars going around the world. Today, the world is marked by heightened tensions, regional conflicts, and geopolitical complexities. Looking at the multiple conflicts, are we in a zone of World War III. I worry, the way, WW II was ended by nuclear weapon being used for the very first and last time, human race do not end-up with same mistakes.

*Russia-Ukraine Conflict*: The ongoing Russia-Ukrainian war has escalated with Russia's invasion of Ukraine. Untill now this has remained a localized conflict, albeit with broader implications. The international community is closely monitors developments. Though it hasn't spiralled into a world war but if we look at it, it is by and large a war between countries of western world, which include US and European Region at one side vs. Russia, the largest country of the world, its allies like Belarus, China on another side. Though the US is not directly involved in the conflict, but merely because of its financial and military hardware support, the war which was predicted to get over in a week time, is been fought from last two years.

Then on another continent, we have Gaza-Israel War. The longstanding Israeli-Palestinian conflict continues to cause suffering. While it's a regional issue, it hasn't ignited a global war. Yet, the situation remains volatile, demanding diplomatic efforts. This war is now no more limited to two nation, it has on one side Arab nations fighting for Gaza rights and on another side, again western countries especially the US supporting Israel.

With Iran's getting involved, the geo-politics has become very complex and on the edge.

China-Taiwan-India Border Tensions: Though, these territorial disputes have remained localized and haven't escalated to a war like situation, but two biggest military nations regularly having boarder disputes, and with the US's so called military protection to Taiwan can escalate to full fledge war. Diplomacy is very essential to prevent any escalation. The human race can no more afford wars.

**The International Order:**

Presently the global order is under strain. As such, these conflicts impact all the nations, they aren't at existential risks. However, we should be deeply be concerned about the fraying international order.

**Escalation Risks:**

There is a potential of a spark igniting World War. Countries like Israel, its allies, including the UK and the US, need to urge restraint.

**How world can avoid World War III:**

- Diplomacy: Robust diplomatic efforts are crucial. Engaging in dialogue, de-escalation talks, and conflict resolution mechanisms can prevent further deterioration.
- International Cooperation: Nations must collaborate to address common challenges. Multilateral institutions play a vital role in maintaining stability. We need stronger and effective UN like charter, which are binding and acceptable by all the nations. Leaders should respect such charter and should few elite group should not be able to control it.
- Nuclear Restraint: The specter of nuclear weapons looms large. Strict adherence to arms control agreements and disarmament efforts is essential.
- Conflict Prevention: Identifying flashpoints and addressing them proactively can prevent escalation.
- Public Awareness: Educating the public about the risks and consequences of global conflict fosters a collective commitment to peace.

I am hopeful our world leaders will learn from the mistakes we have done in past and they will surly not repeat those. Let's hope we will see a bright light at the end of tunnel very soon.

*Thank you all..... Always in Gratitude*

CA Ameet Chheda

# APPLICABILITY OF INTEREST: UNDERSTANDING THE INTRICACIES AND INTERPRETATION FROM JUDICIAL POINT OF VIEW

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## Overview:

Interest has always been a subject matter of interest under the GST Law. There have been several interesting twists and turns with respect to applicability of interest in cases where there has been delay in payment of output tax under the GST regime. Section 50 of the CGST Act, 2017 provides for applicability of interest under the GST Law. Moreover, interest being compensatory in nature, shall arise only when there is delay in payment of tax liability to the credit of Government. In this article, an attempt is made to simplify and analyze some of the significant and interesting judicial pronouncements pertaining to applicability of interest on delayed payment of tax along with my comments.

### *1. 2020 (34) G. S. T. L. 588 (Mad.)*

***M/S. Refex Industries Limited, M/S. Sherisha Technologies Pvt. Ltd. Versus The Assistant Commissioner Of Cgst & Central Excise, The Superintendent Of Central Tax, Bank Managar, Bank Managar, Icici Bank***

***Dated 06.02.2020***

**Facts:**

M/S. Refex Industries Limited (Petitioner) had belatedly filed its GST Returns for the period involving July 2017 to March 2018. Accordingly, interest was demanded for the entire amount of outward liability belatedly discharged through cash. The question which arose before Hon'ble Madras High Court that whether interest would be applicable on entire outward liability or only on that portion which is discharged through debiting electronic cash ledger?

**Analysis:**

Hon'ble High Court by applying the rationale of Income tax Law stated that the purpose to levy interest is to compensate the Revenue for delay in payment of tax liability beyond the permissible time limit. Applying the same principle under GST Law, the Court observed that interest would be applicable only on that portion of tax liability which was paid through Electronic Cash Ledger. The Court highlighted the fact that amount of tax discharged through ITC is already available with the Government and there are adequate safeguards in Law for recovery of the same if it is subsequently found that ITC availed or utilized was not in consonance with the provisions of GST Law. The Court read the insertion made in proviso to Section 50(1) of CGST Act, 2017 from 01.08.2019 to levy interest on liability discharged through cash to be clarificatory and shall have retrospective application as it was inserted to cure the anomaly in the original provision.

**Held:**

Court held that interest shall be applicable only on that portion of output liability which was discharged through Electronic Cash ledger.

**Author's Comment:**

This is one of the first decisions under GST Law whereby inconsistency under GST Law was removed by Hon'ble Madras High Court. It further emphasized the fact that GST is a tax on value addition. Accordingly, it was rightly concluded that interest should be applicable only on the cash component while discharging liability.

## 2. *2022 (9) TMI 118 - Madras High Court*

***India Yamaha Motor Private Limited (Represented By Assistant General Manager, Khiroda Chandra Patra) Versus The Assistant Commissioner, The Commissioner Of Cgst & Central Excise, The Deputy Commissioner (Ct) (LTU) – III, The Goods And Service Tax Network***

***Dated 29.08.2022***

**Facts:**

India Yamaha Motor Private Limited (Petitioner) had mistakenly filed GSTR 3B for July, 2017 by including the data pertaining to its Faridabad plant instead of Chennai plant. Subsequently, a grievance petition before the GST authority for redressal and while keeping the monthly returns for the months from August to October 2017 in abeyance till proper ascertainment of tax liability for the aforesaid months would rely upon the adjudication of its grievance petition. Subsequently they have filed the returns and remitted tax belatedly. The issue which arose before Hon'ble High Court was whether interest was applicable when there was sufficient balance in Electronic Cash Ledger as well as Electronic Credit Ledger.

**Analysis:**

The Court in its evaluation rejected Petitioner's claim stating that about adequate balance available in electronic cash ledger as well as electronic credit register without any loss to Government. Court further stated that where actual credit was not availed cannot be regarded as payment. The Court envisaged several situations where ITC may have been availed erroneously or on a mistaken interpretation of the law. Accordingly, it could be risky and prejudicial to the interest of revenue if mere availability of balance in electronic credit ledger is considered and equated with utilization for non-levy of interest liability. Moreover, Court refused to provide immunity to Petitioner from levy of interest for belated remittance of GST for the period from July 2017 to October 2017.

**Held:**

Hon'ble Court held that unless Petitioner actually files the returns and debits the respective registers, it would not be considered as discharge of tax liability. Accordingly, decision was pronounced against Petitioner.

**Author's Comment:**

This ruling brought into a unique interpretation whereby availment in GST returns is mandatory to avoid interest liability of balance in electronic credit ledger while discharging output tax liability. Further, the non-availability of mechanism to rectify the mistakes or errors committed once returns are filed had also resulted in Court deciding the case against the Petitioner.

### 3. MANU/JH/1260/2022

***RSB Transmission (India) Limited Versus Union of India***

***Dated 18.10.2022***

**Facts:**

RSB Transmission (Petitioner) had delayed in filing the returns under FORM GSTR-3B for the month of July 2017, October 2017, November 2017 and March 2018. However, the petitioner had deposited the tax amount in the Electronic Cash Ledger before the respective due dates of filing GSTR-3B. Therefore, the issue which arose before the Hon'ble Jharkhand High Court that whether the interest would be applicable on portion of tax liability which is being deposited in the Electronic Cash Ledger before the due date where returns are filed belatedly?

**Analysis:**

The Hon'ble High Court construed that as per Scheme of GST Law, Section 39(7) of CGST Act, 2017 specifies that the payment of tax should happen simultaneously with filing of GSTR 3B Returns. The Court based on its reading of Section 49(1) of CGST Act, 2017 stated that amount deposited in electronic cash ledger is merely in the nature of deposit and would not be considered as the payment made to Government. The Court further observed that Explanation to Section 49(11) that date of deposit in the Electronic Cash Ledger does not amount to payment of the tax liability to the Government. The Court on perusal of Rule 61(1) and Rule 61(2) of CGST Rules, 2017 mentioned that the tax, interest and penalty is discharged only by debiting the Electronic Cash Ledger and by furnishing the details under Form GSTR-3B. Moreover, the Court highlighted that proviso to Section 50(1) of CGST Act, 2017 makes it amply clear that interest liability would arise on the portion of tax which is paid by debiting the Electronic Cash Ledger.

**Held:**

The Hon'ble High Court held that no person could make the payment of tax prior to filing of GSTR-3B return as such amount will always be lying in the Electronic Cash Ledger and does not amount to the payment of tax due to the Government exchequer. It further held that the any deposit in the electronic cash ledger prior to due date of filing of GSTR 3B return does not amount to discharge tax liability. Therefore, the interest would be levied on the portion of tax liability deposited in the Electronic Cash Ledger even on the amount debited before the due date of filing of returns.

**Author's Comment:**

In this verdict, Court while arriving at the decision has missed out an important fact that GST Law nowhere mandates that payment of GST ought to go hand in hand with filing of returns. As per legal position payment of tax can be made anytime before the filing of GST returns. It is in fact the mechanism of the GST Portal which does not allow to file GST returns without discharging the GST liability. Moreover, it appears that Court has given more weightage to the nomenclature rather than substance by treating the amount deposited in electronic cash ledger as deposit rather than payment. Also, surprisingly the Court in its decision has given preference to Rules over Section where there is inconsistency between the two. Additionally, proviso goes beyond the main provision by considering that payment of tax can be made only through debit of Electronic Cash Ledger. Moreover, there are separate provision under GST Law enabling taxpayer for filing refund application for balance under electronic cash ledger which in itself shows that such amount is already paid to Government.

**4. *(2024) 14 Centax 323 (Mad.)***

***Eicher Motors Versus Superintendent of GST and Central Excise***

***Dated 23.01.2024***

**Facts:**

Eicher Motors (Petitioner) had transitioned the CENVAT Credit to GST regime through GST TRAN-1. However, due to some technical glitches on the portal, the GST TRAN-1 was not filed on time and subsequently, the petitioner was unable to file the monthly return in Form GSTR-3B for the months July 2017-December 2017. However, the petitioner ensured that the tax dues are paid before the due dates without any delay by depositing the tax amount in Electronic Cash ledger. Therefore, the issue which arose before the Hon'ble Madras High Court that whether the interest would be applicable on portion of tax liability which is being deposited in the Electronic Cash Ledger before the due date where returns were filed after due date?

**Analysis:**

The Hon'ble High Court noted that once the amount is deposited through GST PMT-06, the said amount is said to be credited to the account of the Government by equating the same with payment of tax. Moreover, the Court on interpreting the Explanation (a) to Section 49 of CGST Act, 2017 which specifies that the date of credit to the account of Government shall be deemed to be the date on which the amount is deposited in the Electronic Cash Ledger stated that the amount credited to the Electronic Cash Ledger is for the purpose of accounting only whereas in substance the amount is already credited to Government's Account. The Court stated on bare perusal of the proviso inserted in Section 50(1) of CGST Act, 2017, inferred that even though interest liability would arise on the portion of the amount of tax which is paid by debiting the Electronic Cash Ledger, yet proviso cannot override and contradict the main provision of Section 50(1) of CGST Act, 2017.

**Held:**

The Hon'ble High Court had deviated from the decisions of Jharkhand High Court in the case of ***RSB Transmission (India) Ltd. v. Union of India (MANU/JH/1260)*** and the decision held by Telangana High Court in the case of ***Megha Engineering and Infrastructures Ltd. v. CCT (MANU/TL/41/2019)*** and relied on the decision of Gujarat High Court in the case of ***Vishnu Aroma Pouching (P.) Ltd. v. Union of India (2020 (38) G.S.T.L. 289 (Guj.).*** It concluded that the amount deposited in the Electronic Cash Ledger is to be treated as credited to the Government on the date of such credit. Therefore, the interest would not be applicable on the amount of tax deposited in the Electronic Cash ledger before the due date of filing of return.

**Author's Comment:**

This is the most recent decision pertaining to interest which has been widely welcomed by various taxpayers and GST experts across the country. Madras High Court after thorough analysis has rightfully deviated from the reasoning given and conclusion arrived by Hon'ble Jharkhand High Court in ***RSB Transmission (India) Limited Versus Union of India MANU/JH/1260/2022.*** Also, this decision emphasizes the fact that substantial compliance requirement for payment of taxes is done then interest should not be levied for procedural delay of filing the returns. It further reiterates the fact

that as per the legal position, return filing and payment of taxes are distinct from each other. However, one factual difference which needs to be taken into account in the decision of ***Eicher Motors Versus Superintendent of GST and Central Excise (2024) 14 Centax 323 (Mad.)*** there were issues pertaining to GST Portal in transitioning credit of erstwhile laws in which was not the case in ***RSB Transmission (India) Limited Versus Union of India MANU/JH/1260/2022.*** Nonetheless, with divergent decisions by two different High Courts, it is likely that matter would go to Supreme Court for putting the debate to rest.

**Parting Remarks:**

Even though some of the issues pertaining to interest have been resolved there exists a lot of ambiguity with respect to the provisions pertaining to Interest under the GST Law. It is recommended that Government should bring clarity with respect to various provisions impacting under the GST Law and resolves the inconsistencies and ambiguity surrounding the provisions of Interest. Further, taxpayers need to be aware with respect to their potential exposure to interest liability and accordingly comply with GST Law. It is advisable to take due care and assistance of GST Consultants based on the applicable facts before relying on the favourable judgments given by the judiciary.

# FROM COURTROOMS TO COMPLIANCE: ANALYSING KEY GST VERDICTS

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## Introduction:

The youngest tax law of India – GST, is about to turn 7 years old this year. During this journey, GST has witnessed various twists and turns, with judicial pronouncements helping to clarify things along the way. This article delves into analysis of significant recent judgments on GST. By examining these cases, we can gain valuable insights into how courts are approaching key issues like input tax credit (ITC) claims, refunds, rectification of errors in returns and penalties.

### 1. *Shri Shanmuga Hardware Electricals vs. The State Tax Officer (Madras HC)*

***Writ Petition No. 3804 of 2024***

***Order dated 20.02.2024***

**ITC claims cannot be rejected solely based on non-declaration in the GSTR-3B**

**Facts:**

- The dispute centers around Input Tax Credit (ITC) claims made by Shanmuga Hardware Electricals (Petitioner) for the assessment years 2017-2018, 2018-2019, and 2019-2020.
- Petitioner claims that the nil GSTR-3B were filed by mistake. The actual ITC was reflected in their GSTR-2A. Consequently, GSTR-9 (annual) returns were filed duly reflecting the ITC claims.
- However, the ITC claim was rejected solely on the ground that the Petitioner had not claimed ITC in GSTR-3B.

**Held:**

- Hon'ble Madras High Court held that the ITC should **not be denied merely** because such **ITC claim is not reflected in GSTR-3B** return.
- The Impugned Orders rejecting the ITC claim were quashed, and the matter was remanded back for reconsideration along with the instructions that Assessing Officer should examine the validity of ITC claims by considering all the relevant required documents, even if GSTR-3B does not reflect the ITC claim.

**Takeaways:**

Practically, the ITC declared in GSTR 3B is automatically credited to electronic credit ledger of GST portal. However, it is not the case with ITC declared in GSTR 9 (annual return). The ITC declared in GSTR 9 is not automatically credited to the electronic credit ledger. Therefore, taxpayers have to careful before relying on this judgement, as they may face practical challenges in obtaining the ITC balance in their electronic credit ledger.

2. *Delhi Metro Rail Corporation Limited vs. The Additional Commissioner (Delhi HC)*

***Writ Petition No. 6793 of 2023***

***Order dated 18.09.2023***

**Period of limitation for claiming refund is not applicable where GST itself was not chargeable**

**Facts:**

- The petitioner, Delhi Metro Rail Corporation, provided services to Surat Municipal Corporation for preparing a Metro Rail Project Report
- Petitioner raised an invoice with GST, which was later informed by Surat Municipal Corporation that the services were exempt and GST need not be charged
- Thus, Petitioner filed a refund application, but it was rejected as being barred by limitation

**Held:**

- Hon'ble Delhi High Court held that the limitation period of two years under Section 54 (1) of the CGST Act, cannot be invoked when the tax is collected without legal authority

**Takeaways:**

- This judgement helps taxpayers to claim refund of amount that has inadvertently paid considering it to be tax.
- It can also help to claim the refund of amount paid under protest in a smooth manner.

3. *Star Engineers (I) Pvt. Ltd. vs. Union of India and others (Bombay HC)*

***Writ Petition No. 15368 of 2023***

***Order dated 14.12.2023***

**The case revolved around the ability to rectify errors in a specific Goods and Services Tax (GST) return form, the GSTR-1, after the deadline for filing it had passed.**

**Facts:**

- Star Engineers (I) Pvt. Ltd. (Petitioner) was engaged in designing, development, manufacturing, and supply of electronic components.
- During the financial year 2021-2022, Petitioner made deliveries to third-party vendors on the instructions of their regular client viz. Bajaj Auto Limited (BAL). This was a common "Bill-to-Ship-to Model" where billing party was BAL and shipping party were third-party vendors
- From documentation perspective, Star Engineers contended that e-invoices and credit notes were correctly billed on BAL. However, from reporting perspective at the time of filing GSTR-1, GSTIN of third-party vendors were reported instead of BAL
- This inadvertent error was noticed in Nov'22 and it had resulted into excess reflecting of ITC in 2B of third-party vendors and deficit ITC in 2B of BAL

- To rectify this inadvertent error, Star Engineers submitted an application to GST Authorities. However, the application was rejected on the ground that the time limit to rectify such error in GSTR-1 was expired.
- Being aggrieved by such incident, Star Engineers filed petition before the Hon'ble Bombay High Court to rectify the mistake in their GSTR-1 form even though the deadline for rectifying it had expired. They argued that the error was unintentional and did not reflect any attempt to evade taxes.
- They also highlighted that, due to such an error, BAL was unable to claim ITC as the transactions were not reflected in 2B of BAL. Consequently, BAL adjusted such loss from the payment due to Star Engineers.

**Held:**

- Hon'ble Bombay High Court ruled in the favour of Star Engineers.
- The court allowed them to rectify the factual errors in their GSTR-1 even beyond the specified time limit.

**Takeaways:**

The court's decision highlighted the **importance of allowing businesses to correct bona fide errors** and ensure accurate GST return filing. This judgement is considered a landmark decision as it provides relief to taxpayers who might have made unintentional mistakes in their GST return filings.

### *4. Raidi Steels LLP vs. State of UP (Allahabad HC)*

***Writ Petition No. 974 of 2022***

***Order dated 21.02.2024***

**Penalty cannot be imposed on expiry of E-way Bill in absence of any intention to evade tax**

**Facts:**

- In this case, Raidi Steels LLP (Petitioner) had challenged the imposition of penalty levied on account of e-way bill expiry
- Petitioner had transported goods along with e-way bill and e-invoice. However, 4 days prior to the date of detention, the e-way bill got expired
- Petitioner submitted the reason, that driver was driving the vehicle slowly and intermittently stopping the vehicle so that the engine did not get overheated. GPS tracking was also produced by Petitioner indicating that the vehicle was travelling as per the original route
- In counter, Respondent submitted in event where e-way bill expires, there is a provision in the portal that allows the transporter/consignor/consignee to seek extension of the e-way bill.
- Since Petitioner had not extended the e-way bill, it was contravention of Section 129(3) of CGST Act and thus, the penalty was imposable

**Held:**

- After hearing both the parties, the Hon'ble Allahabad High Court ruled in favour of Raidi Steels LLP.

- The court pronounced that *mens rea* to evade tax is essential for imposition of penalty. However, *mens rea* was absent in the factual matrix of the present case.
- The breach committed by Petitioner was merely a technical breach and it cannot be the sole ground for imposition of penalty on expiry of e-way bill.

**Takeaways:**

- This judgement will provide relief to genuine cases where there is no intention to evade tax
- Certain High Courts have also viewed that penalty under Section 129 of CGST Act is imposable irrespective of intention to evade tax. Thus, taxpayers need to be careful while relying on this judgement and substantiate their arguments accordingly.

## Conclusion:

The evolving landscape of GST jurisprudence, as reflected in these recent judicial pronouncements, continues to provide much-needed clarity and direction for taxpayers, tax authorities and stakeholders. By closely following these developments and staying abreast of judicial interpretations, businesses can ensure better tax optimizations, GST compliances and navigate through the complexities of the GST regime in an effective manner.

# KEY INSIGHTS FROM GST LEGAL RULINGS

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## GST Demand Order cannot be passed without issuing Show Cause Notice

Case Name: M/s Yash Building Material vs. State of U.P. and 2 Others (Allahabad High Court)

Appeal No.: Writ Tax No. 1435 of 2022

**Introduction:**

The Allahabad High Court delivered a pivotal judgment in the case of Yash Building Material v. State of Uttar Pradesh [Writ Tax No. 1435 of 2022, dated January 31, 2024], wherein it invalidated demand orders issued without the requisite Show Cause Notice (SCN). The Court's ruling emphasizes the critical importance of due process in matters related to taxation.

**Background:**

- M/s YASH BUILDING MATERIAL ('the Petitioner') received a Notice dated June 4, 2021, under Section 74(5) of the Central Goods and Services Tax Act, 2017 ("the CGST Act"), asserting tax liability.
- According to Section 74(7) of the CGST Act, if the tax remains unpaid, the proper officer must issue a notice under Section 74(1) of the CGST Act read with Uttar Pradesh Goods and Services Tax Act, 2017 ("the UPGST Act").
- The Assistant Commissioner ("the Respondent") failed to serve the Show Cause Notice (SCN) to the Petitioner. Subsequently, the Respondent passed an Order dated July 30, 2021 ("the Impugned Order").
- The Petitioner appealed against the Impugned Order, arguing the absence of a notice under Section 74(1) of the UPGST Act. However, the Additional Commissioner ("the Respondent") issued an Order dated August 31, 2022 ("the Impugned Order").
- Thus, aggrieved by the Impugned order, the Petitioner has filed the present writ petition.

**Issue:**

- Whether the demand orders can be passed without issuance of the SCN?

**Court Proceedings:**

- The matter came before the Hon'ble Shekhar B. Saraf, J.
- The Petitioner was represented by Sri Pranjal Shukla, while the State was represented by Sri Ravi Shanker Pandey, the learned Additional Chief Standing Counsel.

**Observations and Conclusion:**

- **Notice Issue:** The Petitioner contended that the orders in question lacked a legal basis due to the absence of a proper Show Cause Notice under Section 74(1) of the CGST Act read with UPGST Act. The Petitioner highlighted that although a notice was issued under Section 74(5) of the Act on June 4, 2021, asserting tax liability, the subsequent procedure as mandated by law was not followed.
- **Procedural Irregularity:** The Court observed that according to Section 74(7) of the CGST Act read with UPGST Act, upon the non-payment of tax after issuance of a notice under Section 74(5), the proper officer is mandated to issue a show cause notice under Section 74(1). However, in this case, such a notice was not issued. Instead, the impugned orders were passed directly.
- **Legal Conclusion:** Based on the above analysis, the Court concluded that the impugned orders lacked a legal foundation due to the failure to adhere to the prescribed procedural requirements. As a result, the Court deemed it necessary to quash and set aside the orders dated July 30, 2021, and August 31, 2022.
- **Future Action:** The Court directed that the Respondents were at liberty to proceed in the matter but only after issuing a notice under Section 74(1) of the Act, thus emphasizing the importance of procedural compliance. Thus, the writ petition filed by M/s Yash Building Material was allowed by the Court.

**Comments:**

This case underlines the importance of procedural compliance in tax matters, particularly in the issuance of notices and adherence to statutory provisions. It highlights the judiciary's role in ensuring that administrative actions are conducted in accordance with the law, thereby upholding the principles of natural justice. Additionally, it serves as a reminder to tax authorities to strictly adhere to procedural requirements to avoid legal challenges and setbacks in their enforcement actions.

**Relevant Legal Provisions:**

*Section 74 of the CGST Act: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.*

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

*(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*

*(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.*

*(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*

*(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.*

*Explanation 1.-For the purposes of section 73 and this section,-*

*(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;*

*(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.*

*Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.*

## Taxability of Personal guarantee by Managing Director under GST

Case Name: M/s BST Steels Pvt Ltd vs. The Superintendent of Central Tax (High Court, Telangana)

Appeal No. Writ Petition No. 21384 of 2023

**Introduction:**

The Telangana High Court affirms the order issued by the Additional Commissioner regarding the liability to pay Goods and Services Tax (GST) on guarantees or securities provided by a Managing Director (MD) to a bank for the Company.

**Background:**

- M/s YBST Steels Pvt Ltd ('the Petitioner') filed a writ petition against the order dated 31/03/2023 by the Additional Commissioner ('the Respondent'), affirming the order dated 18/11/2021 passed by the Superintendent of Central Tax ('the Respondent') regarding the taxability on guarantees or securities provided by a MD to a Bank for the Company.

**Issue:**

- The core issue concerned whether GST is applicable to guarantees or securities provided by the MD, using personal properties as security and personal guarantee, to a Bank for the Company.

**Court Proceedings:**

- The matter came before the Hon'ble P. Sam Koshy.
- The Petitioner was represented by Sri Basavaraj Bala Krishna
- The Respondent was represented by Sri Dominic Fernandes

**Observations and Conclusions:**

- Contention of the Petitioner: The Petitioner argued that the guarantees or securities provided by the MD should be exempt from GST liability.
- Contention of the Respondent: The Respondent presented Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, issued by the Government of India, Ministry of Finance, which specifies categories of services subject to tax on a reverse charge basis. The Respondent referred to Clause 6 of the said notification which pertained to services supplied by a director of a Company or body corporate to the Company or body corporate itself.
- Interpretation of the said Notification: The Court analyzed the said notification and found that services provided by a director to the Company or body corporate fall under the reverse charge mechanism, making the Company liable to pay GST for such services.
- Court's Decision: Considering the notification and the arguments presented, the Court concluded that the orders of the Authorities were not erroneous or arbitrary. It upheld the imposition of GST on the guarantees or securities provided by the MD and rejected the Petitioner's contentions. The writ petition challenging the imposition of GST on guarantees or securities provided by the MD was dismissed by the Court.

**Comments:**

- It may be noted that Central Board of Indirect Taxes and Customs ('CBIC') has issued a Circular (No. 204/16/2023-GST dated October 27, 2023) clarifying on issues pertaining to taxability of personal guarantees and corporate guarantees in GST.

Activity of personal guarantee by Director:

- The Circular clarifies that the director and the company are related persons as per explanation to Section 15(a) of the Central Goods and Services Tax Act, 2017 ('CGST Act').

- Further, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration as per Section 7(1)(c) of the CGST Act read with S. No.2 of Schedule I of the CGST Act.
- In case the personal guarantee is provided without any consideration, the value of taxable supply would be determined under Rule 28 of the CGST Rules i.e. as per the open market value of such supply.
- The Reserve Bank of India vide its Circular No. RBI/2021-22/121 dated 9th November, 2021 prohibits payment to the director by the Company for such guarantees.
- Accordingly, the Circular clarifies that the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.
- Further, in cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

**Relevant Legal Provisions:**

*Notification No.13/2017 - Central Tax Rate F.No.334/1/2017-TRU Dated 28th June, 2017*

| *Sl. No.* | *Category of Supply of Services* | *Supplier of service* | *Recipient of service* |
|---|---|---|---|
| *6* | *Services supplied by a director of a company or a body corporate to the said company or the body corporate.* | *A director of a company or a body corporate* | *The company or a body corporate located in the taxable territory.* |

# UNRAVELING LEGAL PRECEDENTS: EXPLORING KEY CASE LAWS SHAPING JURISPRUDENCE

CA Akshay Satra
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*Unraveling Legal Precedents: Exploring Key Case Laws Shaping Jurisprudence*

*Suncraft Energy (P.) Ltd. vs. Assistant Commissioner of State Tax – Calcutta High Court - [2023] 153 taxmann.com 81 (Calcutta)*

**Facts and issue involved**

Appellant had claimed ITC in respect of certain invoices which were not reflected in its GSTR-2B because the supplier had not uploaded the same in its GSTR-1 and therefore, had not discharged GST liability on the same. GST Authorities issued notice for recovery of the ITC claimed by the appellant, on the basis of the difference of the amount of ITC in Form GSTR-2A and Form GSTR- 3B, without conducting any enquiry on the supplier.

**Discussions by and observations of High Court**

For a dealer to be eligible to avail credit of any input tax, the conditions prescribed in Section 16 (2) of the Act have to be fulfilled. Sub-section (2) of Section 16 commences with a non-obstante clause stating that notwithstanding anything contained in Section 16 no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services or both to him unless-

(a) he is in possession of tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both;

(c) subject to the provisions of Section 41 or Section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of such supply; and

(d) he has furnished the return under Section 39.

Appellant claims that they have fulfilled all the conditions as stipulated under Sub-section (2) of Section 16 and they also paid the tax to the fourth respondent, the supplier and a valid tax invoice has been issued by the respondent for installation and commission services and the appellant had made payment to the respondent within the time stipulated under the provisions of the Act. Thus, grievance of the appellant is that despite having fulfilled all the conditions as has been enumerated under Section 16(2) of the Act, the department erred in reversing the credit availed and directing the appellant to deposit the tax which has already been paid at the time of availing the goods/ services. Thus Appellant claims that it has fulfilled all conditions as stipulated under the said section and therefore it should be able to claim ITC on the same.

Appellant placed reliance on decision of the Hon'ble Supreme Court in case of ***Union of India vs. Bharti Airtel Limited*** wherein it was held that:

Form GSTR-2A is only a facilitator.

ITC is to be availed on self-assessment basis as per books of accounts.

Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit return on the basis of such self-assessment in Form GSTR-3B manually on electronic platform.

Press release dated 18.10.2018 clarified that furnishing of outward details in Form GSTR- 1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act.

Further, it has been clarified that ITC can be availed only on the basis of reconciliation between Form GSTR-2B and Form GSTR-3B conducted before the due date for filing of the return in Form GSTR-3B for the month of September 2018 is unfounded and the same exercise can be done thereafter also.

Press release dated 04.05.2018 clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

In light of the above, GST Authorities are not justified in directing the appellant to reverse the ITC.

### Decision of High Court

It was held that before directing the appellant to reverse the input tax credit and remit the same to the government, the GST Authorities ought to have taken action against the supplier unless they can prove that the buyer was colluding with the supplier or the supplier has closed down his business and such other contingencies.

**Against the said order, the Respondent (Revenue) filed a SLP before the Hon'ble Supreme Court and the same has was dismissed by the Apex Court in December 2023.**

## MOHIT MINERALS PRIVATE LIMITED – SUPREME COURT [2022-TIOL-49-SC-GST-LB]

### Facts of the case

In the present case, the respondent, Mohit Mineral Pvt. Ltd., was engaged in the business of importing non-coking coal into the territory of India from foreign countries. Consequent to the import of the goods, the appellant supplied the same to various businesses across India. The nature of the arrangement that the appellant had with the exporters was such that the exporter was liable to bear the freight charges on the goods. This arrangement is called CIF ("Cost-Insurance-Freight") where the exporter pays the freight and insurance charges. On the other hand, in the FOB ("Free-on-Board") system, the importer pays the freight and insurance charges.

Nevertheless, the respondent paid two types of taxes on the value of the freight: the customs according to the Customs Act of 1962 and the applicable IGST on the value of the goods. Before the enforcement of the GST Acts in 2017, the service tax on ocean freight was non-taxable. But through Notification 08/2017 and Notification 10/2017 issued by the Central Government, it was made taxable on a Reverse Charge Basis, meaning the recipient of the service would be liable for the payment of the tax.

While the appellant did not dispute the payment of IGST when the transportation of goods was done on FOB basis, it contended that it was not obliged to pay the IGST on transportation done on CIF basis since both the recipient as well as the supplier were foreign entities. This, they contended, violated Article 5(3) of the IGST Act. Consequently, the respondents challenged the Notifications dated 08/2017 and 10/2017 as being ultra vires.

**Discussions by and observations of Supreme Court**

The Court stated that the argument made by Revenue that in light of the usage of the expression 'unless the context otherwise requires' in Section 2, makes the ambit larger and accordingly the importer should be treated as recipient in terms of Section 2(93) would be farfetched. The reason for such a conclusion was that such an argument would overlook the context of Section 5(3) which reiterates that the taxable person to be the recipient of service and since the importer was not specifically mentioned as taxable person in the statute, the argument should be required to be set aside. In simple words, as we understand the relevant para of the judgment, it is evident that the Court is trying to find a specific mention of 'importer' as recipient of service in the IGST Act and just because a person is required to pay tax under reverse charge and requires registration cannot be called as recipient of service. Further, the Court observed that the current provision of Section 5(3) delegates the power to notify the good or services that are required to be paid under reverse charge but does not have the power to delegate and specify the person who would be recipient and the same has to be found in the IGST Act. Since, in the instant case, there is nothing in the IGST Act to make the importer as recipient, the arguments of Revenue would have to be struck down but for the provisions of Section 13(9) read with Section 2(93)(c). Any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply, which is found in Section 2(93)(c), when read with Section 13(9), which makes the destination of goods as the place of supply, then it can be inferred that supply of services would have been made to the Indian importer and thus thereby he can be considered as recipient of supply. The Court stated that the conclusion comports with the philosophy of GST to be consumption and destination based tax and accordingly held that since the ultimate benefactor of shipping service is also the importer in India who will finally receive the goods at a destination which is within the taxable territory of India and hence the importer can be called as 'recipient'.

Having concluded all the aspects in favour of the Revenue, the Court then proceeded with the main question as to the composite supply and issues of double taxation.

**On Composite Supply and Issues of Double Taxation:**

The transaction involves three parties – the foreign exporter, the Indian importer and the shipping line. The first leg of the transaction involves a CIF contract, wherein the foreign exporter sells the goods to the Indian importer and the cost of insurance and freight are the responsibility of the foreign exporter. The second leg of the transaction involves an agreement between the foreign exporter and the shipping line for providing services for transport of goods to India.

On the first leg of the transaction between the foreign exporter and Indian importer, the Indian importer is liable to pay IGST on the transaction value which includes the provision of services such as insurance and freight making it classifiable as 'composite supply' under Section 2(30). Since as per Section 8, the principal supply is to be subjected to tax qua a composite supply and since the principal supply in the instant case would be the goods, the tax would be leviable as if the transaction was one of supply of goods.

The Respondent (Mohit Minerals Private Limited) has contended that the current levy which seeks to impost IGST on the 'service' aspect of transaction would be in violation of principle of composite supply. This is for the reason that the impugned levy is trying to break a part of the composite supply and try to bring the same under the tax net. The Revenue contended that impugned levy is on the second leg of transaction, which is standalone contract between foreign exporter and shipping line and accordingly stated that contract between the foreign exporter and shipping line of which the Indian importer is not a party cannot be deemed to be a part of composite supply.

**Decision of Supreme Court**

Import of goods on CIF basis is a composite supply of sale of goods, freight and insurance services wherein supply of goods is principal supply. Hence, import of goods on CIF basis is import of goods leviable to IGST under Customs Tariff Act and IGST is not payable on ocean freight services under reverse charge basis.

# INTERPRETING BASIC PROVISIONS OF GST THROUGH JUDICIAL DECISIONS

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## 1. Recipient vis-à-vis Agent - West Bengal Agro Industries Corporation Ltd. (Order No. 15/WBAAR/2022–23 dated 22nd December, 2022) (WB)

**The applicant working as a "Project Implementing Agency" is covered within the meaning of "recipient" making supplies to the State Government Department is required to issue a separate tax invoice for the entire contract value and not merely for the fees/commission.**

Facts:

The applicant is a Government undertaking that undertakes civil works as "Executive Agency or Project Implementing Agency" entrusted by various Administrative Departments of Government of West Bengal in the development of rural infrastructure.

On receiving a request for submission of an estimate from any Administrative Department, the applicant prepares and submits the estimate for financial and administrative approval. After getting the approval, the applicant enters into an agreement with the concerned Department. The applicant, thereafter, invites tenders and enters into an agreement with the selected supplier / contractor.

The applicant further appoints different suppliers / contractors to get the work done. The applicant monitors and supervises the work to ensure that it conforms to the specifications.

It is the contention of the applicant that the property in goods used in execution of works is directly transferred from contractor to the Department concerned and the role of the applicant is similar to an "agent". Therefore, the applicant is required to issue tax invoice only for Agency fees.

The question raised by the applicant is – Whether the applicant is required to issue a tax invoice to the State Government on the contract value as determined by the Administrative Department where the applicant is acting as "Project Implementing Agency"?

**Ruling:**

The Authority observed that the applicant enters into an agreement with the contractor and so is liable to pay the consideration to the contractor. The Authority referred to the definition of "recipient of supply of goods or services or both" which has been defined under section 2(94) of CGST Act, 2017 to include an agent acting as such on behalf of the recipient in relation to goods or services or both supplied. In this context, the authority ruled that the applicant being an agent shall be the recipient of supply provided by contractor.

In view of the above findings, the Authority held that there are two separate supplies: the first one by the contractor to the applicant and the second one by the applicant to the department concerned though there is no value addition in respect of the second supply and ruled that the applicant while working as a 'Project Implementing Agency' is making supplies to State Government Department/ Directorate and therefore is required to issue tax invoice on the contract value as determined by the department.

Comments:

It is essential to note that the ruling while holding that the applicant is rendering a separate supply and therefore, needs to issue a tax invoice for the entire contract value has simultaneously held the applicant to be an agent. There seems to be a contradiction to that extent.

In this context, it is essential to refer Circular No. 159/15/2021 – GST which states that sub-contracting for a service is not an intermediary service. *"The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary".*

Therefore, in my humble view, in the instant case, there is a separate supply between the applicant and the Department and the applicant on the Contractor on the rationale that –

a) The Applicant has entered into two separate contracts on principal basis and is not merely acting as a facilitator of supply of main service

b) Essentially, the applicant has sub-contracted the entire service to the Contractor and therefore, is not an agent in line with the clarification referred above.

However, the ruling is relevant in cases where an agent is acting on behalf of the supplier while receiving and rendering services. In such cases, the agent, on one hand discharges liability on the supplies rendered on behalf of the principal and on the other hand, claims input tax credit on the services received on behalf of the principal for rendering such services. This is on account of inclusion of "agent" within the definition of supplier as well as recipient of goods or services or both. For instance, this practice is typical in the case of shipping agents.

## 2. Modern Insecticides Ltd. vs. Commissioner CGST [2023 (78) GSTL 423 (P & H.) ]

**Date of Order: 19th April, 2023**

**Amount deposited during search operation cannot be considered as voluntary and when no proceedings under section 74(1), the amount is liable to be refunded.**

Facts:

The petitioner is a manufacturer and exporter of pesticides. A search was conducted by the respondent at the factory premises of the petitioner on 5th March, 2020 and seized all the records lying there. The respondents created an artificial shortage of goods without conducting an actual stock count involving GST at Rs.34,04,855. Petitioner, under pressure from the respondents, deposited the said amount along with a penalty of Rs.5,10,728.

A second search was conducted on 15th January, 2021 wherein the Chartered Accountant and the Director of the petitioner were detained. They were released on deposit of Rs.2.15 crore paid by reversal of ITC and withdrawal of pending refund claim.

While multiple notices asking for voluminous details and summons were issued in the intervening period, no proceedings under section 74 were initiated. Being aggrieved, the petitioner preferred this petition seeking a refund of the amounts deposited in the absence of issuance of any show cause notice. It was the contention of the respondent that since the amount is deposited voluntarily, the question of refund does not arise. Respondent contended that the investigation is still under process and the necessary order under section 74(9) and 74(10) would be issued after completion.

Held:

Hon'ble High Court relying on the decision of *Delhi High Court in the case of Vallabh Textiles v. Senior Intelligence Officer and others, 2022 (145 taxmann.com 596)*, wherein the provisions of section 74(1) of CGST Act, 2017 were examined along with Rule 142 of CGST Rules, 2017 and Government Instructions dated 25th May, 2022 issued by CBIC held that the deposit cannot be taken to be voluntary. It held that since no proceedings under section 74 (1) of the CGST Act have been initiated till date, as per Rule 142 (1A) of CGST Rules, 2017, the department cannot even issue Form GST DRC-01A to ask the petitioner to make payment of tax, interest and penalty due. Accordingly, the respondents were directed to refund the amount of Rs.2.54 crore along with applicable interest.

Comments:

The above judgement while referring to the instructions by CBIC which were issued keeping in view the observations of Gujarat High Court in the case of Bhumi Associate v. Union of India, 2021 (124 taxmann.com 429) has elaborated on it. As per the judgment passed in Bhumi Associate's case (supra), even if the assessee wants to make voluntary payment in the prescribed form, he/she should be advised to file the same the day after the search has ended and the concerned officers have left the premises of the assessee. The Court observed that the above instructions and observations have been made so that no unnecessary harassment is caused to the assessee.

The above referred decisions are important to note as safeguards in the light of ongoing proceedings and investigations being conducted.

### 3. Dharmendra M. Jani v. Union of India [2023 151 taxmann.com 91 (Bombay)]

**Date of Order: 6th June, 2023**

**Provisions of section 13(8)(b) and section 8(2) of IGST Act, 2017 are valid, legal and constitutional but to be confined in their operation to provisions of IGST Act only.**

Facts:

The petitioner is engaged in marketing and promotion services to customers located outside India. The Indian purchaser directly places an order on the overseas customer and overseas customer raises an invoice for sale on the Indian purchaser. The petitioner merely acts as an intermediary and received commission from the overseas customer in convertible foreign exchange.

As per section 13(8)(b) of IGST Act, 2017, the place of supply in case of an intermediary is the location of the service provider. Section 8(2) provides that supply of services where the location of supplier and place of supply of services are in the same State or Union Territory shall be treated as intra-state supply. Therefore, the services of the petitioner that are essentially export of services are subjected to tax as intra-state supply. The petitioner paid tax under protest and preferred this petition questioning the Constitutional validity of section 13(8)(b).

Earlier, the two-member bench was split in it's decision and therefore the matter was referred to a third member.

Held:

The third member held that the provisions of section 13(8)(b) and section 8(2) are valid, legal and constitutional provided the provisions are confined in their operation to the IGST Act, 2017 and the same cannot be made applicable for levy of tax on services under CGST and MGST Acts.

Comments:

Confining the operation of provisions of section 13(8)(b) to IGST Act, 2017, an inference may be drawn that intermediary services provided by a supplier to an overseas customer shall not be liable to CGST and SGST and may not be liable to be IGST as well. Considering that levy of IGST is only on inter-state supplies and by virtue of section 8(2) read with section 13(8)(b), intermediary services are intra-state supplies.

The matter will be now placed before the Division bench for a final determination on the issue.

# LEGALITY OF GST APPLICABILITY ON USAGE OF BRAND NAME

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**Legality of GST Applicability on usage of Brand Name by subsidiary companies/associate companies of holding company.**

Earlier several banks had started receiving goods and services tax (GST) notices for using their brand name by their branches and subsidiaries. According to GST rules, banks and non-banking financial companies (NBFCs) are eligible to claim only 50 per cent ITC against services and capital goods. If the use of the brand name is subject to GST, a bank can only claim half the GST as input credit.

Because Banks and NBFCs are getting only 50 percent ITC and therefore department has issued GST notices.

On similar lines GST department has started inquiring many developers and asked them to pay GST on brand name used by subsidiary companies/associate companies of holding company. Normally Brand of Holding company is registered as a trade mark. So department is telling that if holding company is charging royalty of use of trademark/brand name from subsidiary companies/associate companies then GST @ 18% is to be payable by holding company on such royalty charges. Further if Holding company is not charging royalty for use of brand name, logo, trade mark by subsidiary companies /associate companies then also they are telling them to value Brand value usage & telling them to pay GST at the rate of 18% on the said estimated brand value usage. Real Estate developers developing residences are not getting any set off of input credit. GST @ 5% is payable by developers on under construction flats sold subject to complying certain conditions and one of the condition is no input credit set off is allowed. Further in case of affordable housing GST rate is 1% subject to complying certain conditions and one of the condition is no input credit set off is allowed. As developers developing residences are not getting any input credit set off and therefore department started inquiries and in few cases it is heard that Show cause notice is issued to them asking them to explain why Department cannot ask holding company to pay GST on Brand value on usage of brand name-logo-trademarks by the subsidiary company/associate company.

Normally in a real estate industry one special purpose vehicle is floated by holding company i.e. one company one project. Normally the said special purpose vehicles are wholly owned subsidiaries of holding company. As people normally know holding company so holding company use their trade mark, brand name, logo etc. while doing marketing activities of subsidiary companies/associate companies. So because of above if sales are happening in subsidiary companies then finally holding company will be benefited because once net worth of subsidiary companies will increase so Investment in shares of subsidiary companies will also increase. Therefore, finally they are benefited.

In case of developer of commercial properties, they are going to get input credit set off so even if GST on Brand value on use of brand name, trade name, logo by subsidiary company's / associate companies will be charged by the holding company then they will not lose anything.

We will try to examine now what GST law is telling at present on above controversy.

For GST to be levied it should fall under Supply.

Definition of Supply as per CGST Act is as under

LEVY AND COLLECTION OF TAX Section 7 – Scope of supply

CGST ACT 2017

(1) For the purposes of this Act, the expression "supply" includes––

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

[1][(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.––For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; [2][and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

Relevant abstract of SCHEDULE I is as under

**Activities to be treated as Supply even if made without consideration**

2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

—For the purposes of this Act,––

(a) persons shall be deemed to be —related persons if––

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other

Based on above definition of related person Holding and Subsidiary company and Holding and Associate Company are related person.

Therefore, as per schedule 1 of CGST act even if no consideration is charged by the holding company for its use of trade name/brand name/logo by subsidiary company's/ associate companies, it is considered as supply as the same is used by subsidiary company / associate company in the course or furtherance of business and therefore GST is apparently payable. But there is a need to challenge the said new levy by developers as GST if payable by developers of residences then as no input credit set off is allowed so it will result into additional cost, further in rising input cost scenario this will add to further additional cost so finally it can result into passing of such cost by developers to customers to maintain their profitability so as a result of the same inflation cost will increase.

Many developers have though of fighting the same whereas some developers have though of valuing the said services in such a fashion so that impact of the same can be minimised. So some developers though of valuing the said services at 0.5% to 1% of booking of revenue and on that they are thinking to pay 18% on such value.

However, if you as developers are thinking to pay GST on above only after receipt of Show cause notice and if you failed to convince department in the reply of Show cause notice then it is better to pay GST under protest and then challenge the same so that Developers can claim refund if decision comes in their favour.

Further, here I wanted to explain one GST tax saving idea on above valuation of Brand value.
There are various methods to value Brand value and one of the method is Income approach.

The income approach of brand valuation measures the value of a brand based on the present economic benefits that it provides over the rest of the brand's useful life. Among the methods to measure the brand value based on the income approach is to multiply the price differential of the branded products concerning the generic products by the amount of income generated by the branded products.

It means that actual benefit of using Brand name by subsidiary companies /associate companies of holding company is only getting sales value over and above ready reckoner value for payment of stamp duty and not entire sales consideration. Therefore, if at all Developers decided to pay GST on brand value then developer has to find out sales value over and above ready reckoner value of stamp duty and on that apply 0.1 percent to 1 percent and on that pay GST @ 18% under protest so within the four corners of law, developers can minimise the impact of GST payment if at all it can come on them.

**Conclusions:**

1) Developers has to challenge the new levy proposed by department on usage of brand value/trade mark/logo etc by subsidiary companies / associate companies of holding company.

2) If developers are getting show cause notices and they have decided to pay GST on the said Brand value usage by subsidiary companies / associate companies , then it is better to pay under protest and then challenge the same so that Developers can claim refund if decision comes in their favour.

3) To reduce the GST impact on brand value usage if it will come to developers then apply income approach. And value brand value only on difference of sales consideration over and above stamp duty ready reckoner value by the subsidiary company / associate company because it is that value only which is extra amount received by the subsidiary company / associate company on usage of brand value of holding company. And on that additional amount, apply 0.1% to 1% and only pay 18% GST on the said value. Don't forget to pay GST under protest because the concept is debatable.

4) Developers associations can challenge the said levy in court. Many developers have approached Finance Ministry to intervene in their favour else additional levy can result into increase of inflation also.

5) Developers developing commercial properties are indifferent because they are going to get set off of Input credit even if such GST levy will come.

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# THE STRENGTH TO BE HUMBLE : POWER OF HUMILITY

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"Humility will open more doors than Arrogance will ever will"

Humility is a vital quality for Chartered Accountants. It's a characteristic that can profoundly influence interpersonal relations, decision-making processes, and long-term career advancement. Here are several reasons why humility is important for Chartered Accountants:

1. Encourages Learning and Growth: Humble Chartered Accountants acknowledge that they don't know everything and are open to new ideas and continuous learning. This openness is crucial for personal and professional growth, as it allows individuals to adapt and thrive in rapidly changing environments.

2. Fosters Collaboration: Humility facilitates better teamwork by allowing others to contribute and share their ideas. It prevents conflicts that arise from ego clashes and makes team members feel valued, which can enhance productivity and innovation.

3. Builds Respect and Trust: When Chartered Accountants demonstrate humility, they earn the respect and trust of their colleagues and subordinates. This is because humility involves recognizing and valuing others' contributions, which can create a more cooperative and positive work environment.

4. Enhances Leadership: Humble leaders are often more effective because they are seen as approachable and fair, making it easier for them to motivate and inspire their teams. They are also more likely to acknowledge mistakes and learn from them, which can lead to better decision-making over time.

5. Improves Client Relations: In roles that involve direct interaction with clients or customers, humility can lead to better relationships. By showing genuine interest in the needs and concerns of clients, Chartered Accountants can build strong, lasting relationships based on trust and mutual respect.

6. Mitigates Risk: Chartered Accountants who are humble are more likely to consider potential downsides and seek input from others when making decisions. This can lead to more thorough risk assessment and better outcomes.

7. Encourages Adaptability: By acknowledging their limitations, humble Chartered Accountants can better adapt to unforeseen challenges. Their ability to listen and adapt can be crucial in managing crises or navigating complex projects.

8. Supports a Positive Workplace Culture: Humility can help cultivate a culture of respect, learning, and shared success. In a humble work environment, employees are more likely to feel valued and empowered, which can reduce turnover and boost morale.

In summary, humility is not about underestimating one's abilities but about having an accurate view of one's capabilities and limitations and being open to learning from others. In professional settings, this can translate into more effective teamwork, leadership, and overall success. It's a trait that complements technical skills and expertise, enhancing a professional's ability to navigate the complexities and dynamics of the modern workplace.

# EVENTS IN RETROSPECT

| Day & Date | Committee | Program Name | Moderator / Speaker | Attendance / Views |
|---|---|---|---|---|
| 20th March, 2024, Wednesday | Membership and Recreation Committee | Campus Placement at S K Somaiya College, Vidayavihar | 5 CVOCA firms | 70+ participants |

# EVENTS IN RETROSPECT

| Day & Date | Committee | Program Name | Moderator / Speaker | Attendance / Views |
|---|---|---|---|---|
| 6th April, 2024, Saturday | 50 years Celebration Committee | CVOCA Entrepreneurship & Leadership Awards 2024 | Keynote Speaker - Mr. Jalaj Dani, Co-Promoter – Asian Paints, Chairman – Addverb Technologies Ltd and EndureAir | 1200+ live audience, 5000+ youtube views |




# EVENTS IN RETROSPECT

| Day & Date | Committee | Program Name | Moderator / Speaker | Attendance / Views |
|---|---|---|---|---|
| 25th April, 2024, Tuesday | Capital Market Committee | Fundamentals & Value Investing - "Old Age Business - Dying or Worth Investing | CA Amit Doshi, Director at Care Portfolio Managers Pvt. Ltd | 70+ participants |

# EVENTS IN RETROSPECT

| Day & Date | Committee | Program Name | Moderator / Speaker | Attendance / Views |
|---|---|---|---|---|
| 25th April, 2024, Tuesday | Students Committee | Capital Gains under Income Tax | Session Speaker - Manan Maru, Session Mentor - CA Bhavin JM Dedhia | 75+ participants |