Judicial pronouncements other Burning issues under GST

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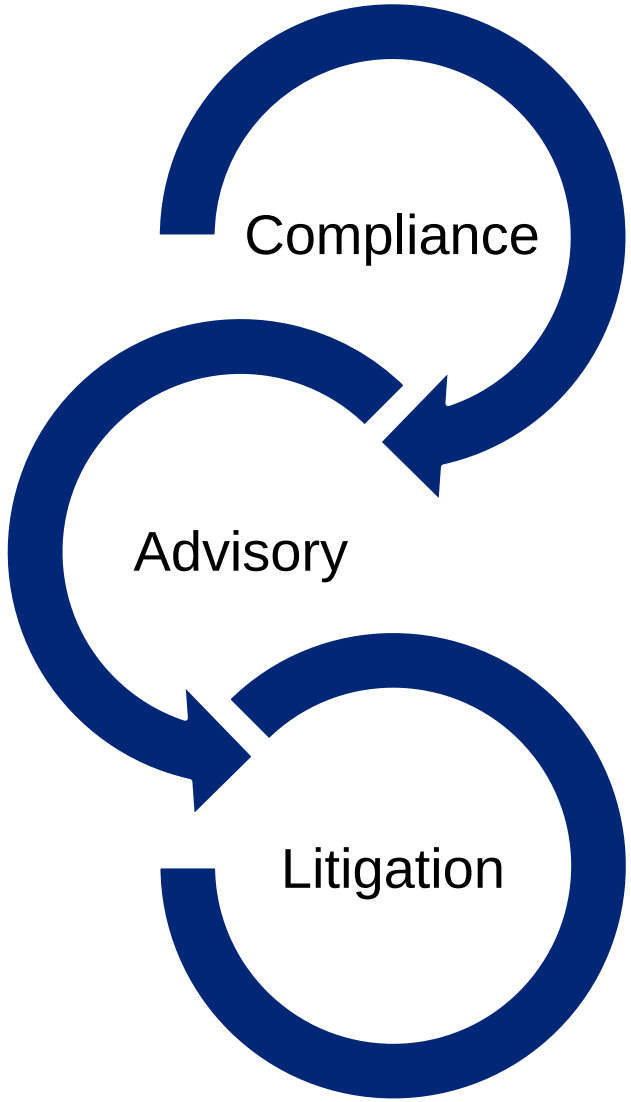

Why tax evasion news is more under GST Regime?

More Under GST Regime

- Control over Traders of Central Investigation Agencies
- Centralization of Tax Administration
  - Anti Evasion Centre
  - Anti Evasion State
  - DGGI
  - State DRI
- Use of Data Analytics by the GSTN Portal
- Coordination between GST_Income Tax_Endofrcement Directorate Wing
- Registration Verification Drive
- E Way Bill Portal

Some Burning Issues at Rajasthan High Court

- Shree Cement vs UOI (Rajasthan High Court)
- Nestle India Ltd vs Audit Officer (Rajasthan High Court)
- Khwaja Garib Nawaj Nursing College vs Rajasthan Nursing University & Othrs
- Matru Play Services Pvt Ltd. vs UOI

Judicial Pronouncements

Raj Kumar Chhalani vs.Joint Commissioner of State Tax

Forum : High Court of Punjab And Haryana
Date : 08-10-2021

- **Issue Involved** – Whether appeal can be filed post expiry of statutory time limit given u/s 107 of the CGST ACt
- **Facts of the case** – Following are the points of the Case
  1. Petitioner filed an appeal before appellate authority being aggrieved by order u/s 73.
  2. As the appeal was otherwise barred by limitation so was not accompanied by application u/s 5 of the Limitation Act, hence the same was dismissed by the Appellate Authority being barred by limitation.

- **Points of Petitioner** – Any provision of GST law do not create specific or implied exclusion to section 5 of the Limitation Act, hence on account of section 29(2) of the Limitation Act it is well within the power of appellate authority to entertain appeal beyond the statutory time-limit prescribed under GST law.

- **Points of the Respondent** – GST being a specific law there is no requirement of creating exclusion of the Limitation Act

- **Conclusion** – The court placed reliance on the judgement of Hon'ble Supreme Court in the case Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and another versus Excise and Taxation Officer Sunder Nagar/Assessing Authority reported in (2020) 17 SCC 692, and had concluded that in absence of non obstante clause rendering Section 29 (2) of the Limitation Act 1963, nonapplicable and in absence of specific exclusion of Section 5 of the Limitation Act, 1963, it would be improper to read implied exclusion thereof

TVL Vardha Infrastructure vs UOI

Forum : High Court of Madras
Date : 11.03.2024

- **Issue Involved** – Whether the Enforcement Wing of the State/Centre can carry out Investigation in absence of notification empowering Cross-Empowerment?
- **Points of Petitioner** – Following are the points of the Case
  1. Proceedings have been initiated by the Central Officers against the assessee who have been assigned to the State and there are cases vice a versa.
  2. As on date notification u/s 6 of the CGST/SGST Act has been issued only in relation to cross empowerment for processing refund in absence of right for proceedings under other sections the counter-authority is not empowered to carry out said activity.

- **Points of the Respondent** – GST being a specific law there is no requirement of creating exclusion of the Limitation Act

- **Conclusion** – The court placed reliance on the difference in the language of section 7 of the Model GST Law and the Section 6 of the Current GST Law which require that a notification has to be issued by the appropriate authority to cross-empower the concurrent authority of CGST/SGST to carry out action on the Assessee which are notified in jurisdiction of one particular Department.
- As on date cross-empowerment notification exist only with respect to refund processing the action carried out by the counter-part is illegal

K.M. Food Infrastructure(P) Ltd. vs. Director General DGGI

Forum : High Court of Delhi
Date : 13-02-2021

- **Issue Involved** – Whether Cash can be seized
- **Facts of the case** – Cash amount of Rs. 1,90,66,000/- was seized from the residential premises of the assessee vide Panchnama dated 4-10-2021, as he could not provide any satisfactory reply for the possession of the said amount. It has also been stated that the said amount was deposited in the bank and converted into fixed deposit with Auto Renewal Option.

- **Points of Petitioner** – The CGST Officers had no power to seize the cash in exercise of its powers under section 67 (2) of the "Central Goods & Services Tax Act, 2017" (CGST Act).The currency is excluded from the definition of goods and thus cannot be seized as goods. Further currency is not useful for conducting any proceedings and cannot be seized under Section 67(2) of the CGST Act.
- **Points of the Respondent** –
  1. Argued that the petitioner could not offer any valid explanation of the source of the cash and therefore the Officers of respondents were under bona fide belief that the cash was the result of clandestine and illegal activities of the petitioners contrary to the provisions of CGST Act 2017.
  2. Reliance was placed on the judgment passed by the Hon'ble M.P. High Court in the case of ***Kanishka Matta v. UOI W.P. (C) No. 8204/2020, decided on 26-8-2020,*** wherein, the Hon'ble High Court interpreted the word "things" appearing in Section 67 (2) of the CGST Act, 2017 to include the money.

Continuation…

Conclusion-

Term "**Things**" appearing in section 67 **does not include "money"** and therefore, that being so, action on part of revenue seizing/resuming cash was illegal and arbitrary.

As per ***Deepak Khandelwal Vs. Commissioner of CGST Delhi West (2023) 9 Centax 244 (Delhi***) word 'things' cannot be interpreted broadly to encompass every possible item, especially if it lacks relevance to proceedings under Act and power of search and seizure is significant, impacting taxpayer's rights and privacy thus, this power must be constrained by specific guidelines to avoid violating constitutional guarantees.

There was no justification for resumption of cash and therefore revenue was directed to forthwith remit proceeds of fixed deposit (along with interest) to the bank account of the entities/person from whose possession same was resumed during search conducted.

The above judgement was further confirmed in the case of *Jagdish Bansal v. Union of India W.P. (C) NO. 16677 OF 2023*

Recent Judgements

Gargo Traders vs Joint Commissioner Commercial Tax
Forum : High Court at Calcutta
Date : 12.06.2023

- Issue Involved – 1. Aggrieved on account of rejection of the ITC for the tax paid on purchases from a registered dealer
- Facts of the case – Following are the points of the Case
  1. Petitioner has availed the credit on invoices and later on it was transpired that firms from whom the purchases were made and non existent.
  2. It was alleged that the Petitioner has not verified that the parties were in existent.
  3. Registration of the supplier cancelled from retrospective dates.
- Points of Petitioner – 1. All documents are available with respect to purchase such as e way bills, purchase bill, transportation documents etc.
  2. At the time of transaction the GST number of the supplier was validly appearing on the portal.
  3. No allegation of collusion between the Petitioner and the Supplier.

- Points of the Respondent –The registration stand cancelled retrospectively
- Conclusion – Remand for reconsideration of the documents available on the record

Vishwanath Traders vs. Union of India

Forum : High Court of Allahabad
Date : 17-10-2023

- **Issue Involved –** Whether an **order** which has been passed **without recording any cogent reason and giving any information** for cancelling the GST registration can sustain.

- **Facts of the case –** The GST registration of the petitioner was cancelled without giving a**ny information and without serving the cancellation order upon the petitioner(s)**. The petitioners came to know about the said fact from its banker i.e. H.D.F.C. Bank that his account has been freezed by the order of the respondent-Assistant Commissioner, thereafter, the petitioners contacted the respondent authorities then it was informed that the cancellation order has been passed, as the Input Tax Credit being taken on the purchases made from M/s Anant Enterprises of Kanpur have been found to be bogus.

- **Points of Petitioner –** In support, the petitioners placed reliance upon the recent judgment of this Court, on an identical sets of fact, passed in Writ Tax No. 1476 of 2022 (***M/s Namo Narayan Singh v. State of U.P., and 2 Ors***.), decided on 10-10-2023. It was held that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected.

- **Conclusion –** It was held by the Hon'ble Court that the facts of the present case is squarely covered in the aforesaid judgment, hence the impugned orders cannot sustain. The writ petition is allowed. The **matter is remitted back to the first appellate authority who shall pass a fresh reasoned and speaking order in accordance with law**, expeditiously, preferably within a period of two months from the date of production of a certified copy of this order, after affording reasonable opportunities of hearing to the parties concerned.

Yonex India(P) Ltd. vs. Union of India

Forum : High Court of Karnataka
Date : 18-01-2024

- **Issue Involved** - Whether the holding of shares of a subsidiary company, by its parent company, would qualify as a 'supply of service' under the GST regime.

- **Facts of the case** – The crux of the dispute centred around whether the holding of shares by a parent company in its subsidiary qualifies as a "supply of service" under the GST regime. The petitioner, Yonex India Private Limited, challenged Notifications issued by the GST authorities, which were interpreted to tax the equity held in subsidiary companies as a service supply.

- **Points of Petitioner** – Attention was invited to the Circulars dated 17-7-2023 and 21-7-2023 issued by the Central Government and the State Government. It is pointed out that the petitioner is a subsidiary company of M/s. Yonex, Japan [a holding company] and mere holding of shares in a subsidiary company by the holding company cannot be construed or treated as "supply of service" in the light of the Circulars issued by the Central Government and the State Government.

- **Conclusion** – Impugned order dated 2-11-2022 which proceeded on the basis that the said holding of shares amounted to "supply of service" was clearly illegal, arbitrary and without jurisdiction or authority of law, and the same deserves to be quashed.

The relevant portions of the notifications in the previous case

Circular No. 196/08/2023-GST dated 17-7-2023

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred bysection 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
	Taxability of share capital held in subsidiary company by the parent company	
1.	Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.	Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

Page **1** of **2**

		This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "*the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.",* unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Similarly, the State Government also issued a Circular dated 21-7-2023 on the same lines, which reads as under:

Representations have been received from the trade and field formations seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred bysection 168 (1) of the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as "KGST Act"), hereby clarifies the issues as under.

Sl. No.	*Issue*	*Clarification*
	Taxability of share capital held in subsidiary company by the parent company	
1.	Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not	Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of KGST Act and the definition of services under clause (102) of the said section. Further, securities include "shares" as per definition of securities under clause (*h*) of section 2 of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of KGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning: "the services provided by holding companies, ie, holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of KGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

3. Difficulties, if any, in implementation of this circular may be brought to the notice of this office.

As it is clear from the aforesaid Circulars issued by the Central Government and the State Government, mere holding of shares by the holding company in the subsidiary company cannot be classified, treated or construed as "supply of service" as clearly clarified and confirmed by the aforesaid Circulars by both the Central Government and the State Government.

Dharmendra M. Jani vs. Union of India

Forum : High Court of Bombay
Date : 06-06-2023

- **Issue Involved –** The principal challenged is the vires of Section 13(8)(b) and Section 8(2) of the IGST Act, 2017.

- **Facts of the case –** Following are the points of the Case:
    1. The petitioner was engaged in providing marketing and promotion services("intermediary services") to customers located outside India. It was providing services only to the principal located outside India and in lieu thereof receiving consideration in convertible foreign currency from the principal located outside India.
    2. The matter was referred to a dual bench where one member held the provisions to be ultra vires and unconstitutional, while the other member had opposite views.
    3. The matter was further referred to a third member who held the provisions to be constitutional.

- **Points for holding unconstitutional–**
    1. Section 13(8)(b) of the IGST Act creates a fiction that intermediary services are supplied in India even if the recipient is abroad. This clashes with the overall structure and charging sections of both CGST and IGST Acts.
    2. Section 13(8)(b) of IGST Act not only falls foul of overall scheme of CGST Act and IGST Act but also offends Articles 245, 246A, 269A and 286(1)(b) of the Constitution.
    3. Section 13(8)(b) of the IGST Act taxes foreign services, clashing with GST's destination-based principle. It taxes where the service is provided, not where it's consumed.

Continuation..

- **Points of the Respondent** –

1. Applying parameters of section 13(1) read with sub-section 8(b), of IGST Act treats intermediary services supplied outside India as if they were supplied in India. This can be seen as a legal fiction as it has been provided that the place of supply shall be the location of the supplier of intermediary services.
2. CGST and SGST don't apply to export of services under IGST Act. They don't define export or intermediary, unlike the IGST Act. They do not contain provisions akin to provisions of section 13(8)(b) and section 12 as contained in IGST Act.
3. Thus, cumulative effect of provisions of section 13(8)(b), read with section 8(2) and section 12, of the IGST Act, can neither be read nor can be said to be of any relevance for the purpose of CGST and SGST Act(s) when it comes to any levy of GST under said Acts on intermediary services, falling within meaning of section 2(6) of IGST Act.
4. Thus, fiction which is created by section 13(8)(b) would be required to be confined only to provisions of the IGST Act, as there is no scope for fiction travelling beyond provisions of the IGST Act to CGST and MGST Acts - On such interpretation, provisions of section 13(8)(b) and section 8(2) are intra-vires Constitution, IGST, CGST and SGST.

- **Conclusion** –

1. Section 13 is required to be specifically confined only to the IGST Act. This becomes clear from the different legislative indications which are discernible from the provisions of the IGST Act itself.
2. In the context of such provisions of the IGST Act, CGST Act and the Constitution, it is difficult to conceive that the CGST Act, which has been enacted only for the purpose of levy of GST on intra-State trade and commerce and the MGST Act, which is also an enactment to levy tax on intra-State trade and commerce, would be legislations which would recognize tax on “export of services”, as governed and contained within the domain of IGST Act.
3. The provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional, provided that the provisions of Section 13(8)(b) and Section 8(2) are confined in their operation to the provisions of IGST Act only. The same cannot be made applicable for levy of tax on services under the CGST and MGST Acts.

Engineers India Ltd. v. Assistant Commissioner (Central Tax)

Forum : High Court of Madras
Date : 07-02-2024

- **Issue Involved** – Whether refund claim should be rejected when refund application is filed under wrong category?

- **Facts of the case** – Upon the entry into force of the Central Goods and Services Tax Act, 2017 (the CGST Act) on 1-7-2017, the petitioner asserts that it was entitled to transition the TDS credit as Input Tax Credit (ITC) under the CGST Act. Since the eligibility of persons such as the petitioner to transition the credit into the GST regime was the subject of litigation before this Court, the petitioner deposited a sum of Rs. 57,98,945/- towards the tax demand under the GST regime. Such deposit was made under protest which should be refunded.

- **Points of Petitioner** – The said order is unreasoned and was issued on the ground that the claim for refund was made under the wrong category, i.e. "Any Others". According to learned counsel, a refund claim cannot be rejected merely because the application was filed under the wrong category. He also points out that the categories provided under the circular do not envisage refund claims such as the petitioner's.

- **Points of the Respondent** – The refund claim does not fall within the scope of Section 54 of the CGST Act, which only enables refund in case of unutilised ITC on account of inverted duty structure or unutilized ITC on account of zero-rated ex

- **Conclusion** – A refund claim cannot be rejected merely on the ground that such refund claim does not fall within the specific categories enumerated in Circular No. 125/44/2019-GST dated 18-11-2019. The sub-section (1) of Section 54 of the CGST Act appears to **be wide enough to embrace any claim** for refund of tax or interest provided such claim is made within a period of two years reckoned from the relevant date.

M/s Sterlite Power Transmission Limited vs. Union of India

Forum : High Court of Delhi
Date : 28-02-2024

- **Issue Involved –** Whether the activity of the holding company providing a Corporate Guarantee ("CG") to a subsidiary is in nature of supply of service taxable under Section 9 of the Central Goods and Service Tax Act, 2017

- **Facts of the case** – Following are the points of the Case
  1. In the case of group company, the CESTAT Chennai in the case titled ***Sterlite Industries India Ltd. v. Commissioner of GST & Central Excise*** 2019 (2) TMI1249/2019 (25) G.S.T.L. 277 (Tri. - Chennai) had held that the provision of only a Corporate Guarantee to an associate company is like an in-house guarantee and does not amount to providing any services.
  2. The summons have been issued u/s 70 of the CGST Act, 2017, requiring the petitioner to provide all information with regard to Corporate Guarantees provided till date.

- **Points of Petitioner** –
  1. The order dated 17.03.2023 of the Supreme Court in Civil Appeal(Diary No). 5258/2023 titled ***Commissioner of CGST & Central Excise v. Edelweiss Financial Services Ltd***. was referred.
  2. Value of enforcement is not dependent on the value of the guarantee, and it is only where the guarantee is enforced that the issue of service may arise, if at all Corporate Guarantee. and as such fixing a value at 1% of the CG provided would put **onerous burden on the entity providing the CG.**
- **Points of the Respondent** – Vide Circular dated 27.10.2023, the provision of Corporate Guarantee to associate has been made taxable and the value has been provided as 1% of the guarantee.
- **Conclusion** – It is directed that no coercive action shall be taken against the petitioner in case a final assessment order is passed or a demand is created. The matter is decided to be listed on 08.07.2024.

Ashish Kumar Sharma Vs. Deputy Commissioner, State Tax, South Bengal, Howrah

Forum : High Court of Calcutta
Date : 25-04-2024

- **Issue Involved –** The question which falls for consideration in this case is whether penalty in terms of Section 129 of the Act could be imposed without considering as to whether there was an intention to evade the payment of taxes.

- **Facts of the case** –
  1. **Vehicle suffered breakdown** during the course of its journey and on the date the vehicle was intercepted **the e-way bill generated** by the appellant had **expired and four days had lapsed** by then.
  2. The Deputy Commissioner passed an order of detention under Section 129(1) on the ground that the e-way expired for more than four days. A show cause notice was issued under Section 129(3) of the Act proposing to levy of 200% penalty on the grounds that the e-way had expired for more than four days and the vehicle was moving with the loaded consignment without an e-way bill.

- **Points of Petitioner** – "mens rea" is essential for imposition of penalty.

- **Points of the Respondent-** It does not take much effort for extending or re-validating the e-way bill and the appellant as well as transpoter are well aware of the procedure and such extension of the e-way bill can be obtained by using the mobile phone.

- **Conclusion** – The case on hand can be construed to be rather peculiar and imposition of 200% penalty is **harsh** and if the same is to be affirmed it will cause grave prejudice to the appellant.. The circumstances of the case, the court is inclined to grant some indulgence to the appellant but will not completely exonerate the appellant. Thus, considering the peculiarity of the facts, the appellant is liable to pay reduced penalty of Rs. 1,00,000/-.

Bagga Link Motors vs. Commissioner SGST

Forum : High Court of Delhi
Date : 26-04-2024

- **Issue Involved –** Whether, in the event that the proper officer omitted to procure material documentation from the taxpayer, can the impugned order confirming the demand be quashed?

- **Facts of the case** – Following are the points of the Case:
  1. The Assessee submitted their reply to the SCN and thereafter attended the personal hearing wherein all the documents were submitted to the proper officer and no additional documents were sought from them by the proper officer.
  2. Thereafter, the proper officer has passed an impugned order stating that the reply was incomplete, not duly supported by adequate documents and unable to clarify the issue.
- **Points of Petitioner–**

  The observation in the impugned order is not sustainable and the reply filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is incomplete, not duly supported by adequate documents, unable to clarify the issue which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner

- **Conclusion:**

  If the Proper Officer was of the view that any further details were required, the same could have been specifically sought from the Petitioner. However, the record does not reflect that any such opportunity was given to the Petitioner to clarify its reply or furnish further documents/details. In view of the above, the impugned order cannot be sustained and is set aside.

Thank You !!