

# APRIL'19INDIRECT TAX LAW REPORT

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**Seizure: GST Liability on truck owners: Ashok Kumar Bhatia vs State of UP, 2019-TIOL-679-HC-ALL-GST**

Findings of the High Court:

1. If 'any person' transports any goods or stores any goods while they are "in transit" in contravention of the provisions of the Act or Rules made thereunder, all goods used as a means of transport for carrying the said goods and documents shall be liable to detention or seizure u/s129 of the GST Act, 2017.
2. It is immaterial that the person proceeded against is not a registered person or a supplier or a taxable person or is not doing any business. It is enough that he is a 'transporter' of goods and that the goods are being transported and have been seized in transit and if the charge is made out against the transporter, the respondents can proceed to seize such goods including the conveyance.
3. In the present case, a show cause notice has been issued to the petitioner where they contended that no business is being conducted in respect of sale or purchase of the goods as he is a mere transporter who is providing vehicles for transportation was rejected.
4. The writ petition was dismissed and the vehicle along with goods have been seized and an F.I.R. has also been lodged u/s 420, 463, 464, 468, 471, 34 and 120-B of I.P.C.
5. The petitioner is neither a registered person u/s 2 (94), nor a taxable person u/s 2(107) of the UPGST Act, 2017.
6. The truckers are back to the GST Officials. When a truck is hired, the truck owner is required to be sure that the goods he transports are not liable for seizure, for his truck may also get seized.

**Summons:Wrong availment of input tax credit:Bharat Raj Punj vs Commissioner CGST, 2019-TIOL-678-HC-RAJ-GST**

**Findings of the High Court:**

1. It is a clear case of the Department that the Petitioner and its sister concerns have availed input tax credit to the tune of Rs.328,36,73,701/- on the basis of fake invoices, out of which Rs.40,53,58,772/- is the fraudulent input tax credit claimed by Petitioner Company. The Petitioners cannot controvert the fact in the Writ Petition that a wrong allegation has been levelled by the Goods and Services Tax Department.
2. The Petitioner has claimed input tax credit on fake invoices and the Department has all rights to take any action permissible by law.
3. The contention that the tax is to be first determined under Section 73 & 74 of the Act does not have any force for the very reason that in an offence committed under Section 132 of the Act (punishment for certain offences) determination of tax is not required and the Department can proceed straight away by issuing summons or if reasonable grounds are available by arresting the offender.
4. Since offence under Section 132 is made out and Senior Officials of Company are behind bars, Petitioner being Managing Director is responsible and Department has the right to proceed under Section 69 and 70 of the Act (power to arrest and give summons).
5. Petitioners have claimed tax input credit on the basis of fake invoices, hence Writ Petition is dismissed with cost of Rs.1,00,000/- only.

This is perhaps the first time that a petitioner against summons, not only lost the case, but ended up paying costs.

## GST Notifications

### Central Tax Notifications

Notification No.	Date of Issue	Subject& Description
1. Notification No. 22/2019-Central Tax	23-04-2019	<p><b><u>Seeks to notify the provisions of rule 138E of the CGST Rules w.e.f 21st June, 2019.</u></b></p> <p>Restriction on furnishing of info in PART A of GST EWB-01 w.e.f. 21.06.2019.</p>
2. Notification No. 21/2019-Central Tax	23-04-2019	<p><b><u>Notifies the procedure for Quarterly tax payment and Annual filing of Return for taxpayers availing the benefit of Notification No. 02/2019-Central Tax (Rate), dated the 7th March, 2019</u></b></p> <ol style="list-style-type: none"><li>1. The Central Government notifies the registered persons who is paying tax under the provisions of section 10 of the said Act or by availing the benefit of notification of the Government of India, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing of return and payment of tax.</li><li>2. The said persons shall furnish a statement, every quarter or, as the case may be, part thereof containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017, till the 18th day of the month succeeding such quarter.</li><li>3. The said persons shall furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, on or before the 30th day of April following the end of such financial year.</li><li>4. The registered persons paying tax by availing the benefit of the said notification, in respect of the period for which he has availed the said benefit, shall be deemed to have complied with the provisions of section 37 and section 39 of the said Act if they have furnished FORM GST CMP-08 and FORM GSTR-4 as provided in para 2 and para 3 above.</li></ol>

3. Notification No. 20/2019-Central Tax	23-04-2019	<p align="center"><b><u>Central Goods and Services Tax (Third Amendment) Rules, 2019:</u></b></p> <ol style="list-style-type: none"> <li>1. CBIC added proviso to Rule 23, Amended Rule 62 to provide rule for payment and return filing by Specified Composition dealers, Inserted Form GST CMP – 08– Statement for payment of self-assessed tax, added a new instruction to FORM GST REG-01 .</li> <li>2. It further notified procedure for quarterly tax payment and annual filing of return for taxpayers availing the benefit of Notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019.</li> </ol>
4. Notification No. 19/2019-Central Tax	22-04-2019	<p align="center"><b><u>Seeks to extend the due date for furnishing of returns in FORM GSTR-3B for the Month of March, 2019 for three days (i.e. from 20.04.2019 to 23.04.2019)</u></b></p> <p>In the said notification, after the eighth proviso, the following proviso shall be inserted, namely: –</p> <p>“Provided also that the return in FORM GSTR-3B of the said rules for the month of March, 2019 shall be furnished electronically through the common portal, on or before the 23rdApril, 2019.”</p>
5. Notification No. 18/2019-Central Tax	10-04-2019	<p align="center"><b><u>Seeks to extend the due date for furnishing FORM GSTR-7 for the month of March, 2019 from 10.04.2019 to 12.04.2019</u></b></p> <p>The Commissioner extends the time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017 for the month of March, 2019 till the 12th day of April, 2019.</p>

6. Notification No. 17/2019-Central Tax	10-04-2019	<p><b><u>Seeks to extend the due date for furnishing FORM GSTR-1 for taxpayers having aggregate turnover more than Rs. 1.5 crores for the month of March, 2019 from 11.04.2019 to 13.04.2019</u></b></p> <p>In the said notification, in the first paragraph, after the fourth proviso, the following proviso shall be inserted, namely: –  “Provided also that the details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of March, 2019 shall be furnished electronically through the common portal, on or before the 13th April, 2019.”</p>
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## GST Circulars & Orders

Circular & Order No.	Date of Issue	Subject & Description
1. Circular No. 98/17/2019-GST	23-04-2019	<p><b><u>Clarification regarding the manner of utilization of input tax credit post insertion of the rule 88A of the CGST Rules</u></b></p> <p>CBIC has issued Circular No. 98/17/2019 GST dt 23 April 2019 for Clarifications on issues relating to Order of Utilization of Input Tax Credit (ITC) under GST, specially in view of accumulation of un-utilized ITC of Central tax/ State tax in the Electronic Cash Ledger due to utilisation of IGST first as prescribed under newly enacted Sections 49A &amp; 49B of the CGST Act, 2017 w.e.f. 1 Feb. 2019. The circular link is as under:</p> <p><a href="http://www.cbic.gov.in/htdocs-cbec/gst/Circular-98-17-2019-GST.pdf">www.cbic.gov.in/htdocs-cbec/gst/Circular-98-17-2019-GST.pdf</a></p>

<p>2. Circular No. 99/18/2019-GST</p>	<p>23-04-2019</p>	<p><b><u>Opportunity to apply for revocation of cancellation of GST registration:</u></b></p> <ol style="list-style-type: none"> <li>1. Registration of several persons was cancelled due to non-furnishing of returns in FORM GSTR-3B or FORM GSTR-4.</li> <li>2. Two provisos have been inserted in Rule 23(1) of the CGST Rules, 2017 which clarifies the issues relating to the procedure for filing of application for revocation of cancellation of registration.</li> <li>3. First proviso provides that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid.</li> <li>4. All returns due till the date of cancellation are required to be furnished before the application for revocation can be filed.</li> <li>5. In terms of the second proviso, all returns from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of thirty days from the date of the order of revocation.</li> </ol>
<p>3. Order No. 5/2019-GST</p>	<p>23-04-2019</p>	<p><b><u>Extends the time limit for filing an application for revocation of cancellation of registration for specified taxpayers:</u></b></p> <p>CBIC clarified the extension in time u/s 30 (1) of the Act to provide a one time opportunity to apply for revocation of cancellation of GST registration on or before the 22nd July, 2019 for the specified class of persons for whom cancellation order has been passed up to 31st March, 2019 and extends the time limit for filing an application for revocation of cancellation of registration for specified taxpayers.</p>

## Goods & Service Tax Judgments

- 1. Maharashtra AAR- Classification-** 'Ready to cook popcorn premix i.e. Popcorn Maize with edible oil and salt', sold in retail pack size attracts GST @12%.**Shah NanjiNagsi Exports Private Limited, 2019-VIL-127-AAR.**
- 2. Maharashtra AAR- Composite Supply-** Contract for Design, Build, Operate, Maintain and install LED Street Light is a composite supply of works contract. The subject contract is a composite supply where the principal supply is of goods and therefore the applicant will have to discharge their GST liability. The 'LED Lights or Fixtures including LED Lamps' are taxable @ 12%.**2019-VIL-128-AAR.**
- 3. High Court- Anticipatory Bail-** The Director seeking grant of anticipatory bail in connection with the offences punishable u/s 132(1)(i) r/w S. 132(1)(b)(c) of CGST Act, 2017. The main accused in this case is a corporate body. The financial matters are being dealt with by the CFO. Further, the petitioner is not directly liable to pay the taxes imposed by the Government from time to time. The CFO of the company was arrested and detained for about 30 days in judicial custody. The petitioner is entitled for relief under Section 438 Cr. P.C (direction for grant of bail to person fearing arrest). The respondents are directed to release the petitioner on bail in the event of his arrest, on his executing a personal bond. The Criminal Petition is allowed.**2019-VIL-182-TEL.**
- 4. Maharashtra AAAR- GST on Sale and /or Purchase of DFIA licenses-** DFIA, also known as duty paying scrips will be nil rate of GST on the sale or purchase of DFIA as provided in Sr. 122A of the Notification 02/2017-C.T. (Rate) as amended by the Notification No. 35/2017-C.T. (Rate). The ruling of AAR is set aside and appeal is allowed.**SpaceageSyntexPvt.Ltd., 2019-VIL-38-AAAR.**
- 5. Maharashtra AAAR- Admissibility of credit under pre-GST regime-** The question whether input tax credit of Service Tax and State VAT paid while booking of flat is available to the Developer, if cancelled in GST regime. Held, neither AAR nor AAAR has the jurisdiction to pass any ruling on such matters. Appeal is dismissed. **2019-VIL-40-AAAR.**



- 6. Section 50 of CGST Act, 2017 - Demand of interest on the Input Tax Credit portion of the tax paid-** Where there is a delay in filing the returns in GSTR-3B ,the liability to pay interest u/s 50 of the CGST Act, 2017 is payable on the total tax liability including a portion of which is liable to be set-off against Input Tax Credit. The claim made by the Department for interest on the Input Tax Credit portion of the tax cannot be faulted with. The Writ Petition is dismissed.**2019-VIL-175-TEL.**
- 7. Attachment of Bank Account-** Despite the fact that the Court had set aside the order of attachment, the respondent has once again passed an identical order attaching the very same bank accounts without recording necessary satisfaction as to why such action was required to be taken in the interest of government revenue. Held, the action of the Respondent is contempt matter and is in disobedience of the directions of the Court.The Assistant Commissioner of State Tax is called upon to show cause as to why he should not be made personally liable to pay the costs of the petition. The Matter is listed.**2019-VIL-171-GUJ.**
- 8. Functions of GST Council** - Article 279A of the Constitution, provides clearly that GST Council is a constitutional body and there is no mechanism provided in the Constitution or any other statute for the GST Council to adjudicate the grievances raised by the general public. The single judge Order directing the GST Council to consider the representations of Respondent-Plastic Recycling Industrial Association and pass orders thereon, after conducting personal hearing held to be invalid. The judgment is set aside and writ appeal is allowed.**2019-VIL-161-KER.**
- 9. Penalty for late filing of Form GSTR-3B-** The respondents-authorities should not enforce any demand, penalty, interest or late submission fee on the fact that the system problem arose on account of design limitation. Late fee, if any, paid by the petitioner, shall be refunded to the petitioner.**Clix Capital Services Private Limited v. Union of India, 2019-VIL-163-DEL.**
- 10. Kerala SGST Act, 2017- Recovery of tax-** In any proceedings against the hallmarker, the authorities under the SGST Act, cannot confiscate the gold seized from the hallmarker when the gold jewellery seized belongs to the petitioners, and the entrustment of the same is evidenced by the delivery challans and issue of vouchers. Held, the goods cannot be the

subject matter of a confiscation order u/s 130 of the SGST Act. The impugned seizure orders and prohibition orders stands quashed. The writ petitions are disposed in favour of petitioner.**2019-VIL-151-KER.**

- 11. Detention of goods-** Detention orders cannot be made u/s129(1) of the CGST Act on account of deficiency in lorry receipt issued by the transporter where there is no requirement under Rule 138A(1) of the CGST Rules, 2017. The respondents are directed to release the truck along with the goods contained therein. **2019-VIL-154-GUJ.**
- 12. Maharashtra AAR -** The supply of ice-cream by the applicant from its retail outlets would be treated as supply of "goods". There is a transfer of title in ice creams from the applicant to their customers and therefore as per entry no. 1(a) of the Schedule II of the CGST Act, the transaction is treated as supply of goods. **2019-VIL-116-AAR.**
- 13. Tamil Nadu AAAR -** Classification of 'Agricultural Seedling Tray' - The seedling trays used for agriculture doesn't merit classification under Chapter 8201 with tax exemptions unless such hand tool is made of base metal and has a working edge.The appeal is dismissed. **2019-VIL-36-AAAR.**
- 14. Rule 120A of CGST Rules- Revision of declaration in FORM GST TRAN-1-** The grievance of the petitioner is that the respondent are not permitting the petitioner to file a revised FORM GST TRAN-1 on the grounds that petitioner inadvertently transferred a portion of credit to their branch in Hyderabad and is seeking credit of the same. Held, the petitioner is entitled to revise or rectify the errors in the FORM GST TRAN-1 as the same is squarely covered under R.120A.The writ petition is disposed of in favour of assessee.**2019-VIL-127-KAR.**
- 15. Kerala AAR- Management and Consultancy service-** The applicant's activity of providing management consultancy services does not fall under the definition of the term 'intermediary' as per Sec.2(13) of the IGST Act, 2017 as the applicant is directly providing service to his clients and is not engaged in facilitating or arranging the supply of goods or services or both between two or more persons.**2019-VIL-102-AAR.**

- 16. National Anti-Profitteering Authority- Sale of flat-** The Respondent has denied benefit of Input Tax Credit to the Applicants as well as other purchasers of flat in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus realized more price from them than what he was entitled to charge and has also compelled them to pay more GST than what they were required to pay by issuing incorrect tax invoices and hence he has committed offence under section 122 (1) (I) of the CGST Act, 2017 and therefore, he is liable for imposition of penalty under the above Section read with Rule 133 (3) (d) of the CGST Rules, 2017.**2019-VIL-15-NAA.**
- 17. Maharashtra AAR -** Services provided to NGO registered as Trust having registration U/s. 12AA of Income Tax Act, amounts to provision of service and any grant/ Donation received towards performing specific service towards preservation of environment are covered by exemption Notification entry at Sr. No.1 of the Notification No. 12/2017.**2019-VIL-87-AAR.**

## Service Tax Judgments

- 1. Reverse charge- Call Centre services-** The appellant is a 'call centre' operator and that their clients are situated outside the country. Service tax is demanded on 'reverse charge' from service receivers. Held, services procured domestically or imported for carrying on of business or commerce is taxable; to the extent of taxability of output or output service, the tax liability, is adjusted through CCR, 2004 and, to the extent that the output or output service is exported. The payment made to 'service providers outside the country' does not qualify for being subject to tax u/s 66A of Finance Act, 1994. The appeal is allowed and answered in favour of assessee.**2019-VIL-243-CESTAT-MUM-ST.**
- 2. Eligibility of Cenvat credit-** In terms of Rule 2 (a) (ii) of the CENVAT Credit Rules, 2004, the appellant is entitled to avail Cenvat Credit on any inputs, capital goods or input service used for providing output services, namely, renting of immovable property service, irrespective of whether the construction has been done through the contractors or not as long as

service tax is paid. The appeals are allowed. **2019-VIL-238-CESTAT-DEL-ST.**

- 3. Advertising agency-** The petitioner was engaged in the business of advertising who has obtained the registration certificate under Service Tax Act falls within the purview of "Commercial Concern" and is amenable to service tax. "Advertising Agency"u/s 65(3) of the Act means "any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant".The petition fails and is dismissed.**2019-VIL-147-MP-ST.**
- 4. Disallowance of re-credit-** The services of Indian Sugar Exim Corporation (ISEC) were utilized by the assessee for fulfillment of export obligation of sugar. Held, the Revenue cannot disallow the credit of duty reversed earlier under protest on the ground that services provided by ISEC do not fall in the definition of input service. When objection was not raised at the time of availment of credit, it cannot be raised at the time of re-credit. The revenue appeal is rejected.**2019-VIL-226-CESTAT-ALH-ST.**
- 5. Financial Lease or Operating Lease-** The clauses of lease agreement show that the ownership rests with the lessor and after determination of an Operating Lease, the lessee has to return the equipment/vehicle to the lessor. The lessee does not have an option to own the asset at the end of the lease period, which is the distinguishing feature between an Operating Lease and a Financial Lease. **2019-VIL-229-CESTAT-CHE-ST.**
- 6. Technical Testing service-** The appellant undertakes testing for the products of their clients and the testing methodologies are well documented by the global guidelines. It was held that appellant is limited to conducting the analysis of the sample and giving report to the client and has no authority to give any consultancy on the analysis and report conducted by the appellants.The service is classifiable as "Technical Testing and Analysis Agency Service" and not "Scientific and Technical Consultancy Service." The demand on this account is not sustainable and is set aside. **2019-VIL-220-CESTAT-AHM-ST.**
- 7. Credit on life/health insurance-** The medical insurance in relation to the employees of the company falls within the broad definition of input service given at Rule 2(l) of the CENVAT Credit Rules, 2004, therefore, Cenvat credit

on medical insurance services cannot be denied. The impugned order is set aside and the appeal is allowed. **2019-VIL-216-CESTAT-MUM-ST.**

- 8. CENVAT Credit-** The Appellants claimed that if the credit was wrongly availed, the Head office who are registered as Input Service Distributors (ISD) should be put to notice and not the recipient of the ISD invoices. Held, if the Head Office commits an error and wrongly distributes credit either by availing ineligible credit itself or by improperly distributing it, the recipient of the ISD invoices will not be able to correct the mistake and they will also not be able to explain why the credit was wrongly taken or distributed by their head office. The impugned order is set aside and appeal allowed. **2019-VIL-213-CESTAT-HYD-ST.**
  
- 9. CENVAT Credit on Hotel services-** The appellants constructed a Hotel and availed Cenvat credit in respect of inputs and input services exclusively used in the construction of said Hotel & Spa such as accommodation, restaurant services, spa services and other related services in the said Hotel. The appellants have fulfilled the conditions under Rule 2(l) and entitled to the credit of the same under the provisions of Rule 3(1) of CENVAT Credit Rules, 2004. **2019-VIL-211-CESTAT-MUM-ST.**
  
- 10. Works Contract-** The activity of the appellant in respect of construction of guesthouses at the temples and temple premises would fall under the category of (ii)(b) of Section 65(105)(zzzza) of the Finance Act of definition of works contract which states that construction of civil structure or new building is taxable under Works Contract Services, only if it is primarily for the purpose of commerce and industry. The buildings constructed for non-commercial and non-industrial purposes are not taxable under works contract services. Since the above said activity is non-commercial, held to be not taxable. **2019-VIL-189-CESTAT-HYD-ST.**
  
- 11. Export of service-** International GSM Roaming service provided by Indian operator to foreign counterparts is export of service even if ultimate user of such service/ actual beneficiary of service is latter's subscriber visiting India. **2019-TIOL-842-CESTAT-MAD .**
  
- 12. Commercial or industrial construction service (CICS)-** The construction of Sports Complex or Sports Stadium is not "CICS" in the sense that the dominant use of sports complex of popularizing sports is non-

commercial and cannot be subjected to service tax. The Tribunal order is upheld and revenue appeal is dismissed. **2019-VIL-115-BOM-ST.**

## Central Excise Judgments

- 1. Rule 6 of CENVAT Credit Rules, 2004-** The Circular is quashed and set aside in terms of treating Bagasse as non-excisable which in actual are exempted goods. It was held any by product of waste which are non-excisable goods and are cleared for consideration from the factory need to be treated like exempted goods for purpose of reversal of credit of input and input services, in terms of Rule 6 of the CCR, 2004. (Vide Board Circular No.1027/15/2016-CX dated 25/04/2016).The writ petition is allowed.**2019-VIL-157-ALH-CE.**
- 2. Claim for duty free benefit for goods-** The mistake in mentioning the wrong notification number cannot be the sole reason for denying the benefit to the assessee which they were otherwise eligible. The goods cleared by the appellant for construction of water treatment plant cannot be denied the exemption and the impugned order is set aside and appeal is allowed. **2019-VIL-218-CESTAT-BLR-CE.**
- 3. Supreme Court- Demand of duty in respect of Dharmada-** The Dharmada (charitable donation) is an optional payment made by the buyer cannot be regarded as part of the transaction value for the sale of goods. The judgment of the CESTAT is set aside and the appeal is allowed.**2019-VIL-13-SC-CE.**
- 4. Place of removal -** The cost of transportation and insurance are not to be included in assessable value because goods are sold at the factory gate. The place of removal of goods depends upon the facts of each case and conditions of sale. The place of removal is at the place of buyer on the delivery of goods subject to the satisfaction of specification and testing. The impugned orders are set aside and the appeal is allowed.**2019-VIL-129-MEG-CE.**

- 5. Denial of CENVAT Credit-** The credit cannot be denied on the ground that the invoice is issued in the different name of the company (i.e. Company's former name). There is nothing in the rules which disentitles an assessee to avail CENVAT Credit if they change their name and the invoice is in their former name. The impugned order is set aside and the appeal is allowed.**2019-VIL-202-CESTAT-HYD-CE.**
- 6. High Court- Clandestine Removal-** The penalty imposed for manufacture and clearance of chewing tobacco clandestinely is being vacated on the grounds of financial distress faced by assessee and also in the light of peculiar nature of trade & trade practices carried on by assessee. The HC allowed partial relief to the assessee, sustained the duty demand but scrapped the penalty imposed.**2019-TIOL-746-HC-MAD-CX.**
- 7. Benefit of exemption notification-** When mobile/other phones cannot work without batteries, they are to be considered as parts of mobile phones and benefit of exemption under Notfn 21/2005 is admissible to them on the basis of certificate given by the jurisdictional officer and in terms of Bond executed before him.**2019-TIOL-944-CESTAT-BANG.**
- 8. Powers of Tribunal-** The lower authorities cannot interfere with matters pending disposal before Tribunal by attempting to recover duty demands without first seeking vacation of stay granted earlier. The Tribunal is not a trial court; it is an authority established to dispose off appeals at the first or second level, as the case may be. Held, that the stay earlier granted by the Tribunal would continue to operate.**2019-TIOL-861-CESTAT-BANG**
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