



# ERNAKULAM BRANCH

OF SIRC OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Vol: XII

Issue No: 106

## 70<sup>th</sup> Annual Function

Chief Guest

**Shri Om Birla**

Hon'ble Speaker of Lok Sabha

Guest of Honour

**Shri Anurag Singh Thakur**

Hon'ble Union Minister of State for Finance and Corporate Affairs



## All India Best Branch Award for the year 2019

CA. Sreenivasan. P.R, Chairman Ernakulam Branch of SIRC of ICAI along with the managing committee members of the branch receiving the **All India Best Branch Award for the year 2019** from **Shri Om Birla, Hon'ble speaker of Lok Sabha** in the presence of **Shri Anurag Singh Thakur, Hon'ble Union Minister of State for Finance and Corporate affairs**, CA. Prafulla P Chhajed, Hon'ble President of ICAI, CA. Atul Kumar Gupta, Hon'ble Vice President of ICAI, CA. Babu Abraham Kallivayalil, Central Council Member of ICAI and CA. Jomon K George, SIRC of ICAI. The award was received at the 70 th Annual Function of ICAI held on 7th February, 2020 at The Ashok Hotel, New Delhi.

This is the 7<sup>th</sup> time the All India best branch award is being received by the Ernakulam Branch. ICAI have 164 branches all over India. Ernakulam Branch of SIRC of ICAI is the largest branch in the State of Kerala founded in 1967 and presently has 2350 members and 7000 students spread across two revenue districts of Ernakulam and Idukki.



Shri P.H. Kurian, IAS (Rtd), Chairman, Real Estate Regulation Authority (RERA) inaugurating the One Day Seminar on "RERA & GST" organized by the Ernakulam Branch of SIRC of ICAI.

### INSIDE

Chairman's Message  
Judicial Decisions on Direct Taxes  
Judicial Decisions on Indirect Taxes



## Chairman's Message

Dear Professional Colleagues,

At the outset I wish to thank each and every member of Ernakulam Branch for all the support and encouragement provided in the last one year while I occupied the position as Chairman of the Branch. I hope I have performed my duties to the best of my abilities and have lived up to your expectations.

My hearty congratulations to the newly elected President of ICAI CA. Atul Kumar Gupta and Vice president CA. Nihar Niranjana Jambusaria.

By the grace of the Almighty and the prayers of all members of the branch and together we did it again for the seventh time. Ernakulam branch bagged the All India - Best Branch Award under the large category. This was a result of the teamwork and collective efforts of all the members of the Managing Committee of Ernakulam Branch and the entire staff team of the branch. I also express my gratitude to our ex-officio members CA. Babu Abraham Kallivayalil, Central Council Member and CA. Jomon K George, Chairman, SIRC.

We are really happy that under the able chairmanship of our own Regional Council Member CA. Jomon K George, The Southern India Regional Council was adjudged the second best region in the country after a gap of five years. Hearty congratulations!

We were able to conduct some excellent programmes in the last one month. On January 24th we conducted a One Day Seminar on RERA and GST which was well appreciated by all the members who attended. It was for the first time that we had a very detailed talk on RERA and its implications. The address by Sri.P.H.Kurian, IAS (Retd), Chairman, Kerala RERA was also very informative. On February 8th we had the most awaited "Budget Seminar", which was also a grand success.



We are thankful to all the members who sent in their suggestions for the post budget memorandum. My special thanks to CA. P.T.Joy, Past Chairman, CA. Lukose Joseph, Past Chairman, CA. Rajasekharan, CA. Cyrjoe, CA. Soman N.L, CA. Dileep R and CA. Bibin Joseph for their valuable contributions. We have sent the suggestions to the respective committees of ICAI for further action.

I congratulate all the students who cleared the CA Intermediate exams conducted in the November 2019. We are proud that we had 9 toppers at city level in intermediate. Special appreciations to Mr. Pranav Raja who secured the All India 46th rank.

I have enjoyed my tenure as the Chairman of our branch and this has been one of the most memorable years in my life. I thank each and everyone of you for the opportunity given to me. As "Change" is the only constant in life, I will soon be laying down my office and shall hand over the baton to the incoming Chairman. I wish all the very best to the incoming office bearers of the branch for the year 2020-2021. The installation of the new office bearers will be conducted on 29th February at Gokulam Convention Centre, Kaloor. All members are cordially invited with their family.

**CA.Sreenivasan P.R**

Chairman



# Reported Judicial Decisions

CA.P.M Veeramani FCA

Statute: Income Tax Act – Sec.2(14) , 45 – Certificate of village officer

Decision in favour of : Revenue

**Title : Principal CIT vs Kalathingal Faizal Rahman**

Citation: 416 ITR 311

Bench: Kerala HC

Presumption did not arise because no evidence of agricultural operations on the land was placed by the assessee before any fact finding authorities. Sole evidence placed on record was a certificate of village officer long after the sale. Land in question was not agricultural land.

Statute: Income Tax Act – Sec.2(28A) – Interest on MACT claim

Decision in favour of : Assessee

**Title : Sharda Pareek vs ACIT**

Citation: 416 ITR 441

Bench: Rajasthan HC

Interest received on compensation awarded by MACT on the death of victim was interest within the meaning of section 2(28A) and would be subjected to tax on year wise accrual basis

Statute: Income Tax Act – Sec.4 – Will not become income because of TDS

Decision in favour of : Assessee

**Title : Administrator of Estate of Lt Edulji Framroz Dinshaw vs CIT**

Citation: 177 ITD 341

Bench: ITAT Mumbai

If under section 4 an amount does not bear the character of income and hence not chargeable to tax, then same cannot become 'income' only because payer of sum deducts tax under misconception of law

Statute: Income Tax Act – Sec.4 – Deposits are capital receipts

Decision in favour of : Assessee

**Title : The Peerless General Finance & Investment Company Ltd vs CIT**

Citation: 181 DTR SC 97

Bench: Supreme Court of India

Deposits made by subscribers pursuant to investment schemes are capital receipts and not income; it would not be possible to go only by the treatment of such subscriptions in the accounts of the assessee

Statute: Income Tax Act – Sec.10(37) – Vizhinjam acquisition

Decision in favour of : Assessee

**Title : ITO vs Asha Vimala**

Citation: 74 ITR Trib 1

Bench: ITAT Cochin

Though sale price was fixed through negotiated settlement and sale deed executed in favour of Vizhinjam International Seaport, the character would remain compulsory acquisition. Acquisition of urban agricultural land was a compulsory acquisition and compensation entitled to benefit under section 10(37)

Statute: Income Tax Act – Sec.35(1)(ii) – Retrospective cancellation

Decision in favour of : Assessee

**Title : Urmish Jewellers vs ACIT**

Citation: 177 ITD 364

Bench: ITAT Mumbai

Where approval granted under section 35(1)(ii) is cancelled subsequently with retrospective effect, weighted deduction claimed by donor could





be denied since there was valid and subsistent approval when donation was given

Statute: [Income Tax Act – Sec.56\(2\)\(vii\) – Not applicable to stock](#)

Decision in favour of : Assessee

**Title : [Satendra Koushik vs ITO](#)**

Citation: 177 ITD 286

Bench: ITAT Jaipur

Section 56(2)(vii) have application to 'property' which is in the nature of a capital asset of recipient and thus, where assessee purchased land as stock in trade, impugned addition by invoking section 56(2)(vii)(b)(ii) was to be set aside

Statute: [Income Tax Act – Sec.56\(2\)\(viib\) – Not applicable to subsidiary](#)

Decision in favour of : Assessee

**Title : [Apollo Sugar Clinics Ltd vs DCIT](#)**

Citation: 176 ITD 724

Bench: ITAT Hyderabad

Since assessee was a second level subsidiary of a company in which public was substantially interested, case would not fall under the section and impugned addition is set aside

Statute: [Income Tax Act – Sec.92 CA – CBDT instruction mandatory](#)

Decision in favour of : Revenue

**Title : [Principal CIT vs S.G.Asia Holdings India Private Ltd](#)**

Citation: 181 DTR 17 SC

Bench: Supreme Court of India

In view of the guidelines issued by CBDT in instruction 3/2003 the Tribunal was right in observing that by not making reference to the TPO, the AO had breached the mandatory instructions issued by the CBDT. However, the Tribunal ought to have restored the assessment to the file of the AO so that appropriate reference could be made to the TPO, instead of holding that TP adjustment was bad in law. Therefore the revenue

appeal is allowed to this extent

Statute: [Income Tax Act – Sec.253 – Low Tax Effect](#)

Decision in favour of : Assessee

**Title : [ITO vs Amarchand P Shah](#)**

Citation: 73 ITR Trib 588

Bench: ITAT Mumbai

Monetary limits for filing appeals exceptions should be construed strictly. Addition based on information from investigation wing is not from an external source and hence department appeal is not maintainable on low tax effect. External sources means sources external to the income tax department and wings working under them. Onus on department to prove exception

Statute: [Income Tax Act – Sec.271BA – Failure to upload report](#)

Decision in favour of : Assessee

**Title : [Shree Ram Dass Rice & General Mills vs DCIT](#)**

Citation: 176 ITD 748

Bench: ITAT Chandigarh

Where assessee filed audit report in terms of section 92E in paper form during assessment proceedings but failed to upload electronically due to ignorance or oversight , penalty was to be quashed

Statute: [Income Tax Act – Sec.276B – Prosecution for non payment of TDS](#)

Decision in favour of : Revenue

**Title : [Golden Gate Properties Ltd vs ITO \(TDS\)](#)**

Citation: 416 ITR 399

Bench: Karnataka HC

Assessee deducted tax at source but failed to credit to Government account within prescribed time. Though TDS paid after the survey, prosecution under section 276B read with section 278B was valid



## RECENT ADVANCE RULINGS UNDER GST AND JUDICIAL DECISIONS ON INDIRECT TAXES

CA.P.J.Johnney FCA

### RECENT ADVANCE RULINGS UNDER GST

Statute: Goods And Services Tax

Decision in favour of: Applicant

Title: All Rajasthan Corrugated Board and Box Manufacturers Association, In re

J. P. MEENA and HEMANT JAIN (Members)

Citation: [2019] 71 GSTR 82 (AAR)

Bench/Court: BEFORE THE AUTHORITY FOR ADVANCE RULING

Goods And Services Tax—Composite Supply —Input Tax Credit— Applicant Organizing And Managing Conference And Exhibition Conducted By Federation Of Corrugated Box Manufacturers Of India For Delegates, Vendors And Exhibitors —Service Provided By Applicant To Delegates Composite Supply Involving Principal Supply Of Organizing Conference—Classifiable Under HSN 998596 Under Annexure To Notification No. 11/2017-Central Tax (Rate) Dated June 28, 2017—To Exhibitors Classifiable Under HSN 998596 Brand Promotion Packages Offered By Applicant Composite Supply Classifiable Under Service Code 998397 As Per Annexure To Notification No. 11/2017-Central Tax (Rate) Dated June 28, 2017 Under Normal Charge— Applicant Entitled To Input Tax Credit Of Tax Paid On : (A) Services Provided By Hotel Including Accommodation, Food And Beverages, (B) Supply Of Food And Beverages By Outside Caterers, And (C) Services Provided By Event Manager Like Pickup And Drop, Exhibition Stall Setup, Tenting, Etc.—Central Goods And Services Tax Act (12 Or 2017)—Rajasthan Goods And Services Tax Act (9 Of 2017).

Statute: Goods and Service Tax

Decision in favour of: Assessee

Title: KARA PROPERTY VENTURES LLP, In re

Ms. Manasa Gangotri Kata and S. Vijayakumar (Members)

Citation: [2019] 71 GSTR 99 (AAR)

Bench/Court: [BEFORE THE AUTHORITY FOR ADVANCE RULING] (GOODS AND SERVICES TAX, TAMILNADU)

Goods And Services Tax—Supply Of Service Of Construction Value Of —” Project Comprising Of 4 Basement + Stilt + 16 Floors Having 43 Units—Appellant Entering Into Two Agreements One For “Sale Of Undivided Share Of Land” And Other For “Construction” With Customers—Single Supply Though Two Separate Agreements— Covered Under Si. No. 5(B) Of Schedule Ii As Supply Of Service Of “Construction Of Complex, Building, Civil Structure Or Part Thereof, Including Complex Or Building Intended For Sale To Buyer, Wholly Or Partly” Where Consideration Paid While Construction— Value Of Supply Of Service Is 2/3rd Of Total Value Charged For Construction Service And Amount Charged For Transfer Of Undivided Share Of Land (Deemed To Be One Third Of Total Amount Charged For Such Supply), As Per Entry No. 3(I) Of Notification No. 11/2017-C. T. (Rate) Dated June 28, 2017 As Amended And No. Ii(2)/CTR/532(D-14)/2017 Vide G. O. (Ms) No. 72 Dated June 29, 2017 As Amended—Central Goods And Services Tax Act (12 Of 2017).

Statute: Goods and Service Tax

Decision in favour of: Assessee

Title: Bharat Electronics Ltd., In re

Harish Dharnia and Dr. Ravi Prasad M.P, Member

Citation: [2019] 76 GST 593/109 (AAR – Karnataka)

Bench/Court: AUTHORITY FOR ADVANCE RULINGS, KARNATAKA

Good and services Tax—Various systems, sub-systems and onboard spares supplied by applicant for use in warships, vessels and submarines meant for



Indian Navy and shipbuilders (excluding consumables and raw materials) are appropriately covered under Sl. No, 252 of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, and will, accordingly, attract 5 per cent GST.

Where equipments/systems supplied by applicant are Custom-made for warships and applicant alone is qualified to install and commission them and also to train recipients, two supplies, i.e., that of supply of goods and Supply of related services, are naturally bundled and, hence, will qualify as a composite supply

### JUDICIAL DECISIONS ON INDIRECT TAXES

Statute: Goods And Services Tax  
Decision in favour of: Assessee

Title: VALERIUS INDUSTRIES  
v UNION OF INDIA

J. B. PARDIWALA and A. C. RAO J

Citation: [2019] 69 GSTR 78 (Mad)  
Bench/Court: IN THE GUJARAT HIGH COURT

Goods And Services Tax— Recovery Of Tax—Provisional Attachment— Discretion Of Commissioner— Conditions Precedent For Exercise— Credible Material Or Information Warranting Reason To Believe That It Is Necessary To Protect Interests Of Revenue—Discretion To Be Exercised By Commissioner—Delegation Of Power Not Permissible— Provisional Attachment By State Officer Without Material To Support Subjective Satisfaction —Illegal— Gujarat Goods And Services Tax Act (25 Of 2017), Ss. 2(19), 5(3), 83. Goods And Services Tax—Assessment— Not Permissible Without Giving Assessee Opportunity To Be Heard— Assessment Without Granting Opportunity —Illegal— Gujarat Goods And Services Tax Act (25 Of 2017), S. 74

Statute: Central Sales Tax  
Decision in favour of: Assessee

Title: TATA STEEL LIMITED v  
STATE OF JHARKHAND AND OTHERS

H. C. MISHRA and DEEPAK ROSHAN JJ.

Citation:[2019] 70 GSTR 364 (Jharkhand)  
Bench/Court: IN THE JHARKHAND HIGH COURT

Central Sales Tax—Change Of Law—Registered Dealer—Goods—Concessional Rate Of Tax—C Form Declaration—Notification Dated October 11, 2017, Denying Issuance Of Form C To Dealers With Respect To Items Included In Definition Of “Goods” Given In Section 2(D)—Denial On Ground Dealers Not Selling Their End-Products Defined As Goods Under Section 2(D) Of Cst Act Result In Automatic End Of Registration Under Section 7(2) Of CST Act As No Liability Under JVAT Act.CST Act As No Liability Under JVAT Act—Not Justified—“Goods” In Second Half Of Section 8(3)(B) Of The CST Act And “Goods” In Section 2(I) Of CST Act Defining “Sales Tax Law” Cannot Be Under- Stood To Mean Only Those Six Goods As Defined Under Section 2(D) Of CST Act— Dealers Entitled To Continue To Be Registered Under Section 7(2) Irrespective Of Liability To Pay Tax To State—Notification Quashed—Jharkhand Goops And Services Tax Act (12 Of |2017), S. 9(1)— Jharkhand Value Added Tax Act, 2005 (5 Of 2006)— Central Sales Tax Act (74 Of 1956), Ss. 2(D) (After Amendment By Tax Laws Amendment Act, 2017), 2(I), 7, 8(3)(B).

Statute: Sales Tax  
Decision In Favour Of : Assessee

Title: Hindustan Petroleum Corporation Limited V  
Deputy Commissioner (CT) L,  
Fast Track Assessment Circle- II, Chennai

Dr. ANITA SUMANTH J.

Citation:[2019] 71 GSTR 38 (Mad)  
Bench/Court: In the Madras High Court

Sales Tax—Concessional Rate Of Tax—Consumables—Natural justice— Dealer Seeking Four Weeks’ Time To Furnish Complete Factual Particulars And Supporting Evidence—Superior Authority Directing Assessing Authority To Grant Time Sought—Dealer Directed To File Evidence In Four Days Ignoring Request Of Dealer And Specific Instruction Of Superior Officer— Assessment Liable To Be Set Aside On Ground Of Violation Of Principles Of Natural Justice. Sales Tax—Concessional Rate Of Tax—Consumables—Benefit Available In Respect Of Sale Of “Any Goods Including Consumables- Packing Material



And Labels” But Excluding Capital Goods’ Such As Plant And Machinery, For Use In Manufacture, Assembling, Packing Or Labelling Of Any Goods Other Than Alcohol And Spirits—All Conditions Complied With—Manner In Which Purchasing Dealer Deals With Goods Not Concern Of Seller— Dealer Entitled To Concessional Rate Of Tax—Tamil Nadu General Sales Tax Act (1 Of 1959), S. 3(3), (4).’ Precedent— Transactions To Be Decided In Light Of Domestic Law Of State.

Statute: Sales Tax

Decision in favour of: Assessee

Title: STATE OF WEST BENGAL AND OTHERS  
v CALCUTTA CLUB LIMITED

ROHINTON FALIN ARIMAN, SURYA KANT AND V.  
RAMASUBRAMANIAN JJ.

October 3, 2019.

Citation: [2019] 70 GSTR 209 (SC)

Bench/Court: IN THE SUPREME COURT OF INDIA

Sales Tax—Sale— Members’ Club—Supply Of Food And Drinks By Members’ Club To Its Members—Is Not Sale Liable To Tax— Doctrine Of Mutuality—Not Done Away With By Constitution Forty-Sixty Amendment— West Bengal Sales Tax Act (49 Of 1994), S. 2(30)—Constitution Of India, Act. 366(29a)(E), (F)— Constitution (Forty-Sixth Amendment) Act, 1982, S. 6(A). , Service Tax—Members’ Club—Rendering Of Service By Members’ Club To Its Members— Principle Of Mutuality Applies—Not Liable To Service Tax—Finance Act (32 Of 1994), S. 65b(44) —Constitution Of India, Act. 366(29a)(E), (F).

Statute: Sales Tax

Decision in favour of: Assessee

Title: MODERN BAKERS (MADRAS) PVT. LTD  
v COMMERCIAL TAX OFFICER, MANALI ASSESSMENT CIRCLE, CHENNAI AND OTHERS

Dr. ANITA SUMANTH J

Citation: [2019] 71 GSTR 153 (Mad)

Bench/Court: IN THE MADRAS HIGH COURT

Sales Tax—Deferral Scheme—Manufacturer Of Biscuits— ,Dealer Granted Eligibility Certificate And Availing Of Benefit Of Scheme— After Two Years Owing To Losses Carrying Out Job-Work Of Man-

ufacturing Same Product With Raw Material Supplied By Third Party—No Violation Of Conditions Of Eligibility Or Of Agreement With Department Under Scheme— Dealer Entitled To Benefit— Tamil Nadu General Sales Tax Act (1 Of 1959), S. 17a— Notification G. O. Ms. No. 500, Industries (Mig-li) Department, Dated May 14, 1990.

Statute: Service Tax

Decision in favour of: Assessee

Title: COMMISSIONER OF SERVICE TAX-VII,  
MUMBAI

v ABBOTT HEALTHCARE PVT. LTD.

S. K. MOHANTY (Judicial Member) and  
SANJIV SRIVASTAVA (Technical Member)

Citation:[2019] 71 GSTR 64 (CESTAT-Mum)

Bench/Court: BEFORE THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL — MUMBAI

Service Tax—Place Of Provision Of Services—Export Of Service—Services Provided By Assessee To Fellow Subsidiary Outside India— Board Circular That For Services Under Category Iii, Location Of Service Receiver And Not Place Of Performance Deciding Factor—Services Prior February 27, 2010 Exported As Recipient Off Services Outside India—From February 27, 2010, Services Should Be Provided In Relation To Business Or Commerce To Recipient Outside India And Payment Should Be Received By Service Provider Inconvertible Foreign Exchange—Finding Of Commissioner That Both Conditions Satisfied— Services Provided By Assessee Were Export Of Services—Nothing To Show Assessee Providing Intermediary Services To Recipient—Place Of Provision Of Services’ Cannot Be Location Of Service Provider From July 1, 2012—Place Of Provision Of Service Was Location Of Service Recipient— Assessee Not Chargeable On Payments Received For Services— Export Of Services Rules, 2005, R. 3(1)(Iii)—Place Of Provision Of Services Rules, 2012, rr. 2(F), 3, 9.

Statute: Entry Tax

Decision in favour of: Remanded

Title: C. A. MOTORS v COMMERCIAL TAX OFFICER, TIRUVARUR





Dr. ANITA SUMANTH J

Citation:[2019] 71 GSTR 28 (Mad) Bench/Court:  
IN THE MADRAS HIGH COURT

Entry Tax— Motor Vehicle—Set Off Of Entry Tax  
Against Value Added Tax Paid On Vehicle—Condi-  
tions Precedent For Set Off— Dealer Must Establish  
Correlation Between Vehicle On Which entry Tax Paid  
And In Respect Of Which Value Added Tax Credit  
Sought— Failure By Dealer To Establish— Assess-  
ment Made With- Out Affording Personal Hearing  
Though Specifically Sought— Assessment Set Aside  
And Matter Remanded For Assessment Afresh— Ta-  
mil Nadu Tax On Entry Of Motor Vehicles Into Local  
Areas Act (13 Of 1990), Ss. 4, 7—Tamil Nadu Value  
Added Tax Act (32 Of 2006), S. 21—Tamil Nadu Tax  
On Entry Of Motor Vehicles Rules, 1990, R. 3(2)—  
Tamil Nadu Value Added Tax Rules, 2007,R. 7(1)(A).

Statute: Value Added Tax

Decision in favour of: Assessee

Title: BHIMA JEWELLERY v COMMERCIAL  
TAX OFFICER, NAGERCOIL

Dr. ANITA SUMANTHJ.

Citation: [2019] 71 GSTR 290 (Mad)  
Bench/Court: IN THE MADRAS HIGH COURT —  
MADURAI BENCH

Value Added Tax—Purchase Tax—Manufacture Of  
Jewellery Credit For Tax Paid On Purchases Taken  
Against Credit Available In Immediately Preceding  
Month—Liability To Purchase Tax Remitted In Full By  
Set-Off Against Credit Admittedly Available In Monthly  
Returns At End Of Period—Method Accepted  
And Approved By Commissioner—No Infirmity With  
Methodology Adopted By Dealer— Tamil Nadu Value  
Added Tax Act (32 Of 2006), S. 12.

Value Added Tax—Input Tax Credit—Manufacture Of  
Jewellery— Worn-Out Jewellery Sent Outside State  
For Manufacture Of Jewellery, New jewellery Re-  
ceived Back And Sold Within State—Input Tax Credit  
On Tax Paid On Worn-Out Jewellery Available— Ta-  
mil Nadu Value Added Tax Act (32 Of 2006), S. 19(2),  
(4).

Statute: Service Tax

Decision in favour of: Assessee

Title: MORGAN STANLEY INDIA FINANCIAL SER-  
VICES

PVT. LTD. v COMMISSIONER OF CGST, MUM-  
BAI EAST

AJAY SHARMA (Judicial Member)

Citation: [2019] 71 GSTR 226 (CESTAT-Mum)  
Bench/Court: BEFORE THE CUSTOMS, EXCISE  
AND SERVICE TAX APPELLATE TRIBUNAL —  
MUMBAI

Service Tax—Cenvat Credit—Refund—Financial  
Advisory Services To Overseas Clients Including As-  
sistance In Monitoring And Providing Updates About  
Performances Made By Them— Appellant Entitled  
For Cenvat Credit On “Air Travel Agent Services”,  
“Banking And Financial Services”, “Business Auxil-  
iary Services” And “General Insurance Services”—  
Order Rejecting Excess Refund Claim On Account  
Of Non-Reversal Of Erroneous Credit Admittedly  
Availed Of By Appellant In Their Si-3 Returns—On  
Facts Not Correct— Appellant Entitled For Excess  
Refund Claim—Cenvat Credit Rules, 2004

Statute: Service Tax

Decision in favour of: Assessee

Title: FOOD CORPORATION OF INDIA . v COM-  
MISSIONER OF COMMERCIAL TAX, U. P., LUC-  
KNOW

BAY KUMAR (Technical Member) and  
Mrs. RACHNA GUPTA (Judicial Member)

Citation: [2019] 71 GSTR 186 (CESTAT-New Delhi)  
Bench/Court: BEFORE THE CUSTOMS, EXCISE  
AND SERVICE TAX APPELLATE TRIBUNAL —  
NEW DELHI

Service Tax—Charge Of Tax— Taxable Value— As-  
sessee Foreign Company With Office In India And  
Supplying Personnel From Time To Time Under Re-  
verse Charge To Indian Subsidiary Companies—  
Certain Sum Invoiced And Received By Assessee  
From Companies And Certain Benefits Paid Direct-  
ly By Companies To Personnel — Assessee Filing  
Returns And Paying Tax On Amount Received From  
Companies—Show-Cause Notice directly To Per-  
sonnel By Companies—Section 66a Not Applicable  
To Charge Services Received From Outside India—  
Rule 2(1)(D)(iv) Not Applicable As Assessee Provider  
Of Service And Not Recipient Of Service—Demand  
Confirmed Under Provisions Not Invoked In Show-  
Cause Notice—Order Beyond Scope Of Show-





Cause Notice— Order Confirming Demand Invoking Rule 5 Which Court Had Held Ultra Vires— Erroneous— Amendment To Section 67 Adding Explanation That Consideration Includes Reimbursement Of Expenditure Or Cost Incurred By Service Provider—Not To Be Given Retrospective Effect—Amount Paid By Indian Companies Directly As Benefits To Personnel Provided By Assessee Not Part Of Gross Value Subject To Tax—Finance Act (32 Of 1994), Ss. 66a, 67— Service Tax Rules, 1994, Rr. 2(1)(D)(Iv), 6a—Service Tax (Determination Of Value) Rules, 2006, R. Service Tax Authorities—Show-Cause Notice Issued By Audit Officer And Confirmed By Monetary Committee Meetings—To Be Adjudicated Only By Executive Commissioner— Audit Commissioner Had No Jurisdiction To Adjudicate—Circular No. 985/9/2014—Cx, Dated September 22, 2014.

Service Tax—Recovery Of Tax—Extended Period Of Limitation —Penalty—Assessee Regularly Filing Returns Qua Consideration Received—Assessee Not Liable To Tax On Benefits Received Directly By Personnel Provided By Assessee From Service Recipients—No Question Of Tax Evasion—Department Not Entitled To Invoke Extended Period Of Limitation—No Question Of Imposition Of Penalty—Finance Act (32 Of 1994), Ss. 73(3), 76, 78.

Statute : Sales Tax

Decision in favour of: Assessee

Title: Hotel Alakananda and Others v Commercial Tax Officer, Department of Commercial Taxes, Chathannoor and Others

P. R. RAMACHANDRA MENON and Mrs. ANU SIVARAMAN JJ

Citation:[2019] 70 GSTR 431 (Ker) |

Bench/Court: IN THE KERALA HIGH COURT

Sales Tax—Foreign Liquor—Compounding Of Tax—Change Of Law— Amended Provision Introduced With Retrospective Effect Directly To Personnel By Companies—Section 66a Not Applicable To Charge Services Received From Outside India—Rule 2(1)(D) (Iv) Not Applicable As Assessee Provider Of Service And Not Recipient Of Service—Demand Confirmed Under Provisions Not Invoked In Show-Cause Notice—Order Beyond Scope Of Show-Cause Notice—Order Confirming Demand Invoking Rule 5 Which Court Had Held Ultra Vires— Erroneous— Amendment To Section 67 Adding Explanation That Consid-

eration Includes Reimbursement Of Expenditure Or Cost Incurred By Service Provider—Not To Be Given Retrospective Effect—Amount Paid By Indian Companies Directly As Benefits To Personnel Provided By Assessee Not Part Of Gross Value Subject To Tax— Finance Act (32 Of 1994), Ss. 66a, 67—Service Tax Rules, 1994, rr. 2(1)(D)(Iv), 6a—Service Tax (Determination Of Value) Rules, 2006, R.°5.

Service Tax Authorities—Show-Cause Notice Issued By Audit Officer And Confirmed By Monetary Committee Meetings—To Be Adjudicated Only By Executive Commissioner— Audit Commissioner Had No Jurisdiction To Adjudicate—Circular No. 985/9/2014—Cx, Dated September 22, 2014.

Service Tax—Recovery Of Tax—Extended Period Of Limitation —Penalty—Assessee Regularly Filing Returns Qua Consideration Received—Assessee Not Liable To Tax On Benefits Received Directly By Personnel Provided By Assessee From Service Recipients—No Question Of Tax Evasion—Department Not Entitled To Invoke Extended Period Of Limitation—No Question Of Imposition Of Penalty—Finance Act (32 Of 1994), Ss. 73(3), 76, 78.

Statute: SERVICE TAX

Decision in favour of: Assessee

Title : PRICOL LTD. (PLANT I) AND ANOTHER  
v COMMISSIONER OF G. S. T. AND CENTRAL  
EXCISE,  
COIMBATORE COMMISSIONERATE

Ms. Sulekha Beevi C.S. (Judicial Member) And  
Madhu Mohan Damodhar (Technical Member)

Citation: [2019] 71 GSTR 209 (CESTAT-Chennai)

Bench/Court: BEFORE THE CUSTOMS, EXCISE  
AND SERVICE TAX APPELLATE TRIBUNAL —  
CHENNAI

Service Tax—Cenvat Credit — Penalty — Wrongful Availment Of Credit— Assessee Having Manufacturing Units And Registered As Input Service Distributor—Input Service Distributor Entitled To Distribute Credit To Its Manufacturing Unit—Conditions That Credit Distributed Did Not Exceed Tax Paid Thereon, And That Credit Not Attributable To Service Used In Unit Exclusively Caged In Manufacture Of Exempted Goods—Conditions Satisfied—Manufacturing Unit Transferring Excess Credit Back—Prohibition On Reversal Of Credit To Input Service Distributor —



Neutral Transaction—Penalty Not Justified—Cenvat Credit Rules, 2004, rr. 2(M), 3(4), 7.

Statute: Value Added Tax

Decision in favour of: Remanded

Title: JOTINDRA STEEL & TUBES LIMITED v  
COMMISSIONER, COMMERCIAL TAXES, U. P.,  
LUCKNOW

SAUMITRA DAYAL SINGH J.

Citation:[2019] 70 GSTR 141 (All)

Bench/Court: IN THE ALLAHABAD HIGH COURT

Value Added Tax—Registration Certificate—Suspension And Cancellation Of—Input-Tax Credit— Assessment Order Passed Disallowing Input Tax Credit On Purchases From Two Registered Dealers Made During Period March 18, 2011 To March 28, 2011— Assessment Order Set Aside And Matter Remanded To Assessing Authority By First Appellate Authority To Decide Afresh After Making Inquiries And Verification Regarding Registration Certificates Of Selling Dealers—Order Not Challenged By Parties—Fresh Order Passed By Assessing Authority Denying Input Tax Credit On Reasoning That Registration Certificates Of Selling Dealers Suspended On January 18, 2011 And January 16, 2011 Respectively —Confirmed By First Appellate Authority And Tribunal—Revision— Copy Of Certificate By Assessing Authority Of Selling Dealers Revealing April 23, 2011, As Actual Date Of Suspension Of Registration Certificates And May 31, 2011 And May 16, 2011 As Dates Of Orders Of First Cancellation Produced By Assessee Pending Revision—That Registration Certificates Of Selling Dealers Valid On Date Of Purchase Admitted By Department—Order Of Tribunal Set Aside—Open To Assessing Authority To Pass Assessment Order In Light Of Directions Issued By First Appellate Authority— Uttar Pradesh Value Added Tax Act (5 Of 2008).

Statute: Service Tax

Decision in favour of: Assessee

Title: TELENOR CONSULT AS v COMMISSIONER  
OF SERVICE TAX (AUDIT 1), DELHI-I

BIJAY KUMAR (Technical Member) and  
Mrs. RACHNA Gupta (Judicial Member)

Citation:[2019] 71 GSTR 186 (CESTAT-New Delhi)

Bench/Court: BEFORE THE CUSTOMS, EXCISE  
AND SERVICE TAX APPELLATE TRIBUNAL —

NEW DELHI

Service Tax—Charge Of Tax— Taxable Value— Assessee Foreign Company With Office In India And Supplying Personnel From Time To Time Under Reverse Charge To Indian Subsidiary Companies— Certain Sum Invoiced And Received By Assessee From Companies And Certain Benefits Paid Directly By Companies To Personnel —Assessee Filing Returns And Paying Tax On Amount Received From Companies—Show Cause Notice —Directly To Personnel By Companies—Section 66a Not Applicable To Charge Services Received From Outside India—Rule 2(1)(D)(iv) Not Applicable As Assessee Provider Of Service And Not Recipient Of Service— Demand Confirmed Under Provisions Not Invoked In Show-Cause Notice—Order Beyond Scope Of Show-Cause Notice—Order Confirming Demand Invoking Rule 5 Which Court Had Held Ultra Vires— Erroneous— Amendment To Section 67 Adding Explanation That Consideration Includes Reimbursement Of Expenditure Or Cost Incurred By Service Provider—Not To Be Given Retrospective Effect—Amount Paid By Indian Companies Directly As Benefits To Personnel Provided By Assessee Not Part Of Gross Value Subject To Tax—Finance Act (32 Of 1994), Ss. 66a, 67— Service Tax Rules, 1994, rr. 2(1)(D)(iv), 6a—Service Tax (Determination Of Value) Rules, 2006, r.5.

Service Tax Authorities—Show-Cause Notice Issued By Audit Officer And Confirmed By Monetary Committee Meetings—To Be Adjudicated Only By Executive Commissioner— Audit Commissioner Had No Jurisdiction To Adjudicate—Circular No. 985/9/2014—CX, Dated September 22, 2014.

Service Tax—Recovery Of Tax—Extended Period Of Limitation — Penalty—Assessee Regularly Filing Returns Qua Consideration Received—Assessee Not Liable To Tax On Benefits Received Directly By Personnel Provided By Assessee From Service Recipients—No Question Of Tax Evasion— Department Not Entitled To Invoke Extended Period Of Limitation—No Question Of Imposition Of Penalty—Finance Act (32 Of 1994), Ss. 73(3), 76, 78.





Delegates of National Residential Refresher Course at Munnar

### CPE Seminar on RERA & GST



Shri P.H. Kurian, IAS (Rtd),  
Chairman, (RERA)



Adv. Preetha R Menon  
Member, RERA



Adv. K. Vaitheeswaran  
Chennai



CA. Mohan R. Lavi  
Bengaluru

### CPE Seminar on GST



CA. Jatin A Christopher  
Bengaluru

### CPE Seminar on Code of Ethics and Ethical Standards



CA. Rengarajan G  
Kochi