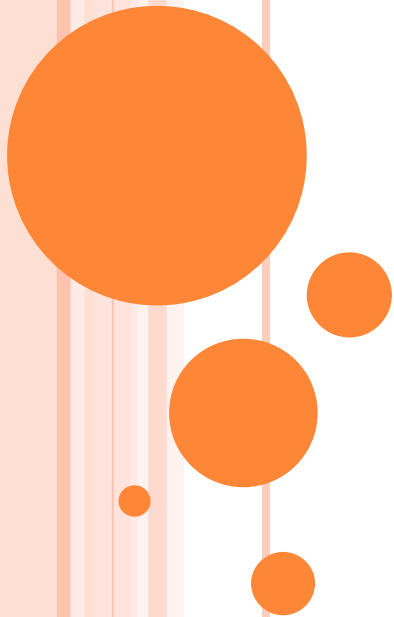


LATEST JUDICIAL PRONOUNCEMENTS UNDER GST ACT

**V. Raghuraman
Senior Advocate**



DHARMENDRA M JANI [2023 (5) CENTAX 201 (BOM)]

- **Issue:** Constitutional validity of Section 13(8)(b) of the IGST Act, 2017 which prescribes place of supply of intermediary services to be location of supplier of services
- **Held:** Before the Division Bench - Split View – Matter referred to Third Judge
 - **View expressed by Justice Ujjal Bhuyan**
 - Unconstitutional - Runs completely contrary to very fundamental principle of destination-based consumption tax
 - Offends Articles 245, 246A, 269A and 286(1)(b) of Constitution
 - Beyond charging section and creates an artificial deeming fiction
 - **View Expressed by Justice Abhay Ahuja**
 - Constitutional – Prevents the escape of revenue
 - Supply under consideration is an inter-state supply of service.

DHARMENDRA M JANI [2023 (5) CENTAX 201 (BOM)] – REFEREE JUDGE DECISION

○ Held: Before the Referee Judge

- By Section 13(8)(b) - Place of supply shall be (is deemed to be) the location of supplier of services.
- Legal consequence by such deeming combination - A supply of service, of the nature of intermediary services - in the nature of "export of service" defined under Section 2(6) of the IGST Act - becomes an "intra-State" sale falling under the charging provision (Section 9) of the CGST Act and the MGST Act.
- Neither CGST, nor SGST recognize tax on export of services - governed within domain of IGST Act
- Thus, fiction which is created by section 13(8)(b) would be required to be confined only to provisions of IGST Act, as there is no scope for fiction travelling beyond provisions of IGST Act to CGST and MGST Acts.

GENPACT INDIA (P) LTD VS UOI [2022 (144) TAXMANN.COM (P&H)]

- **Issue:** Petitioner - Business Process Outsourcing (BPO) Services entered into a Master Services Sub-Contracting with Genpact International Incorporated (GI). Whether the petitioner qualifies as an intermediary and thus not eligible for refund?
- **Held:**
 - Petitioner was providing services which had been sub-contracted to it by GI
 - Petitioner had no direct contract with customers of GI. Nothing on record to show that petitioner was liasoning or acting as an "intermediary
 - Respondent-department had erred in holding petitioner to be in a principal-agent relationship with GI.
 - Reliance placed on Circular 159/15/2021-GST dated 20.09.2021 – Minimum three parties, Does not supply on his own account – Principal to Principal basis

E&Y LTD VS ADDT COMM, CGST APPEAL-II [2023 (4) CENTAX 440 (DEL)]

- **Issue:** Petitioner - provided various professional services to overseas EY Entities in terms of the agreements. Whether the petitioner qualifies as an intermediary and thus not eligible for refund?
- **Held:**
 - Petitioner was providing services to overseas entity and not involved in arranging or facilitating services.
 - The last limb of section 2(13) of the IGST Act reads as "but does not include a person who supplies such goods or services or both or securities on his own account" - Does not control the definition - Merely restricts the main definition.
 - There may be services, which may entail outsourcing some constituent part to a third party. But that would not be construed as intermediary services, if the service provider provides services to the recipient on his own account.

OHMI INDUSTRIES ASIA P LTD VS ASST COMM. OF CGST [2023 (6) CENTAX 163 (DEL)]

- **Issue:** Petitioner - Petitioner was rendering market research services directly to OHMI, Japan, its overseas entity. Whether the petitioner qualifies as an intermediary and thus not eligible for refund?
- **Held:**
 - No allegation that it had arranged supply of such services from a third party.
 - Petitioner was not acting as intermediary in respect of market research services.

TONBO IMAGING INDIA PVT LTD VS UOI [2023 (4) CENTAX 443 (KAR)]

- **ISSUE:** Constitutional validity of amendment to Rule 89(4)(C) of CGST Rules, 2017 – Amendment was made in the aforesaid rule w.e.f. 23.03.2020 – Turnover of zero-rated supplies was restricted to 1.5 times of the value of domestic turnover of the like goods supplied by same or similarly placed supplier.
- **HELD:** Amendment to Rule 89(4)(C) is illegal, arbitrary, unreasonable, irrational, unfair, unjust and ultra vires Section 16 of the IGST Act and Section 54 of the CGST Act
 - Intention of the zero-rating - to make entire supply chain of "exports" tax free.

TONBO IMAGING INDIA PVT LTD VS UOI [2023 (4) CENTAX 443 (KAR)]

- Section 16(3) of the IGST Act allows refund of input taxes paid in the course of making a zero-rated supply - Rule is whittling down such refund.
- Violative of Article 14 and 19(1)(g) of the Constitution of India - discrimination between two class of persons - Rule 89 vis-à-vis Rule 96
- Entire concept of refund obliterated - if department was permitted to put any limitation and condition that would take away petitioner's right to claim refund of all taxes paid
- Possibility of taking undue benefit by inflating value of zero-rated supply of goods could not be a ground to amend rule.

GAMESKRAFT TECHNOLOGIES PVT LTD VS DGGI, DELHI [2023 (6) CENTAX 95 (KAR)]

- **ISSUE:** Whether offline/online games such as Rummy, which are based substantially on skill & not chance & whether played with or without stakes, would tantamount to gambling or betting as contemplated in Entry 6 of Schedule III of CGST Act.
- **HELD:** Rummy is predominantly a game of skill, not chance, whether played with stakes or not and is not considered gambling
 - Section 2(17) of the CGST Act recognizes even wagering contracts as included in the term business, but that in itself would not mean that lottery, betting and gambling are the same as games of skill.
 - A game of skill whether played with stakes or without stakes is not gambling;

GAMESKRAFT TECHNOLOGIES PVT LTD VS DGGI, DELHI [2023 (6) CENTAX 95 (KAR)]

- Meaning of the terms “lottery, betting and gambling” - should be construed nomen juris
- Schedule III - Actionable claims out of the purview of supply of goods or services would clearly apply to games of skill and only games of chance such as lottery, betting and gambling would be taxable.
- A game of mixed chance and skill is not gambling, if it is substantially and preponderantly a game of skill and not of chance;
- No difference between offline/physical and Online/Electronic/Digital rummy.

UOI VS COSMO FILMS LTD [2023 (5) CENTAX 286 (SC)]

- **ISSUE:** Validity of the pre-import condition under Advance Authorization Scheme. - On advent of GST, no exemption of IGST was granted on procurement under Advance Authorization. On 13.10.2017, IGST exemption was granted subject to satisfaction of pre-import and physical exports conditions. Later, w.e.f. Jan 2019, the aforesaid conditions were removed.
- **HELD:**
 - Hardship and inconvenience to exporters cannot be a ground to hold insertion of 'pre-import condition' as arbitrary.

UOI VS COSMO FILMS LTD [2023 (5) CENTAX 286 (SC)]

- DGFT had authority to impose pre-import condition on imports.
- Since pre-import condition were imposed and applicable on certain goods even prior to introduction of GST, all AA holders were never treated equally.
- When reform by way of new legislation is introduced, doctrine of classification cannot be applied strictly.
- Handbook of Procedure not having status of rules or regulations but merely contains guidelines to implement Policy - It does not prevent Central Government from changing Policy

CENTRAL GST DELHI-III VS DELHI INTERNATIONAL AIRPORT LTD [2023 TIOL 68 SC ST]

- **ISSUE:** Applicability of Service tax on User Development Fee (UDF) levied and collected by the airport operation, maintenance and development entities
- **HELD:** User Development Fee (UDF) levied and collected by MIAL, DIAL, HIAL is a statutory levy – Not liable to Service Tax
 - The UDF - 'tax or cess' - to bridge the funding gap of project cost for the development of future projects.
 - No additional benefit has accrued to passengers, visitors, traders, airlines etc., upon levy of UDF.

CENTRAL GST DELHI-III VS DELHI INTERNATIONAL AIRPORT LTD [2023 TIOL 68 SC ST]

- Ruling in Consumer Online Foundation (2011 5 SCC 360) - UDF is a statutory levy.
- Collection is not premised on rendering of any service.
- Amounts collected are deposited in an escrow account, not within the control of the assesseees.
- Utilization of funds, is monitored and regulated by law.
- Fact that the amount (UDF) is not deposited in a government treasury, per se, does not make it any less a statutory levy

K B TEA PRODUCT P LTD VS CTO [2023 TIOL 61 SC CT]

- **ISSUE:** Applicability of doctrine of legitimate expectation where a tax holiday/ sales tax exemption granted to the appellant- manufacturer was stopped pursuant to the amendments made to the West Bengal Sales Tax Act, 1994.
- Vested right in claiming exemption?
- **HELD:** Split Verdict
- **Per: Justice M R Shah**
 - Nobody can claim the exemption as a matter of right
 - To grant the exemption and/or to continue and/or withdraw the exemption is always within the domain of the State Government,
 - Unless withdrawal is found to be so arbitrary, the Court would be reluctant to interfere with such a policy decision

K B TEA PRODUCT P LTD VS CTO [2023 TIOL 61 SC CT]

○ **Per: Justice M R Shah**

- There cannot be any promissory estoppel against the statute as per the settled position of law.
- This is not a case of "vested right" but a case of "existing right", which can be varied or modified and/or withdrawn.

○ **Per: Justice Krishna Murari**

- Agreed with the conclusion arrived on the aspect of exemption is not a vested right
- A legitimate expectation lured the assessee to set up a unit, under the assumption that the State authority would hold true to its promise, act in a fair manner and abide by the decision made by it.

K B TEA PRODUCT P LTD VS CTO [2023 TIOL 61 SC CT]

○ Per: Justice Krishna Murari

- The said expectation was then snatched away without any appropriate justification.
- For a democratic state to function on the principles of equality and justice, the state must be ruled, not by its ruler, but by the law. If a state is allowed to make promises, and rescind the same without justification or explanation, it would lead to a situation wherein every action of the state would be bereft of accountability, and every person governed by the laws of this country would live in a state of fear and unrest, causing a chilling effect on the civil liberties of the people.

CHOWGULE & CO LTD VS ASST. DGFT [2022 (1) CENTAX 3 (SC)]

- **ISSUE:** Applicability of doctrine of Promissory Estoppel and ground of discrimination regarding amendment in Foreign Trade Policy changing list of goods in eligible for grant of additional license on export.
- **HELD:**
 - DGFT/Union, as a policy decision, was free to change Exim Policy from time to time and decide eligible/ineligible items for grant of incentive
 - No exporter could claim incentive as a matter of right - Therefore, doctrine of promissory estoppel was not applicable.
 - Merely because some benefits might have been given wrongly to some other persons/exporters, the appellant cannot claim parity and pray for the similar benefits.

HERO MOTORCORP LTD VS UOI [2022 (66) GSTL 129 (SC)]

- **ISSUE:** During the pre-GST regime, the Government of India issued an offering memorandum of 2003 ("O.M") which provided that new industrial units and existing industrial units on their substantial expansion in the States of Uttaranchal and Himachal Pradesh, would be entitled to exemption of 100% outright central excise duty for 10 years from the date of commencement of commercial production.
- But since GST came into picture w.e.f. 01.07.2017, the benefit enjoyed by appellant reduced to 58%.
- Whether the Central Government is liable to grant 100% exemption under the Budgetary support scheme to the Appellant or not?

HERO MOTORCORP LTD VS UOI [2022 (66) GSTL 129 (SC)]

○ HELD:

- In view of the change of law, the Central Government not bound to continue with a representation made by it in 2003.
- Court cannot interfere in policy matters of the Government unless the policy is found to be palpably arbitrary and irrational.
- Change of policy when in larger public interest, State cannot be prevented from withdrawing an incentive granted through earlier notification.

TATA MOTORS LTD VS DCCT [2023 (6) CENTAX 139 SC]

- **ISSUE:** Whether Credit note issued by manufacturer to dealer, in consideration of the replacement of a defective part done by the dealer (from his own stock or procurement from open market) pursuant to a warranty agreement is a valuable consideration within definition of sale and hence exigible to sales tax under respective State enactments?
- **HELD:**
 - The dealer - acting as an intermediary/agent of the manufacturer - as the contract of warranty is between the manufacturer and customer.
 - The amount shown in the account of the dealer as Credit note is the price received by the dealer for the sale of spare parts.

TATA MOTORS LTD VS DCCT [2023 (6) CENTAX 139 SC]

- Reason for the issuance of CN - to reimburse the dealer for the costs
- Transfer of property in goods between the dealer and the customer for which the manufacturer pays consideration by way of issue of credit note.
- Decision of Mohd. Ekram Khan vs CIT [2004 (6) SCC 183] - applicable.
- If manufacturer dispatches spare part from its own factory or production unit to dealer to replace defective part in automobile, no transaction of sale takes place between manufacturer and dealer.

CC, CE & ST VS INTERACH BUILDING PVT LTD [2023 TIOL 49 SC ST]

- **ISSUE:** Whether an assessee who is liable to pay service tax under Works Contract service has the legal right not to follow Rule 2A of the Service Tax (Determination of Value) Rules, 2006 nor the Composition Scheme on the ground that in terms of Section 67 of the Finance Act, 1994, an assessee is entitled to take the total contract value which includes both goods and services and remit service tax on the entire value as Works Contract service and in the process is also entitled to avail the CENVAT Credit?
- **HELD:**
 - Relying on Larsen and Tubro judgement, in the case of 'Works Contract service', an assessee is liable to pay service tax on the service element/value of the service rendered.

CC, CE & ST VS INTERACH BUILDING PVT LTD [2023 TIOL 49 SC ST]

- Either the assessee has to go for Composition Scheme or go for Determination of Value as per Rule 2A and pay service tax on the service element.
- Matter was remanded to the CESTAT for re-computation of the demand under Rule 2A as well as with respect to the issue of period of limitation.

STATE OF GUJARAT VS SAW PIPES LTD [2023 (5) CENTAX 205 (SC)]

- **ISSUE:** Whether imposition of penalty necessitates requirement of mens rea?
- **HELD:**
 - As per Section 45(5) of Gujarat Sales Tax Act, 1969 - Difference between amount of tax assessed and tax paid by assessee/dealer being more than 25%, assessee deemed to have failed to pay tax.
 - In terms of Section 45(6), levy of penalty is automatic
 - Mens-rea is not a pre-requisite for imposition of penalty
 - Court cannot read anything into a statutory provision which is plain and unambiguous.

UBER INDIA SYSTEMS P LTD VS UOI [2023 (5) CENTAX 175 (DEL)]

- **ISSUE:** Constitutional validity of Notifications denying benefit of exemption when services of transportation by auto rickshaw are provided through Electronic Commerce Operator.
- **HELD:**
 - Classification created between ECOs and individual service providers fulfils test of reasonable classification
 - Consumer who books auto rickshaw ride through an ECO and consumer who uses street hailed auto rickshaw fall under different categories - doorstep convenience and assurance in safety makes experience different.
 - Claiming exemption - not a vested right available to taxpayer

CC, CE AND ST VS SUZLON ENERGY LTD [2023 (5) CENTAX 152 SC]

- **ISSUE:** Whether activity of import of “Engineering Design & Drawings” from the sister companies is classifiable under taxable category “design services” under Finance Act, 1994?
- **HELD:**
 - Designs were to be exclusively used by the respondent in the territory of India and it was a tailormade design.
 - The designs were reduced as blueprint on paper and delivered on the same medium.
 - Such "designs" were subjected to service tax even as per the clarification by the Board dated 18.03.2011 on the issue of applicability of indirect taxes on packaged software.

CC, CE AND ST VS SUZLON ENERGY LTD [2023 (5) CENTAX 152 SC]

HELD:

- Merely because "Engineering Design & Drawings" prepared were shown as 'goods' in the bill of entry - By itself cannot be a ground to take them out from the definition of "design services"
- Same activity can be taxed as 'goods' and 'services' provided contract was indivisible and on aspect of services there may be levy of service tax.
- Intention of contracting parties must be ascertained - whether they intend transfer of both goods and services, separately or in an indivisible manner or in a composite manner.

CCE, MUMBAI-1 VS MORARJEE GOKULDAS SPG. & WVG CO. LTD. [2023 (4) CENTAX 418 (SC)]

- **ISSUE:** Whether the separate notice under section 11A of the Central Excise Act is necessary for the recovery of the amount when an erroneous refund is granted though the speaking order is reviewed under section 35E of the Act?
- **HELD:**
 - Once the OIO sanctioning the refund set aside under section 35E and the proceedings was initiated within the time prescribed under section 35E - no question of any further notice under section 11A i.e., time limits mentioned in section 11A ibid were not applicable.
 - Followed - Asian Paints (India) Ltd. v. Collector [2002 (142) E.L.T. 522(S.C.)] Provisions of section 11A and section 35E operate in different fields and are to be invoked for different purpose.

STATE OF KARNATAKA VS ECOM GILL COFFEE TRADING P LTD [2023 (4) CENTAX 223 (SC)]

- **ISSUE:** Burden of proof in respect of genuineness of purchases for availing credit.
 - The respondents had claimed credit on alleged purchases made from the respective dealers.
 - The Tribunal and High Court allowed the credit, by observing that as the purchasing dealers produced the invoices issued by the respective dealers and in some cases, made the payment through cheques, the Assessing Officer was not justified in denying the credit.
- **HELD:**
 - Mere claim by dealer that he is a bona fide purchaser is not enough and sufficient to claim credit.

STATE OF KARNATAKA VS ECOM GILL COFFEE TRADING P LTD [2023 (4) CENTAX 223 (SC)]

- Burden of proving the correctness of credit remains upon the dealer claiming such credit. Such a burden of proof cannot get shifted on the revenue.
- Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act.
- Purchase transaction was required to be proved by furnishing details viz. name and address of selling dealer, details of vehicle which had delivered goods, payment of freight charges, acknowledgement of taking delivery of goods etc.
- Actual physical movement of the goods is the sine qua non

BALAJI EXIM VS COMM OF CGST [2023 (5) CENTAX 41 DEL]

- **ISSUE:** Rejection of refund on account of the allegation that supplier issued fake invoices
- **HELD:**
 - Refund applications rejected merely because of suspicion without any cogent material.
 - No dispute that goods have been exported; the invoices in respect of which the petitioner claims the ITC were raised by a registered dealer; and there is no allegation that the petitioner has not paid the invoices, which include taxes.

SHRADDHA OVERSEAS P LTD VS ACST [2023 (3) CENTAX 118 (CAL)]

- **ISSUE:** Availment of Input Tax Credit (ITC) without receiving any goods, based on fake documents issued by non-existing dealers was alleged
- **HELD:** Division bench while remanding the matter, observed that:
 - To conclude that the dealer is a non-existing dealer, there should be material to show - On the date of transaction, there was no valid registration.
 - If the cancellation of the registration of the dealer is by way of retrospective cancellation, - Question would be as to whether it would affect the transaction, more particularly when the appellant has been able to show that the payments has been done through banking challans.

PINSTAR AUTOMATIVE INDIA P LTD VS ADDT. COMM., CHENNAI [2023 (5) CENTAX 23 MAD]

- **ISSUE:** Denial of ITC on account of non-payment by supplier
- **HELD:**
 - Provisions of section 16(2)(c) are required to be followed strictly and interest of revenue to be protected
 - Substantive liability - supplier and Protective liability - purchaser
 - Department should restore ITC to purchaser if tax liability was made good by supplier - A mechanism must be put in place
 - On Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi [(2018) 10 GSTL 182 (Del) – Affirmed by SC and M/s DY Beathel Enterprises Vs State Tax Officer [2021-TIOL-890-HC-MAD-GST] ?

SR CONSTRUCTIONS VS UOI [2023 TIOL 578 HC TRIPURA GST]

- **ISSUE:** Denial of ITC in terms of Section 17(5)(c) of CGST Act, 2017
- **HELD:**
 - All conditions of work contracts fulfilled – Provision of work contract services for construction of a Hotel (immovable property) wherein transfer of property in goods is involved
 - Petitioner providing work contract services to the owner of hotel and not for its own
 - Entitled to take ITC on Goods and Services being utilized for providing taxable work contract services.

RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES KARNATAKA VS DGGI, BENGALURU [2022 (64) GSTL 465 (KAR)] AND BANGALORE UNIVERSITY [WP NO.112/2019]

- **ISSUE:** Applicability of Service tax on affiliation fees charged by universities from its affiliate colleges
- **HELD:** Not liable to Service Tax - Clause (I) of Section 66D of Finance Act, 1994 (negative list)
 - Universities are established by the State for furthering the advancement of learning and pursuing of higher education and research.
 - Universities regulate manner in which education to be imparted and also conducts examinations
 - The University has to be considered as an Educational Institution imparting education by itself.

RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES KARNATAKA VS DGGI, BENGALURU [2022 (64) GSTL 465 (KAR)] AND BANGALORE UNIVERSITY WP NO.112/2019

- Similar Rulings –
 - Madurai Kamaraj University vs Jt. Comm of GST & C.Ex., Madurai [2021 (54) GSTL 385 (Mad.)]
 - Sahitya Mudranalaya Pvt Ltd Vs Additional Director General [2021 (46) GSTL 245 (Guj)]
- Matter is pending before the Divisional Bench of High Court of Karnataka [WA 800/2022]

SADGURU INFRATECH P LTD VS COMM OF CENTRAL TAX [WP NO. 10163/2020 KARNATAKA HC

- **ISSUE:** In view of introduction of GST w.e.f. 01.07.2017, the petitioners who had earlier entered into Works Contract with State Govt agencies and had been assessed under Composition scheme under KVAT (@ 4%), are required to pay additional tax by way of GST (@ 12%), which was not envisaged in the agreement.
- **HELD:** The Tax component is an independent component which the petitioners do not retain as a profit and is a statutory payment made.
 - The respondents/employers are required to honor the same after determining the differential tax burden, especially for the petitioners where:
 - The works contract were entered prior to 01.07.2017 during KVAT regime and works are completed pre-GST and payments are made post-GST or

SADGURU INFRATECH P LTD VS COMM OF CENTRAL TAX [WP NO. 10163/2020 KARNATAKA HC

- contracts are entered prior to 01.07.2017 but partly executed pre-GST and balance work executed post GST or
- contracts for which tenders are invited during KVAT regime and finalised after 01.07.2017 under GST regime or
- contracts which were invited during KVAT regime under old schedule of rates but finalised under GST regime

and that a certain procedure is required to be followed to determine the amount payable by or to the works contractors/ petitioner.

- Followed MAS constructions vs Hubballi Dharwad Smart City Ltd [2022 (57) GSTL 230 (Kar)]

R.P. BUILDCON P LTD VS SUPRITENDENT, CCE [2022 (144) TAXMANN.COM 108 (CAL)]

- **ISSUE:** Three wings of the department initiating proceedings for the very same period – Audit Commissionerate, Anti Evasion wing, Range Office
- **HELD:**
 - Audit proceedings under section 65 has already commenced, it is but appropriate that the proceedings should be taken to the logical end.
 - Proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.

TVL. AL-MADHINA STEEL TRADERS VS SUPRITENDENT (ECM) [2023 (148) TAXMANN.COM 86 MAD]

- **ISSUE:** Simultaneous initiation of proceedings under the GST Act by the Central and State Authority on same subject matter – Violation of Section 6(2)(b) of CGST Act, 2017
- **HELD:** In case the subject matter was one and same, summons issued by the Central Authority should be dropped.

VGN PROJECTS ESTATES (P) LTD VS ASST COMMISSIONER (STATE TAXES) [2023 (148) TAXMANN.COM 83 (MAD)]

- **ISSUE:** Parallel proceedings initiated by the Central and State Authority
- **HELD:** The petitioner should file a detailed reply to the impugned show cause notice, stating all their objections that have been raised in this Writ Petition including the objection with regard to section 6(2)(b) of the TNGST Act, 2017
- On receipt of the said reply, the respondent shall pass final orders on merits and in accordance with law, after giving due consideration to the objections raised by the petitioner in the reply.

MEDICAMEN BIOTECH LTD VS UOI [2023 (6) CENTAX 162 (RAJ)]

- **ISSUE:** Whether declarations made at the time of filing refund claims on the GST portal must be physically signed?
- **HELD:**
 - Non-submission of physically signed and scanned declarations could only be termed as an irregularity and not an illegality
 - Refund could not be denied based on administrative instructions when declarations made by assessee were found to be factually correct and legal requirement as contained in law were fulfilled

BHARAT SANCHAR NIGAM LTD VS UOI [DELHI HC – WP NO. 3550/2023]

- **ISSUE:** Limitation for filing refund application in case additional details are sought by revenue.
- **HELD:**
 - If refund application filed is not deficient in material particulars, it cannot be treated as non-est. If it is accompanied by the “documentary evidence” as per the Rules, it cannot be ignored for the purpose of limitation
 - Erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89(2) of the Rules, is required to be treated as complete only after taxpayer furnished the clarification of further documents.

R.K. JEWELERS VS UOI [D.B. CWP NO. 4236/2023 RAJASTHAN HIGH COURT]

- **ISSUE:** Whether ITC can be claimed in respect of the period from cancellation of registration till its restoration?
- **HELD:** When the competent authority considers the issue of revocation of cancellation of Petitioner's GST registration, the Petitioner, shall be entitled to lodge its claim for availment of ITC in respect of the period from the cancellation of the registration till the registration is restored.

AVIGNA PROPERTIES PVT LTD VS STATE TAX OFFICER – MADRAS HC [WP No. 6431/2023]

- **ISSUE:** Paragraph 2 of Notification No. 11/2017-CT (Rate) which deems the value of land at one-third of the total amount charged (70:30 rule)
- **HELD:** Methodology of deeming fiction will not apply where the assessee is able to supply the actual amount of the consideration received towards construction services and land cost.
- Similar ruling - Hon'ble Gujarat High Court in the case of Munjaal Manishbhai Bhatt vs UOI [2022 (62) GSTL 262 (Guj)].

K.I. INTERNATIONAL (INDIA) PVT LTD VS PRINCIPAL SECRETARY [WP NO. 10379/2020 – MADRAS HIGH COURT]

- **ISSUE:** Petitioner had filed Form GSTR-1 but did not file Form GSTR-3B. Petitioner requested to pay tax in installments under Section 80. The Commissioner rejected - Section 80 is only for disputed tax and not admitted tax. Petitioner contention - GSTR-1 is not a return and thus will not fall under the exclusion of Section 80.
- **HELD:**
 - Section 37 to 48 fall under Chapter IX "Returns".
 - Section 39 refers to 'a return, .. , of inward and outward supplies of goods or services or both..'. The return of outward supplies is in form GSTR 1 and is thus a statutory return

NAGARJUNA AGRO CHEMICALS PVT LTD VS STATE OF UP [2023 (6) CENTAX 170 (ALL)]

- **ISSUE:** Whether issuance of notice under Section 61 is a pre-condition for initiation of proceedings under Section 74 of CGST Act, 2017
- **HELD:**
 - The scrutiny proceedings of return u/s 61 and proceeding under section 74 - two separate and distinct exigencies
 - Issuance of notice under section 61(3) - cannot be construed as a condition precedent for initiation of action under section 74.

SIDHIVINAYAK CHEMTECH P LTD VS PC OF CGST, MEERUT [2023 (6) CENTAX 187 DEL]

- **ISSUE:** Can provisional attachment under Section 83 be taken up merely based on suspicion by officers, who do not have jurisdiction?
- **HELD:**
 - Formation of opinion by Commissioner - Based on credible material - not merely on grounds of suspicion
 - Term 'Commissioner' as used in Section 83 would necessarily refer to Commissioner who exercises jurisdiction under CGST Act in respect of 'the taxable person – Section 83 must be read in harmony with Section 3 and 5 of CGST Act, 2017.

STATE OF GOA VS SUMMIT ONLINE TRADE SOLUTIONS [SC-CIVIL APPEAL NO. 1700/2023]

- **ISSUE:** Where tax has been levied by the Government of Goa in respect of a business that the petitioner company is carrying in within the territory of Goa, merely because the petitioner Company has its office in Gangtok, the same may itself does not form an integral part of the cause of action authorizing the petitioner company to move the matter at High Court of Sikkim - Tests To Determine If Cause Of Action Has Arisen Within Jurisdiction Of High Court
- **HELD:** The Constitutional mandate of clause (2) of Article 226 is that the 'cause of action', referred to therein, must at least arise in part within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.

PREMIER SALES PROMOTION (P) LTD. VS UOI [2023 (147) TAXMANN.COM 85]

- **ISSUE:** Whether the Pre-paid Payment Instruments or vouchers themselves, or the act of supplying them is taxable?
- **HELD:**
 - Vouchers are mere instruments accepted as consideration for supply of goods or services and they have no inherent value of their own.
 - Vouchers fall under the definition of 'Money' defined under the GST law and issuance of vouchers is neither supply of goods nor services.

MANNAPURAM FINANCE LTD VS ACCT, THRISSUR [2022 (1) CENTAX 120 (KER)]

- **ISSUE:** Petitioner challenged the order rejecting refund claim of GST paid on notice pay recovery received from former employees
- **HELD:**
 - Circular No. 178/10/2022-GST dated 03.08.2022 has already clarified that no GST is payable on notice pay recoveries.
 - Circular merely clarifies the law, it would apply retrospectively.
 - Order quashed and issue remanded back

RSB TRANSMISSIONS INDIA LTD VS UOI [2022 TIOL 1426 HC JHARKHAND GST]

- **ISSUE:** Applicability of interest on delayed filing of Form GSTR-3B, if tax is deposited prior to filing of Form GSTR-3B
- **HELD:**
 - Any deposit made in modes prescribed under Section 49(1) of the CGST Act is mere deposit towards tax, interest, etc. Such deposit is not appropriated to the Government.
 - Amount in ECL is appropriated towards tax only on filing of GSTR-3B.

BIMAL KOTHARI VS AC (DSGST) [2023 (2) CENTAX 91 (DELHI)]

- **ISSUE:** Cancellation of GST registration due to non-availability of taxpayer at the registered premise.
- **HELD:**
 - Revenue conducted physical verification under Rule 25 of CGST Rules, 2017 without issuing notice to the petitioner mandating his presence. Further, the department did not upload the verification report on the GST portal. – Thus, cancellation of registration is invalid

RECTIFICATION OF RETURN ON ACCOUNT OF INADVERTANT MISTAKES

- **Mahalaxmi Infra Contract Ltd Vs Goods And Services Tax Council [2022-TIOL-1393-HC-JHARKHAND-GST]** - Wrong mention of GSTIN number against invoices raised - No loss of revenue or tax impact - GSTN to allow correction, either online or through manual mode.
- **Yokohama India Pvt Ltd Vs State of Telangana [2022-TIOL-1415-HC-TELANGANA-GST]** - Beyond the statutorily prescribed period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in the electronic records.

RECTIFICATION OF RETURN ON ACCOUNT OF INADVERTANT MISTAKES

- **Wipro Ltd India Vs Asstt. Comm of Central Taxes [2023-TIOL 84 HC KAR GST]** - Error occurred due to bonafide reasons, unavoidable circumstances - Justice oriented approach needs to be adopted.
- **Deepa Traders vs PCC, Chennai [2023 (5) CENTAX 43 (MAD)-**
Rectification was to be permitted when errors committed while furnishing returns were clearly inadvertent.
- **Y B Constructions Pvt Ltd vs UOI [2023 (4) CENTAX 200 (Ori)]** -
Where in GSTR-1 Form, B2B supply was reported mistakenly under B2C, permitting assessee to rectify error return will not cause any loss to department; department should enable petitioner to rectify error.

RECTIFICATION OF FORM GSTR-1 ON INADVERTANT MISTAKES

- **Orient Traders vs DCCT (AUDIT)-3,4, DGSTO-3 [2023 (3) CENTAX 63 (KAR)]** - ITC cannot be denied based on mismatch of forms GSTR-3B & GSTR-2A merely on account of inadvertent and bona fide error at the time of filing returns i.e., furnishing details under a wrong column in Form GSTR-2A

DENIAL OF CREDIT ON ACCOUNT OF MIS-CLASSIFICATION

- **Steel Authority of India Ltd. vs CCE [2022 (142) taxmann.com 392 (SC)]** - Classification done at the supplier's end is final and same cannot be changed/questioned at the recipient's end
- **UOI vs Bharat Forge Ltd. [2022 (64) GSTL 3 (SC)]** - GST being an indirect tax, it is the responsibility of the supplier to quote GST under the correct head as he is liable to pay tax and file returns

Thank You.