



ERNAKULAM BRANCH

OF SIRC OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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Hon'ble CA. Atul Kumar Gupta
President, ICAI

addressing the members at the Virtual CA day Celebrations of the branch



Hon'ble CA. Nihar Niranjan Jambusaria
Vice President, ICAI



Shri T J Vinod, MLA inaugurating the CA Week Celebrations of the branch

Members completed 50 years in profession were honoured at the CA Week Celebrations



CA. Kurian Thomas



CA. Vaidhyanathan K



CA. Surinder Paul Singh



CA. Thomas V.M



CA. Kumaran Nair K.K



CA. Rajagopal K

CONTENTS

- 2 Chairman's Message
- 3 Branch Activity
- 6 Judicial Decisions on Indirect Taxes
- 8 Judicial Decisions on Direct Taxes

Chairman's Message



Dear Colleagues and Friends in profession,

Chartered Accountants Day is a proud day for all of us. On July 1st every year we commemorate the establishment of The Institute of Chartered Accountants of India (ICAI) by the parliament of India in 1949. ICAI is India's national professional accounting body and the second biggest accounting organization in the world. This year we celebrate the 71st year of ICAI's glorious existence. On CA Day, Honorable Prime Minister Shri Narendra Modi sending greetings to all CAs in a tweet said "Our industrious CA community has a major role to play in ensuring a healthy and transparent economy. Their services to the nation are deeply valued." Honorable Prime Minister's words emphasize the role and importance of Chartered Accountants in strengthening the economy and nation building. On the 72nd CA Day, every one of us can be proud that we individually and collectively are instrumental in creating economies, finances to rely on, opportunities to grow and contributing to strengthening the economy of our country. It is a prestigious honor for all of us as Chartered Accountants and it is our responsibility to live up to the expectations of the society.

CA Day was celebrated with all dignity on July 1st by hoisting flag at the branch and honoring members who completed 50 years of glorious service in profession. The whole week from July 1st to 7th was celebrated as CA Week with several programme like Blood Donation Camp, CPE programme, CSR Programme-TV Distribution to students, Swatchatha drive, tree plantations and distribution etc. We were all honored by the virtual presence of Honorable President of ICAI CA Atul Kumar Gupta as Chief

Guest and Vice President CA Nihar Niranjana Jumbusariya as Guest of Honor on July 5th along with our own pride CCM CA Babu Abraham Kaliivayalil and RCM and Immediate Past Chairman CA Jomon K George on the virtual family meeting of members. Past Central Council Members CA Jose Pottokaren and CA V C James were also present on that occasion. During the meeting, the Talent Hunt winner's results were declared. The details of the CA Day and CA Week celebrations and names of Virtual Talent Winners are given elsewhere in this newsletter.

July was a month with full of professional development activities. Apart from several Virtual CPE Programme we could also host a 5 Day Virtual CPE Refresher Course on GST organized by the GST & Indirect Taxes committee of ICAI. I take this opportunity to thank Central Council Member and Chairman of Indirect Tax Committee CA Rajendra Kumar and CCM CA Babu Abraham Kallivayalil for all the help and support and making the GST Refresher course a success. As our public outreach programme, we could conduct two joint programme for college faculty members-with MG University and Mariyan College Kuttikkanam on Accounting Standards and St Stephan's College Uzhavoor and MG University on GST. Both the programme was well received and appreciated by the faculties who attended the programme. I would like to thank and congratulate the resource persons for accounting standards CA Vinod Balachandran and CA Amal Paul and resource persons for GST CA Soman N L and CA Cyrjoe for their contributions. We could also organize two Career Counselling Programme during the month – one for the students of

MES College Marampilly taken by CA Razee Moideen and the other for Higher Secondary Students of Kottayam District organized by Director of General Education, HS Wing, Kottayam, taken by CA Jomon K George, RCM and IPC of SIRC. Special thanks to CA Razee Moideen and CA Jomon K George for the help and support. The details of all these Programme is given elsewhere in this newsletter.

“The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.”
—Martin Luther King, Jr.

We are still in the midst of a shambled economy badly af-

ected by the pandemic Covid-19. The expectations of the society and the Government heavily large on us. We have to strive to not to bely our responsibilities and expectations. At a time like this, we all need to be there for each other also. Please take care of yourself, your friends and your family. Stay safe and healthy. Believe...we will push through these challenges with grace and positivity.

With Warm Regards and Love

CA Roy Varghese
Chairman, Ernakulam Branch

BRANCH ACTIVITIES – July 2020

VIRTUAL CPE MEETINGS

The branch has organized 7 Virtual CPE Meetings in the month of July, 2020. Meeting on “Income Tax settlement commission (Procedure & Practice) & benefits under Vivad Se Vishwas Scheme” was organised on 3rd July, 2020. Dr. H.C. Jain, Ex – Chief Commissioner Income Tax, Mumbai and Ex – Vice Chairman, IT Settlement Commission, Mumbai was the speaker. On 4th July, 2020 a meeting on “Audit under Covid Environment & Compliances for peer Review” was organised in which CA. Ganesh Balakrishnan, Hyderabad was the speaker. Meeting on the topic “Recent issues and developments in GST” was organised on 6th July, 2020. Adv. V. Raghuraman, Bengaluru was the speaker. Virtual CPE Meeting on “Accounting Standards in Audit of Corporate & Non-Corporate Entities for FY 2019-2020” was organised on 7th July, 2020. CA. M.P. Vijay Kumar, Chennai was the speaker. CA. Narasimhan Elangovan, Bengaluru took the session on “Excel and Tally as Audit Tool” on 14th July, 2020. Virtual CPE Meeting on “Standards on Auditing : Audit Evidence (Covering SA 500,501, 505 & 570)” was conducted on 15th July, 2020. CA. R.S. Balaji, Chennai was the speaker. CA. Chinnsamy Ganesan, Chennai took the session on “Standards on Auditing : Audit conclusions and reporting (Covering SA 700,701, 705 & 706)” on 17th July, 2020.



Dr. H.C. Jain,
Ex – Chief Commissioner
Income Tax, Mumbai and
Ex – Vice Chairman,
IT Settlement Commission, Mumbai



CA. Ganesh Balakrishnan
Hyderabad



Adv. V. Raghuraman
Bengaluru



CA. M.P. Vijay Kumar
Chennai
Central Council Member, ICAI



CA. Narasimhan Elangovan
Bengaluru



CA. R.S. Balaji
Chennai



CA. Chinnsamy Ganesan
Chennai

Virtual Refresher Course on GST

Virtual Refresher Course on GST was organized by the GST & Indirect Taxes Committee of ICAI and was hosted by Ernakulam Branch of SIRC of ICAI. CA. Rajendra Kumar P, Chairman, GST & Indirect Taxes Committee of ICAI inaugurated the course. CA. Babu Abraham Kallivayalil, Central Council Member of ICAI, CA. Jomon K George, Regional Council Member, Past Chairman, SIRC of ICAI addressed the members. The topics on “Classification concepts in GST” “Concept of Place of Supply”, “GST for builders and developers with special reference to Joint Development Agreement”, “Input Tax Credit”, “GST provisions and issues in transportation of goods including E way bill” were deliberated at the course. CA. (Ms.) Viral Khandhar, Chennai : CA. Rajendra Kumar P, Central Council Member of ICAI, CA. V Shankaranarayanan, Chennai, CA. {Dr} Gaurav Gupta, New Delhi and CA. J Murali, Chennai were the speakers.



CA. Rajendra Kumar P



CA. (Ms.) Viral Khandhar



CA. Shankara Narayanan K



CA. (Dr.) Gaurav Gupta



CA. J. Murali

Study Circle Meetings

Two Study circle meetings were conducted on 8th and 20th July, 2020. The topics on “Provisions relating to accounts and audit under Companies Act 2013” and “RERA Act and provisions” were handled by CA. Ankit R Momaya and CA. K. C. Seetharman respectively.

CA DAY and CA WEEK CELEBRATIONS – held from 1st July to 7th July, 2020

1st July	CA flag hoisting
2nd July	Blood Donation Camp
2nd July	CSR Project – Distribution of TV for students
2nd July	Career Counselling Programme at Department of Commerce, MES College, Marampally
3rd July	Planting of saplings
3rd July	Virtual CPE Meeting on “Income Tax settlement commission (Procedure & Practice) & benefits under Vivad Se Vishwas Scheme” , Speaker: Dr. H.C. Jain, Ex – Chief Commissioner Income Tax, Mumbai & Ex – Vice Chairman, IT Settlement Commission, Mumbai
3rd July	Swachh Bharat Abhiyan
3rd July	A webinar on “How to Plan, Prepare and Pass CA Exams”, Speaker : CA. Pavan Kumar, Chennai
4th July	Virtual CPE Meeting on “Audit under Covid Environment & Compliances for Peer Review” was organised from 11 am to 1 pm through webinar Speaker: CA. Ganesh Balakrishnan, Hyderabad
4th July	Honouring members completing 50 years in profession
5th July	Virtual family meeting of members in connection with the CA day celebration
6th July	Virtual CPE Meeting on “Recent issues and developments in GST ” Speaker: Adv. V. Raghuraman, Bengaluru
7th July	Virtual CPE Meeting on “Accounting Standards in Audit of Corporate & Non-Corporate Entities for FY 2019-2020” was organised from 3 pm to 5 pm through webinar Speaker: CA. M. P. Vijay Kumar, Chennai



Blood Donation Camp

CSR ACTIVITY

CSR project - Distribution of TV for students

In connection with the CA week celebrations held at the branch on 2nd July, 2020 Shri T J Vinod, MLA inaugurated the CSR project – Distribution of TV to the school students in the Ernakulam and surrounding areas.

On 11th July the distribution of TV sets project of Ernakulam Branch of ICAI were done in the presence of Shri. Roji M John, MLA at St. Mary’s UP School, Manjapra. On 20th July TV Sets to the students at St. Peter’s L P School, Vypin were distributed by Shri. S. Sharma, MLA and Ex Minister for Fisheries, registration and Harbour Engineering, Government of Kerala and Adv. V D Satheesan MLA distributed TV Sets to the students at St. Aloysius School, North Paravur and Samootha Madam High School, Paravoor. On 21st July, 2020 CA Jomon K George Regional Council Member of ICAI distributed TV Sets to the students of CKC LPS, Ponnurunny and Shri P.T. Thomas MLA distributed TV sets to the students of Govt HS, Vennala. Altogether 36 TV sets were distributed by the Ernakulam branch of SIRC of ICAI to the students studying at various schools at Vypin, Kanjiramattom, Palluruthy Thoppumpady, Ponnuruni, Thammanam, Njarakal, Vennala, Kanjoor, Manjapra and Paravoor to attend the online classes organized by the District Education Department, Government of Kerala.

OTHER ACTIVITIES – MEMBERS

CA Week Celebrations

CA Day celebrations was organized at the branch on 1st July, 2020. CA. Roy Varghese, Chairman hoisted the CA flag and delivered the message on CA day. Blood donation camp was organized in connection with the CA Day celebrations on 2nd July, 2020. The camp was organized in association with the IMA, Kochi Blood bank. 14 participants donated blood at the camp. 6300 ml were donated. 100 Saplings were planted and distributed on 3rd July, 2020. Swachh Bharat Abhiyan – the cleanliness drive was carried out at the branch premises on 3rd July, 2020. On 4th July, 2020 the chairman and managing committee members visited the residence of members who have completed 50 years in service in the CA profession and honoured them by presenting mementoes and bestowing shawl. CA. Kumaran Nair K K, CA. Kurian Thomas, CA. Rajagopalan K, CA. Surinder Paul Singh, CA. Thomas V. M and CA. Vaidyanathan K were honoured on the occasion.



Shri T J Vinod, MLA inaugurating the CSR project – Distribution of TV to the school students



Shri. Roji M John, MLA, distributing TV to the school students at St. Mary’s UP School, Manjapra as a part of CSR project of Ernakulam Branch of ICAI



FORTHCOMING PROGRAMMES IN THE MONTH OF AUGUST, 2020

Date and Time	Topic	Speaker
06-08-2020, 3 pm to 5 pm	Virtual CPE Meeting on "Excel utilities & Technology for Audt and Professional Services" was	CA. Vinodh Kothari, Chennai
10-08-2020, 3 pm to 5 pm	Virtual CPE Meeting on "Independence of Auditors & Reporting vis-à-vis Companies Act and other Regulators"	CA. Mohan R Lavi, Bengaluru
13-08-2020, 3 pm to 5 pm	Virtual CPE Meeting on "Changes / Amendments in Income Tax Law relevant for Tax Audit 2019-2020 "	CA. P.M. Veeramani, Kochi
17-08-2020, 3 pm to 5 pm	Virtual CPE Meeting on "Discussion on decided Case Laws on Goods and Services Tax"	CA. Keshav R.Garg, Chandigarh

Virtual Family Meeting of the members in connection with the CA day Celebrations

We have organized a virtual family meeting of the members on 5th July, 2020 in connection with the CA day celebrations. CA. Atul Kumar Gupta, Hon'ble President of ICAI was the Chief Guest for the programme. CA. Nihar Niranjan Jambusaria, Hon'ble Vice President of ICAI was the Guest of Honour. They addressed the members through their virtual presence. CA. Babu Abraham Kallivaylil, delivered the special address. CA. Roy Varghese, Chairman, CA. Renjith R Warriar, Vice Chairman, CA. K. V. Jose, Secretary and CA. Deepa Varghese, Treasurer also spoke on the occasion. CA. V.C. James and CA. Jose Pottokaran, Past Central Council Members were also present at the virtual meeting. The programme was webcasted live through the you tube channel of ICAI Ernakulam.

The result of the Virtual Talent Hunt organized in connection with the CA week celebrations of the branch were announced at the virtual meeting of members held on 5th July, 2020.

Faculty Meeting

A faculty meeting of the branch was conducted on 18th July, 2020 through webex. CA. Roy Varghese welcomed the gathering. CA. Jomon K George, Regional Council Member and Immediate Past Chairman, SIRC of ICAI addressed the faculty members. 33 faculty members attended the meeting.

Joint Programmes

Webinar on "Accounting Standards" was organized by the branch jointly with SICASA and Research and PG Department of Commerce, Mariam College Autonomous, Kuttikkanam from 20th July, to 26th July, 2020. Ms. Seethalekshmy C, Asst. Professor, Mariam College welcomed the gathering. Rev. Dr. Roy Abraham P, Principal, Mariam College inaugurated the webinar. CA. Roy Varghese, Chairman, Ernakulam Branch of SIRC of ICAI gave the special address. Dr. Thomas K. V, HOD, Commerce, Mariam College proposed vote of thanks. The technical session speakers were CA. Vinod Balachandran, Ernakulam and CA. Amal Paul, Ernakulam. 157 faculty members attended.

Webinar on Goods and Services Tax was organized by the branch jointly with SICASA and PG department of commerce, St. Stephen's College Uzhavoor, Kottayam and M.G. university, Kottayam from 27th July, 2020 to 6th August, 2020. Dr. Stephen Mathew Convenor & HoD, St. Stephen's College welcomed the gathering. Smt. Lally K. Cyriac, Principal, St.

Stephen's College gave the Introductory Speech. The webinar was inaugurated by CA. Roy Varghese, Chairman, Ernakulam Branch of SIRC of ICAI. CA. Kurian V John, Co-ordinator, St. Stephen's College delivered the Special Address. Smt. Jinnu Anna Kuriakose, Joint Co-ordinator, St. Stephen's College proposed vote of thanks. Technical Session Speakers were CA. Soman N L, FCA, Ernakulam and CA. Cyrjoe V. J, FCA, Ernakulam. 82 faculty members attended.

Career Counselling Programmes

Virtual Career Counselling programme was conducted on 2nd July 2020 by the Department of Commerce, MES College, Marampally The Speaker of the Session was CA. Razeed Moideen, Ernakulam 105 students attended the programme. The Director of General Education, Higher Secondary Wing of Career Guidance & Adolescents Counselling Cell, Kottayam organized a webinar on Dream Career on 15th July, 2020. In the webinar CA. Jomon K George, Regional Council Member and Past Chairman, SIRC of ICAI gave the counselling on CA course. CA. Renjith Warriar, Vice Chairman was present at the webinar. 180 participants attended the webinar.

Webinars for students

A webinar on "How to Plan, Prepare and Pass CA Exams" was conducted on 3rd July 2020. The session was handled by CA. Pavan Kumar, Chennai. 585 students attended.

A webinar on "Audit Report and Allied SA's" was conducted on 19th July 2020. The Speaker of the Seminar was CA. Amal Paul, Ernakulam. 138 students attended the webinar.

Indoor Games

Ernakulam Branch of SICASA conducted a 'The Treasure Hunt' contest on 19th July, 2020. It featured 3 rounds, and the competition was completed on 29th of July. Nearly 450 students participated in the first round, which was held through Instagram Stories and question stickers within Instagram. The second round featured 3 Sub rounds, which were conducted as elimination rounds to the point that only 6 people remained for the third round.

Online classes

Online classes were arranged for students due to the outbreak of Coronavirus – Covid – 19 : In view of the outbreak of Coronavirus – Covid – 19 throughout the country ICAI the branch, we have arranged online classes for the students of Intermediate (Foundation Route), Intermediate Direct Entry students and Foundation for November, 2020 through google meet app.

Reported Judicial Decisions

Direct Tax

CA. P.M. Veeramani FCA

In view of the nationwide lockdown, printed copies of the magazines were not available and hence this edition is prepared based on the data available online

Statute: Income Tax Act
Sec.10(10AA) – PSU, Nationalised bank employees
Decision in favour of : Revenue
Title : Kamal Kumar Kalia vs UOI
Citation: 268 Taxman 398
Bench: Delhi HC

Retired employees of PSUs and nationalised bank cannot be treated as Government employees and thus, they are not entitled to get full tax exemption on leave encashment after retirement/superannuation under section 10(10AA)

Statute: Income Tax Act
Sec.45,47 Family settlement
Decision in favour of : Revenue
Title : P P Mahatme vs ACIT
Citation: 420 ITR 71
Bench: Mumbai HC

Merely because the dispute regarding immovable property involved some family members and such dispute was ultimately settled by filing consent terms, same could not be styled as a family settlement and on such basis, it could not be held that consideration received as a result of such settlement did not constitute capital gain . The amount received was liable to be taxed as capital gains

Statute: Income Tax Act
Sec.45 – Reduction in partner share
Decision in favour of : Assessee
Title : Anik Industries Ltd vs DCIT
Citation: 58 CCH 323

Bench: ITAT Mumbai
The compensation received by the assessee from existing partners for reduction in profit sharing ratio would not tantamount to Capital Gains chargeable to tax u/s 45(1).

Statute: Income Tax Act
Sec.45(2) – Year of taxability
Decision in favour of : Assessee
Title : Union Company (Motors) Private Ltd vs ACIT
Citation: 180 ITD 799
Bench: ITAT Chennai

Where assessee converted its undivided interest in land into stock-in-trade, capital gains arising from such conversion was to be brought to tax when transfer/sale of such asset took place and not on date of converting capital asset into stock-in-trade

Statute: Income Tax Act
Sec.80 – Return of loss; revised return
Decision in favour of : Assessee
Title : B E Billimoria & Co Ltd vs PCIT
Citation: 180 ITD 808
Bench: ITAT Mumbai

Where assessee filed an original return claiming carry forward of loss of certain amount but without filing an audit report and, subsequently, assessee voluntarily filed a revised return claiming said loss at a lesser figure along with audit report, impugned revision so as to hold return of income filed originally as defective and denying benefit of carry forward of



loss to assessee in terms of section 139(1) read with sections 139(3) and 80, was unjustified

Statute: Income Tax Act
 Sec.144C – No variation in income
 Decision in favour of : Assessee
Title : IPF India Property Cyprus Ltd vs DCIT
 Citation: 115 taxman.com 78
 Bench: ITAT Mumbai

In view of amendment in Finance Bill, 2020, it is beyond any doubt of controversy that so far as period prior to 1-04-2020 is concerned, in case of an eligible assessee, draft assessment order under section 143(3), read with section 144C(1) is not required to be passed in cases in which no variation in returned income or loss is proposed. The controversy was only regarding rate of tax to be applied, whether the treaty rate or general rate. The mere issuance of draft assessment order, when it was legally not required to be issued, cannot end up enhancing the time limit for completing the assessment under section 143(3). We, therefore, uphold the plea of the assessee on this point as well. The impugned assessment order is indeed, in our considered view, time barred

Statute: Income Tax Act
 Sec.195 – Payment to celebrity outside India
 Decision in favour of : Revenue
Title : Volkswagon Finance Private Ltd vs ITO
 Citation: 115 taxman.com 386
 Bench: ITAT Mumbai

Where assessee had made payment to an award winning celebrity Nicolas Cage, for an appearance made by him at Dubai (UAE) in a product launch event for promoting business of assessee in India, assessee would be liable to withhold taxes from payment so made as it was because of this relationship between event in Dubai and business of assessee in India that income had accrued and arisen to celebrity making appearance in Dubai launch event. Thus Commissioner (Appeals) was justified in upholding impugned demands raised under section 201 read with section 195 in respect of appearance made by celebrity

Statute: Income Tax Act
 Sec.201(1A) - Payment made online
 Decision in favour of : Assessee
Title : Moody's Analytics Knowledge Services (India) (P.) Ltd. Vs ITO
 Citation: 180 ITD 804
 Bench: ITAT Bangalore

Where remittance of TDS was made online on prescribed date, credit to Government's account was instant and thus, no interest could be levied under section 201(1A) for delay in remitting TDS to credit of Government even if online portal showed a delayed date

Statute: Income Tax Act
 Sec.220 – Prior charge by creditor
 Decision in favour of : Assessee
Title : Connect well Industries Private Ltd vs UOI
 Citation: 115 taxman.com 87 SC
 Bench: Supreme Court of India

Where charge over the property was created much prior to the issuance of the recovery notice under Rule 2 of Schedule II to the Income-tax Act, it would remain valid though sale of property was conducted after issuance of attachment order by tax recovery officer

Statute: Income Tax Act
 Sec.221 – Penalty for non-payment of 140A D e c i s i o n in favour of : Assessee
Title : Kapsons Electrostampings vs DCIT
 Citation: 58 CCH 347
 Bench: ITAT Amritsar

The assessee, for non-payment of self-assessment tax is to be treated as an "assessee in default" for the limited purpose of enabling the AO to make recovery of the amount of tax and interest due and not for levy of penalty, under section 221

Statute: Income Tax Act
 Sec.263 – No revision to order enquiry
 Decision in favour of : Assessee
Title : Seth Madanlal Pariwara Foundation vs CIT
 Citation: 78 ITR Trib 436
 Bench: ITAT Delhi

This was not a case of no enquiry by the Assessing Officer. Nor had the Commissioner conducted the enquiry himself so as to record the finding that the assessment order was erroneous. He had set aside the order and directed the Assessing Officer to conduct the enquiry which was not sustainable in the eyes of law

Statute: Income Tax Act
 Sec.263 – Revision to consider defective return
 Decision in favour of : Assessee
Title : B E Billimoria & Co Ltd vs PCIT
 Citation: 180 ITD 808
 Bench: ITAT Mumbai

Where assessee filed an original return claiming carry forward of loss of certain amount but without filing an audit report and, subsequently, assessee voluntarily filed a revised return claiming said loss at a lesser figure along with audit report voluntarily and the same was accepted in assessment u/s 143(3) revision by CIT under section 263 for failure of AO to consider original return as defective is without jurisdiction and hence quashed

RECENT ADVANCE RULINGS UNDER GOODS AND SERVICES TAX JUDICIAL DECISIONS ON INDIRECT TAXES

Indirect Tax

CA.P.J.Johney FCA

RECENT ADVANCE RULINGS UNDER GST

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: M/s Alcon Consulting Engineers (India) Pvt. Ltd.
Harish Dharnia , Ravi Prasad M.P

Citation: Advance Ruling No. KAR ADRG 83/2019
Bench/Court: AAR Karnataka

The amounts paid to the employees of the applicant company as reimbursement of expenses incurred by them in the course of employment of the applicant company are not liable to tax under the provisions of the Goods and Services Tax Act, 2017 as the transaction of the services supplied by a supplier to the employee and paid by the employee is liable to tax after 30.09.2019. The remuneration paid to the Director of the applicant company is liable to tax under reverse charge mechanism under sub-section (3) of section 9 in the hands of the applicant company as it is covered under entry no. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Carnation Hotels Private Limited
Harish Dharnia , Ravi Prasad M.P

Citation: Advance Ruling No. KAR ADRG 37/2019
Bench/Court: AAR Karnataka

The applicant registered office in New Delhi proposed to operate hotels and rent out the rooms to the employees of SEZ units sought advance ruling whether such ac-

commodation services rendered by the applicant to SEZ units can be treated as 'zero rated supplies' under GST. Under GST, Supply of goods/services or both to a SEZ Developer/Unit are treated as 'Zero Rated Supplies'. Supply to SEZ developer/units shall be treated as such only if those are used towards authorized operations by SEZ. Held that if the hotel or accommodation services received by SEZ developer/unit for authorized operations, as endorsed by the specified officer of the zone, the benefit of zero rated supply shall be available to the supplier. Therefore, accommodation services supplied by the applicant to SEZ units are to be treated as 'zero rated supplies'.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Chowgule Industries Private Limited
JK Meena, Ashok.V.Rane

Citation: Advance Ruling No. GOA/GAAR/07 of 2018-19/4796
Bench/Court: AAR Goa

Applicant authorized dealer of Maruti Suzuki India Ltd for sale of motor vehicles & spares sought advance ruling on ITC availability on motor vehicles purchased for demo AAR held that vehicle used as demo cars (for a specified period only) to provide trial runs to customers are being capitalized by the applicant and ITC is available on those capital goods which are used in the course or furtherance of business, further GST is charged when such demo vehicles are sold which excludes it from blocked credit as well so ITC on motor vehicles purchased to provide trial runs can be availed by the applicant.



B. JUDICIAL DECISIONS ON INDIRECT TAXES

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Guru Shoe Components and Company Vs Goods and Services Tax Council
Dr. Justice Anita Sumanth

Citation: WP No. 31285 of 2019
Bench/Court: Madras High Court

The petitioner is a manufacturer of Insoles, presently registered as a dealer under the provisions of the Puducherry Goods and Services Taxes Act, 2017 (PGST Act)

With the enactment of the PGST Act with effect from 01.07.2017, the petitioner had made an attempt to transition/migrate existing credit available under the VAT scheme to the GST portal. Section 139 of the PGST Act provides for migration of existing tax payers. As per the procedure set out for migration, existing dealers who held a valid PAN were provided with a provisional user ID and password, generated by the Goods and Service Tax Network (GSTN)/R2. The user ID and password constitute mandatory requirements for enrolling under the GST Scheme and are required to login into the GST portal. Upon completion of the registration process using the user (provisional) ID, the same becomes the GSTN for the purposes of GST. The petitioner states that since no provisional ID was received from GSTN, it proceeded to utilise an ID using random units that, admittedly, has no basis and was defective. Using this ID, business was conducted during the period 01.07.2017 to 21.08.2017 and credit was also earned. Since, it was unable to utilise the credit generated on the basis of incorrect ID, the petitioner thereafter applied for a new registration that was granted on 22.08.2017. Returns were filed wherein the petitioner sought to claim credit of the input tax earned for the earlier period, unsuccessfully. The present writ petition is thus filed seeking a mandamus directing the 5th respondent i.e. Commercial Tax Officer, to issue a user name and password to complete the migration process, upload returns in GSTR1 and GSTR3 and claim TRAN 1 credit under the old provisional ID earned from the months of July and August, 2017. The above submissions are recorded. The appropriate authority is directed to issue the necessary positive recommendations for migration/transition of credit available in the account of the R2 within a period of four (4) weeks from date of receipt of a copy of this order and R2 will, in turn and within four weeks from receipt thereof, issue necessary intimation to the petitioner permitting it to access the portal and upload the forms.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Rishi Bansal Vs Union of India
Hon'ble Mr. Justice Manmohan, Hon'ble Mr. Justice Sanjeev Narula

Citation: WP (C) No. 4409 of 2020
Bench/Court: Delhi High Court

The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing. Present writ petition has been filed challenging the letter dated 11th June, 2020 and summon dated 06th July, 2020 issued by respondent No.3 whereby the petitioner has been asked to deposit Rs.2,69,21,228/- being alleged as inadmissible input tax credit and file DRC-03 challan without initiating any adjudication process either under Section 73 or Section 74 of Central Goods and Services Tax Act, 2017 (for short "CGST Act"). Learned counsel for petitioner states that the alleged amount is being asked to be deposited without issuing any show cause notice or mentioning any tax period. He further submits that to pressurize the petitioner, a summon dated 06th July, 2020 under Section 70 has been issued to the petitioner asking him to appear for recording of his statement and for submitting DRC-03 for Rs.2,69,21,228/-.

The intent behind issuing the impugned letter dated 11th June, 2020 was to give an opportunity to the petitioner to come forward and either explain the transaction or deposit the tax with minimum interest and penalty under Section 74(5) of the CGST Act without going through the adjudication procedure. He clarifies that if after the investigation the respondent is not satisfied with the petitioner's response, it shall follow the adjudication process for recovery. The aforesaid statement made by learned counsel for respondent nos. 2 and 3 is accepted by this Court and said respondents are held bound by the same. It is clarified, as a matter of abundant caution, that as the demand is disputed by the petitioner, no coercive steps shall be taken for recovery of the said demand without following the adjudication process. However, the petitioner is directed to appear before the respondent nos. 2 and 3 and cooperate in the investigation process. Keeping in view the aforesaid, learned counsel for petitioner states that he does not wish to press the writ petition any further. Consequently, writ petition and application stand disposed of.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Mayank Sikarwar Vs State of U.P.
Siddhartha Varma, J

Citation: Writ Tax No. 300 of 2020
Bench/Court: Allahabad High Court

The petitioner had a registration under the Goods and Services Tax Act, 2017, which when the Assessing Authority cancelled on 19.9.2019 under Section 29(2)(c) of the Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act'), the petitioner filed an application for the revocation of the cancellation order. When, however, the application was rejected on 10.1.2020, the petitioner filed a First Appeal under Section 107 of the Act.



Upon the dismissal of the First Appeal on 13.2.2020, in the absence of Tribunal, the instant writ petition was filed. The contention of the learned counsel for the petitioner is that the orders of the Assessing Authority and of the First Appellate Court cannot be sustained now in view of the Central Goods and Services Act (Removal of Difficulties Order), 2020 issued under Section 172 of the Act. Under such circumstances, the order dated 10.1.2020 passed by the Assessing Authority and the Appellate Order dated 13.2.2020 are set aside. The application dated 7.12.2019, which was filed by the petitioner for the revocation of the cancellation order dated 19.9.2019, shall now be decided in accordance with law within a period of 15 days from the date of production of a copy of this order. The Authority concerned may verify the correctness of this order from the Official Website of the High Court, Allahabad, if a certified copy is not submitted.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Brand Equity Treaties Limited Vs Union Of India.

Hon'ble Mr. Justice Vipin Sanghi Hon'ble Justice Sanjeev Narula

Citation: W.P.(C) 11040/2018 and C.M. No. 42982/2018
Bench/Court: Delhi High Court

Rule 117 of CGST Rules is directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed. This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates, have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of three years should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.

Accordingly, since all the Petitioners have filed or attempted to file Form TRAN-1 within the aforesaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020. Respondents are directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually. Respondents shall thereafter process the claims in accordance with law. We are also of the opinion that other taxpayers who are similarly situated should also be entitled to avail the benefit of this judgment. Therefore, Respondents are directed to publicise this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1

till date are permitted to do so on or before 30.06.2020. Hon'ble Delhi High Court has held that period of 90 days for claiming input tax credit in TRAN-1 is directory and therefore, period of limitation of 3 years under the Limitation Act would apply. The Court has directed the Department to allow all assesseees to claim input tax credit in TRAN-1 by 30.6.2020. The direction would apply to all those who could not file TRAN-1 and claim input tax credit. The court has further directed that it should be advertised that all taxpayers who have not filed TRAN 1 can do so by 30.6.2020. The judgment has been made applicable to all irrespective of whether the taxpayer has approached the court or not.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: VKC Footsteps India Pvt. Ltd Vs Union Of India.
JUSTICE J.B.PARDIWALA And MR. JUSTICE BHARGAV D. KARIA

Citation: R/Special Civil Application No. 2792 of 2019
Bench/Court: Gujarat High Court

High Court held that by prescribing the formula in Sub-rule 5 of Rule 89 of the CGGST Rules, 2017 to exclude refund of tax paid on 'input service' as part of the refund of unutilised input tax credit is contrary to the provisions of Sub-section 3 of Section 54 of the CGST Act, 2017 which provides for claim of refund of 'any unutilised input tax credit'. The word "Input tax credit" is defined in Section 2(63) means the credit of input tax. The word "input tax" is defined in Section 2(62), whereas the word "input" is defined in Section 2(59) means any goods other than capital goods and "input service" as per Section 2(60) means any service used or intended to be used by a supplier. Whereas "input tax" as defined in section 2(62) means the tax charged on any supply of goods or services or both made to any registered person. Thus "input" and "input service" are both part of the "input tax" and "input tax credit". Therefore, as per provision of sub-section 3 of Section 54 of the CGST Act, 2017, the legislature has provided that registered person may claim refund of "any unutilised input tax", therefore, by way of Rule 89(5) of the CGST Rules, 2017, such claim of the refund cannot be restricted only to "input" excluding the "input services" from the purview of "Input tax credit". Moreover, clause (i) of proviso to Sub-section 3 of Section 54 also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST, Rules 2017.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Bharti Airtel Limited Vs Union of India & Ors.
Hon'ble Mr. Justice Vipin Sanghi Hon'ble Mr. Justice Sanjeev Narula

Citation: W.P. No. 6345/2018
Bench/Court: Delhi High Court.



The Respondents have failed to fully enforce the scheme of the Act, and cannot take benefit of its own wrong of suspension of the Statutory Forms and deprive the rectification/amendment of the returns to reflect ITC pertaining to a tax period to which the return relates to. Petitioner has a substantive right to rectify/adjust the ITC for the period to which it relates. The rectification/ adjustment mechanism for the months subsequent to when the errors are noticed is contrary to the scheme of the Act. The Respondents cannot defeat this statutory right of the Petitioner by putting in a fetter by way of the impugned circular. Since the Respondents could not operationalize the statutory forms envisaged under the Act, resulting in depriving the Petitioner to accurately reconcile its input tax credit, the Respondents cannot today deprive the Petitioner of the benefits that would have accrued in favour of the Petitioner, if , such forms would have been enforced. The Petitioner, therefore, cannot be denied the benefit due to the fault of the Respondents Delhi High Court held that the failure of the Government to operationalise the statutory returns, GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee.

The GSTR 3B which was merely a summary return as an alternative did not have the statutory features of the returns prescribed under the Act. Therefore, if there were errors in capturing ITC on account of which cash was paid for discharging GST liability instead of utilising ITC which could not be captured correctly at that time, the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund. The High Court read down the circular which did not permit such rectification as being contrary to the scheme of the CGST Act.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Rajinder Bassi and others Vs State of Punjab
Hon'ble Mr. Justice Gurvinder Singh Gil

Citation: 11954-2020 (O&M)
Bench/Court: High Court Of Punjab And Haryana

In the present case, there are allegations on the petitioner of having caused loss to State-Exchequer to the tune of Rs 20 crores appx. by evasion of payment of GST and he has applied for grant of interim bail, mainly on account of the prevalent conditions of the spread of COVID-19 virus. The Supreme Court, vide its order dated March 23, 2020, had directed all the States/Union Territories to consider as to which of the prisoners 'may' be released on interim bail or parole during the pandemic so as to decongest the jails and to prevent the outbreak of COVID-19 virus in prisons. They further clarified that the purpose was to prevent the overcrowding of prisons so that in case of an outbreak of coronavirus in the prisons, the spread of the disease is manageable. They make it clear that they have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: M/s.Reflex Industries Limited Vs The Assistant Commissioner of CGST & Central Excise
Dr. Justice Anita Sumanth

Citation: WMP Nos.23106 and 23108 of 2019
Bench/Court: High Court Of Madras

The petitioners are registered as assesseees under the provisions of the Central Goods and Service Tax Act, 2017 (in short 'CGST Act'). The petitioners have admittedly filed Returns of income belatedly for the period 2017-18. Communications dated 07.05.2019 (in W.P.No.23360 of 2019) and 15.05.2019 (in W.P.No.23361 of 2019) computing the delay in filing of Returns and consequently the interest to be remitted on the tax accompanying the Returns were issued. The Madras High Court held that interest under Section 50 of the Central Goods and Service Tax (CGST) Act, 2017 can be levied only on belated 'cash' components of tax and not on the 'ITC' component. The High Court, inter alia, relied on the newly inserted proviso to Section 50(1) of the CGST Act to opine that this recently inserted proviso, as per which interest shall be levied only on the 'cash' part of the tax inserted with effect from August 01, 2019, clearly seeks to correct an anomaly in the provision as it existed prior to such insertion, hence should thus, be read as clarificatory and operative retrospectively.

Statute: Goods and Service Tax
Decision in favour of: Disposed

Title: Shiv Agro Through Ashokkumar Kantibhai Patel Vs State Of Gujarat

Mr.Justice J.B.Pardiwala , Mr. Justice Ilesh J. Vora

Citation: C/SCA/7046/2020
Bench/Court: High Court Of Gujarat

The Gujarat High Court said that for a final decision regarding the confiscation of goods and conveyance under GST, the applicant has to file a statutory appeal under Section 107 of the G.S.T. Act before the appellate authority. Filing writ petition before a court will not be able to solve the issue since they will not interfere in the matter since form GST MOV11 has already been passed by the concerned authority.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Tax Bar Association Vs Union of India & Ors.
Indrajit Mahanty

Citation: Writ Petition No. 1805/2020
Bench/Court: Andhra Pradesh High Court

Learned counsel for the petitioner was directed to implead the service provider, who operates the GSTN portal, as party respondent. The name and address of the service provider

shall be provided by the learned counsel for the Union of India. The present petition has been filed by the Tax Bar Association raising the issue about non-functionality of the respondent's portal i.e. www.gst.gov.in, as a consequence of which, various assesseees are unable to upload their returns both GSTR9 and GSTR9C. In view of the fact that the portal was having problems, the respondents issued a notification vide Annex.6 dated 3rd February, 2020 at page 52, requiring the assesseees to furnish their returns under Section 44 of the GST Act (2 of 7) [CW-1805/2020] read with Rule 80 of the Rules for the Financial Year 2017-18 by 5th February, 2020 (Rajasthan). The Rajasthan High Court in PIL filed by Tax Bar Association granted a big relief direction to file GSTR 9 and 9C without late fees till February 12, 2020, on the grounds of technical glitches being faced by the taxpayers in filing of GSTR 9/9C on the GSTN portal. The High Court turned down the arguments of UOI on the basis that it is a legal right of the taxpayers to file return up till the last date.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Srinidhi Marketing Vs Union of India

J. Jitendra Kumar Maheshwari and Ninala Jayasurya

Citation: SCN in Write Petition No. 4769 of 2020
Bench/Court: Andhra Pradesh High Court

The High Court of Andhra Pradesh held that as per Section 50 of the Central Goods and Services Act, 2017, interest is payable on the delayed payment of tax and that as per the interest statement filed along with the impugned letter, dated February 07, 2020, there was a delay in filing GSTR-3B and hence, interest on 'cash set off' and 'ITC set off' has been calculated and payment thereof has been asked for, recovery of interest against the petitioner, insofar it relates to ITC set off, shall remain stayed.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title :Pushp Forgings Pvt. Ltd. Vs Union of India
Justice Sabina

Citation: Civil Writ Petition No. 1516/2020
Bench/Court: Rajasthan High Court

By way of this petition, petitioner has challenged Annexure-2 vide which petitioner was directed to pay interest of Rs.33,69,727/- within seven days of the receipt of the said letter. Learned counsel for the petitioner has failed to convince us as to how the writ petition is maintainable.

In this case challenge was made to notice issued by superintendent on account of delayed filing of return whereby interest on gross amount was computed under Section 50 of CGST Act, 2017. Hon'ble Rajas-

than High Court dismissed the writ petition as petitioner has failed to convince why the writ is Maintainable

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title : Adfert Technologies Pvt. Ltd Vs Union Of India & Others.

Justice D.Y. Chandrachud, Justice Sanjiv Khanna

Citation: Appeal (C) No.4408/2020
Bench/Court: Rajasthan High Court

The Supreme Court rejected a Special Leave Petition filed by the department against the order of the High Court of Punjab and Haryana allowing the Respondent to carry forward unutilized pre-GST credit, noting that being a vested right it cannot be denied on the ground of time limit. Further, the HC also directed the Petitioners to permit the Respondents to file or revise were already filed incorrect TRAN-1 either electronically or manually.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title: Kabeer Reality Private Limited Vs The Union of India & Others

Mr. Justice S. C. Sharma, Mr. Justice Shailendra Shukla

Citation: Writ Petition No.15645/2019
Bench/Court: High Court Of Madhya Pradesh

The High Court of Madhya Pradesh held that there is no necessity to determine the taxable person, as the liability has been self-assessed by the petitioner itself. So far as the determination of the taxable person in the present case is concerned, the case of revenue rests on the GSTR declaration made by the petitioner itself, and therefore, there was no need for determination of the taxable person. Since the liability has already been quantified by the petitioner itself, only attempts are being made for recovering revenue dues under Section 79 (1)(c) of the Act of 2017. It was the petitioner itself, who did not receive the notice issued by the Department, and now, at this juncture cannot blame the Department.

Statute: Goods and Service Tax
Decision in favour of: Assessee

Title : Amar Cars Private Limited Vs Union Of India

Mr. Justice J.B.Pardiwala, Mr. Justice Bhargav D. Karia

Citation: C/SCA/4025/2020
Bench/Court: High Court Of Gujarat

The Gujarat High Court in this case in which the GST department has raised Interest Demand on Gross GST without considering the Input Tax Credit (ITC), directed the department to not to take any coercive steps for the purpose of recovery of the interest.