



# ERNAKULAM BRANCH

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CA. Thomas Chazhikadan, Member of Parliament inaugurating the 51 st Regional Conference of SIRC of ICAI organised by the Southern India Regional Council of ICAI at Lulu International Convention Center, Grand Hyatt, Ernakulam.

L to R : CA. Jalapathi K, CA. Sreenivasan. P.R, CA. Jomon K George, CA. Dungar Chand U Jain, CA. Prafulla P Chhajed, Hon'ble President of ICAI, CA. Pampanna B E, CA. Atul Kumar Gupta, Hon'ble Vice President of ICAI and CA. Babu Abraham Kallivayalil are also seen



CA. Thomas Chazhikadan,  
Member of Parliament



CA. Prafulla P Chhajed,  
Hon'ble President of ICAI,

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# Chairman's Message



Dear Professional Colleagues,

The entire Chartered Accountant fraternity in Ernakulam is basking in the resounding success of the 51st Regional Conference of SIRC of ICAI which recently concluded at Lulu Bolgahty International Convention Centre on the 18th and 19th of November 2019. We, the Managing Committee of Ernakulam Branch express our whole hearted gratitude to all our members for their unstinted support and encouragement in the conduct of the conference. The one driving force behind the entire programme was our SIRC Chairman CA Jomon K George, who showed us the way as a true leader. We are extremely thankful to him for the opportunity given to Ernakulam Branch for hosting the event. This happened after almost a decade. The good memories of the previous Regional Conference held in 2010, under the Chairmanship of CA Babu Abraham Kallivayalil is still fresh in all our minds. His guidance and support during the present event has also contributed in a big way for the success and glory of this conference.

We also use this opportunity to express our deep gratitude to CA Prafulla P Chajjed, President ICAI and CA Atul Kumar Gupta, Vice President ICAI for gracing the occasion. The presence provided a very positive vibe to the entire programme, which was very evident during the interaction with the Press. The interactive session with our Hon'able Past Presidents namely CA. R. Balakrishnan, CA. B.P. Rao, CA. R. Bupathy, CA. K. Raghu, CA. Devaraja Reddy M along with our founder Secretary and Past Chairman of Ernakulam Branch CA Venugopal C Govind was an icing on the cake. We were also privileged to have the gracious presence of all the Central Council members from the South namely CA. Babu Abraham Kallivayalil, CA. Dayaniwas Sharma, CA. Prasanna Kumar D, CA. Rajendra Kumar P, CA. Sekar G, CA. Vijay Kumar M.P. We also use this opportunity to thank all the resource persons, the MCs, members of the various conference committees, the office bearers of SIRC, Chennai and Ernakulam Branch for their dedicated and tireless efforts.

While all of us are still reminiscing the memories of the conference we are also looking forward for further

event coming up in the month of December 2019 of 25 CPE hours. To mention a few seminars and workshops which is in pipeline includes an evening seminar on Sabka Viswas Legacy Dispute Resolution Scheme 2019 on 12th December. Shri Pullella Nag-eswara Rao, Principal Chief Commissioner, Central Tax & Central Excise, Thiruvananthpuram Zone will grace the occasion as Chief Guest. Shri Neticadan Antonio, Superintendent of Central Tax & Central Excise, Chalakudy range will take the first session on the details of the scheme and CA. Veeramani P M will take the session on "Analysis of Sabka Vishwas Legacy Dispute Resolution Scheme – Industry Perspective" . Another evening Seminar will be held on 17th December on "Emerging trends in technology & opportunities for young professionals – Block Chain" with CA. Santhosh N as the faculty.

A one day seminar on GST will be held on the 20th of December with CA Sankarnarayayan, Adv V Raghu-raman and CA. G. Rengarajan as the faculty members. Also a workshop on Internal audit Standards organised by Internal Audits Standards Board of ICAI will be held on the 28th of December.

As Christmas and New Year is around the corner, let's hope that this festive season ushers in a much needed new lease of hope and energy reviving the Indian Economy! Wishing every member and their families Merry Christmas and a very happy and prosperous New Year.

Jai Hind! Jai ICAI!

CA.Sreenivasan P.R  
Chairman



# Reported Judicial Decisions

CA.P.M Veeramani FCA

**Statute: Income Tax Act – Sec.2(47) – POA is not owner of land**

Decision in favour of : Revenue

Title : **Veerannagiri Gopal Reddy vs ITO**

Citation: 72 ITR Trib 578

Bench: ITAT Hyderabad

Recital in the general power of attorney showed that assessee was not owner of the property though he was having possession of the same, but only been granted authority to convey the property to a third party. Capital gains on sale would be taxable in the hands of owners only and not in the hands of POA.

**Statute: Income Tax Act : Sec.2(15), 12 AA – Fourth Limb**

Decision in favour of : Assessee

Title : **Chhattisgarh State Cricket Sangh vs DCIT**

Citation: 178 DTR 369

Bench: ITAT Raipur

When scale of operations is large, even the surplus or deficit can be large. That fact cannot convert pursuit of an object of general public utility into a commercial activity. Assessee entitled to registration

**Statute: Income Tax Act : Sec.28(i), 145 – Obsolete stock**

Decision in favour of : Assessee

Title : **Hindustan Newsprint Ltd vs ACIT**

Citation: 178 DTR 398

Bench: Kerala HC

Assessee consistently writing off stores and spares when it actually become obsolete after having put it to use. Committee of officers based on technical evaluation had recommended devaluation of 50%; claim for loss therefore, allowable

**Statute: Income Tax Act : Sec.40(a)(ia) – When books are rejected**

Decision in favour of : Assessee

Title : **ACIT vs Salauddin**

Citation: 414 ITR 335

Bench: Patna HC

Once the books of account were rejected and the profit

was estimated at 8 per cent. of the turnover, the books of account could not be relied upon for the purpose of making addition under the provisions of section 40

**Statute: Income Tax Act : Sec.43B – License fee to Railways**

Decision in favour of : Assessee

Title : **CIT vs Jagdish Prasad Gupta**

Citation: 178 DTR 403; 414 ITR 396

Bench: Delhi HC

License fee payable to Railways for allotment of land does not fall either under sub clause (a) or (b). Transaction between parties was plain and simple commercial transaction. It does not also fall under sub clause (g) inserted with effect from 1.4.2017

**Statute: Income Tax Act : Sec.64(1A) – Income of Minor**

Decision in favour of : Revenue

Title : **CIT vs Minor M.Pranuthi by Gaurdian R P Sarathy**

Citation: 414 ITR 161

Bench: Madras HC

The assessee was a minor whose parents had died in an accident in 1993. Her grandfather RPS was her sole guardian. The minor naturally inherited the property of her parents and grandmother. The Assessing Officer taxed the income accruing to her in her hands. This was upheld by the Commissioner (Appeals). The Tribunal held that income of the minor child could not be taxed in the hands of the grandfather, RPS, by invoking section 64(1A) of the Act and Explanation (b) thereto and since there was no other provision to assess the minor's income in the hands of minor herself it could not be taxed. On appeal of High Court,

It is brought to the notice of this court that the guardian of the minor, namely, Mr. R. P. Sarathy has expired recently on January 4, 2019 and that the minor Ms. M. Pranuthi has become major. Therefore, it is made clear that our answers have been given for the period in which Ms. Pranuthi was only minor in the years from 1995 to 1999 and the assessment/reassessment made against her grandfather as legal representative was valid and the consequential





recovery action can now proceed against her and her assets or business, as the case may be.

**Statute: Income Tax Act : Sec.73 explanation – Amendment not retrospective**

Decision in favour of : Revenue

Title : **Snowtex Investment Ltd vs Principal CIT**

Citation: 414 ITR 227 SC  
Bench: Supreme Court of India

In conclusion, we therefore, hold that the amendment which was brought by Parliament to the Explanation to section 73 by the Finance (No. 2) Act, 2014 was with effect from April 1, 2015. In its legislative wisdom, Parliament amended section 43(5) with effect from April 1, 2006 in relation to the business of trading in derivatives, Parliament brought about a specific amendment in the Explanation to section 73, in so far as trading in shares is concerned, with effect from April 1, 2015. The latter amendment was intended to take effect from the date stipulated by Parliament and we see no reason to hold either that it was clarificatory or that the intent of Parliament was to give it retrospective effect

The consequence is that in the assessment year 2008-09, the loss which occurred to the assessee as a result of its activity of trading in shares (a loss arising from the business of speculation) was not capable of being set off against the profits which it had earned against the business of futures and options since the latter did not constitute profits and gains of a speculative business.

**Statute: Income Tax Act : Sec.80P(4) – Certificate of Registration not adequate**

Decision in favour of : Revenue

Title : **Principal CIT vs Poonjar Service Co-operative Bank Ltd**

Citation: 414 ITR 67  
Bench: Kerala HC – Full Bench

The certificate of registration of a society as primary agricultural credit society is not conclusive evidence that the primary object of the principal business undertaken by that society is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities, and the society is not entitled to deduction under section 80P merely on the strength of the certificate of registration issued under section 8(1) of the 1969 Act. On a claim for deduction under section 80P

of the 1961 Act, by reason of sub-section (4) thereof, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee-society and arrive at a conclusion whether or not the benefits can be extended in the light of the provisions thereunder.

**Statute: Income Tax Act : Sec.139(5) – Web site cannot block filing of return of income**

Decision in favour of : Assessee

Title : **Dalmia Power Ltd vs ACIT**

Citation: 178 DTR 113  
Bench: Madras HC

In so far as Rule 12(3) which requires filing of returns electronically is concerned, the assessee cannot be rendered remediless just because the income tax website did not allow a window to the respective assessee for filing return of income electronically as the said returns were beyond the period prescribed under section 139(5). When there is no bar under Income Tax Act or rules, the revenue cannot override the approved scheme of amalgamation which has a statutory force by rejecting the manual revised returns filed by respective assessee as invalid. Respondent is directed to receive the revised returns of income filed by the assessee and complete the assessment.

**Statute: Income Tax Act – Sec.139(9), 143(2) - Curing of defects**

Decision in favour of : Assessee

Title : **Atul Projects India Private Ltd vs UOI**

Citation: 178 DTR 441  
Bench: Bombay HC

Defect in the return filed in October 2016 having been removed in September 2017, the date of filing return of income dates back to the date of filing it originally. Notice under section 143(2) issued in November 2018 is out of time

**Statute: Income Tax Act ; Sec.147 – Reasons recorded**

Decision in favour of : Assessee

Title : **Best Cybercity India Private Ltd vs ITO**

Citation: 178 DTR 409  
Bench: Delhi HC

The reasons recorded by AO for reopening of the assessment do not refer to any facts. It merely repeats the language of section 147 that there was a failure to disclose fully and truly all material facts necessary for the assess-



ment. Therefore, the jurisdictional requirement of the first proviso to section 147 has not been satisfied in the present case. Reopening was not therefore, sustainable

**Statute: Income Tax Act : Sec.147,148 – Original return Non est**

Decision in favour of : Revenue

Title : Smt Sangeetha Jain vs ACIT

Citation: 414 ITR 61

Bench: Karnataka HC

Original return of income filed belatedly and hence treated as Non-est. This would indicate that certain income had escaped assessment; Hence, re-assessment was valid

**Statute: Income Tax Act : sec.159, 292 BB – Notice to dead person**

Decision in favour of : Assessee

Title : Rajender Kumar Sehgal vs ITO

Citation: 414 ITR 286

Bench: Delhi HC

In the absence of any provision in the Act, to fasten the liability upon a deceased individual assessee and in the absence of any pending or previously instituted proceedings, the Department could not impose the tax burden upon the legal representative

After rejection of the objections raised by the legal representative of the assessee, which meant that according to the Department the suspected transaction was recorded in the assessee's books, its attempt to correct the error by changing the name of the entity (with whom the suspected transaction by the assessee occurred) in the reasons, was neither innocuous nor innocent. It was aimed at improving what was a fatally defective "reasons to believe" and masking the reality, to wit, that the authorities failed to apply their minds to the facts and circumstances of the case. The Department's contention that the "defect" was curable, in regard to the issuance of notice to a deceased individual was untenable. The phraseology of section 292BB precluded such contention.

**Statute: Income Tax Act – Sec.194IA – Share of each co-owner**

Decision in favour of : Assessee

Title : Oxcia Enterprises Private Ltd vs DCIT

Citation: 72 ITR Trib SN 17

Bench: ITAT Jodhpur

Even though one POA has executed the document on behalf of all joint owners, for the purpose of TDS, the sale of individual co-owner should be looked into and if the same is below the prescribed limit, TDS is not attracted

**Statute: Income Tax Act – Sec.271AAB – Salary person not required to maintain books**

Decision in favour of : Assessee

Title : Ashish Kumar Kanordia vs ACIT

Citation: 72 ITR Trib 657

Bench: ITAT Jaipur

Assessee being a salaried employee was not required to maintain any regular books of account, there was no question of recording cash advance in books of account. Noting in diary as cash advance not undisclosed income. Definition of undisclosed income under this section is "income by way of any entry in the books of account or other documents or transactions found in the course of a search under section 132

**Statute: Income Tax Act – Sec.271B – Absolute Failure**

Decision in favour of : Revenue

Title : Vaikom Palliprethussery Service Co operative Bank Ltd vs ITO

Citation: 72 ITR Trib 398

Bench: ITAT Cochin

Where there was absolute failure to furnish the audit report before completion of assessment and there was no reasonable cause for the same, the levy of penalty is justified

**Statute: Income Tax Act – Sec.80, 139(3) – Return of Loss**

Decision in favour of : Revenue

Title : CIT vs Kerala State Construction Corporation Ltd

Citation: 177 DTR 411

Bench: Kerala HC

Where the original return was filed within time under 139(1) showed positive income, revised return filed 139(5) showed a loss, such loss could not be allowed to carry forward since the return of loss was not filed within time allowed under 139(3)



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

CA.P.J.Johney FCA

## RECENT ADVANCE RULINGS UNDER GST

### Statute: Goods and Service Tax

Decision in favour of: Assessee

**Title: Spacelance Office Solutions (P.) Ltd**

S. ANIL KUMAR AND B.S. THYAGARA JABABU, MEMBER

Citation:[2019] 76 GST 234 (AAR - Kerala)  
Bench/Court: Authority For Advance Ruling, Kerala

The applicant-company is engaged in the business of sub-leasing of office spaces as 'co-working spaces' to their clients. In the 'co-working space model it offers dedicated distinct and identifiable space, tables and chairs to each clients working there. each client company is working as separate and identifiable office within the main office. it seeks to know whether GST registrations can be allowed for multiple companies from same address. Ruling eparate GST registration can be allowed to multiple companies functioning in a "co-working space" and which provide services alone. such companies shall upload the rental agreement with the landlord and lessee. if there is any sub-lease, then rental agreement between lessee and sub-lessee should also be uploaded as proof of address of principal place of business of respective suit or desk number assigned to them. in addition to this, the applicants can upload a copy of "monthly utility bill" in connection with payment towards electricity charges, water charges or other common services availed by the respective suit or desk number.

### Statute: Goods and Service Tax

Decision in favour of: Assessee

**Title: West Bengal Medical Services Corpn. Ltd.**

SUSMITA BHATTACHARYA AND PARTHASARATHI DEY, MEMBER

Citation:[2019] 76 GST 155 (AAR - West Bengal)  
Bench/Court: Authority For Advance Ruling, West Bengal

Where applicant, engaged in managing procurement of drugs and equipment for medical colleges and hospitals and construction and maintenance of health facilities, is established by a State Government, with 100 per cent participation by way of equity and control, to carry out a function as entrusted to a Panchayat under Sl. No. 23 of Eleventh Schedule under Article 43G of Constitution, it is a Governmental Authority eligible for exemption Under Sl. No. 5 of the said notification on supply of any service in relation to establishment and maintenance of hospitals and similar

health facilities

### Ruling

The Applicant is a governmental authority as defined under para No. 2(zf) of Notification No. 12/2017-CT (Rate), dated 28.06.2017 and State Notification- 1136-FT dated 28.06.2017, as amended from time to time, and eligible for exemption under S| No. 5 of the said notifications on supply of any service in relation to establishment and maintenance of hospitals and similar health facilities.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

### Statute: Goods and Service Tax

Decision in favour of: Revenue

**Title: Bhaktawar Mal Kamra & Sons,**

VIJAY KUMAR SINGH AND SANGEETA KARMAKAR, MEMBER

Citation:76 GST 138(AAR-Haryana)  
Bench/Court: Before the Authority for Advanced Ruling,Haryana

Where applicant, a commission agent (KachhaArhatia), provides services to farmers for selling agricultural produce to various buyers being traders, manufacturers or stockists and is making supplies on behalf of such agriculturalist, who is not a taxable person, is not liable for compulsory registration Where applicant, a commission agent (KachhaArhatia), provides services to farmers for selling agricultural produce to various buyers being traders, manufacturers or stockists, if aggregate turnover of supply of exempted goods as well as taxable goods by applicant exceeds threshold limit, it shall be liable for registration Where applicant, a commission agent (KachhaArhatia), provides services to farmers for selling agricultural produce to various buyers being traders, manufacturers or stockists, applicant shall be liable to pay tax on supplies of raw cotton by agriculturist on reverse charge mechanism

### Ruling

As per the above discussions, a commission agent who is making supplies on behalf such agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of section 24 of the CGST/HGST Act 2017. However, if the aggregate turnover of supply of exempted as well as taxable goods by commission agents (KachhaArhatia) Exceeds the threshold limit, such commission agents shall be liable for registration as per 22(1) of CGST/HGST Act 2017.



## JUDICIAL DECISIONS ON INDIRECT TAXES

### Statute: Goods And Services Tax

Decision in favour of: Assessee

**Title: SCHWING STETTER INDIA Private Ltd. v Commissioner of GST and Central Excise, Chennai and Others**

T. S. SIVAGNANAM J.

Citation: [2019] 68 GSTR 46 (Mad)  
Bench/Court: In the Madras High Court

Goods And Services Tax—Transition Provisions—Input Tax Credit—Technical Difficulties Faced By Assesses In Uploading Form Tran-1—Writ—High Court—Directions To Commissioner To Appoint Nodal Officer To Whom Representations Of Assessee To Be Forwarded By Assessing Officer— Nodal Officers To Forward Them To Grievance Committee For Redressal— Circular No. 39/13/2018-Gst Dated April 3, 2018.

### Statute: Sales Tax

Decision in favour of: Assessee

**Title: S. V. BANDI vs ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE I, GANDHINAGAR, Bengaluru**  
ARAVIND KUMAR and P. G. M. PATIL JJ.

Citation: [2019] 68 GSTR 109 (Karn)  
Bench/Court: In the Karnataka High Court — Kalaburagi Bench

Sales Tax— Works Contract—Composition Of Tax— Assessment eProceedings Completed Levying Tax On Gross Contract Receipts Including Amount Claimed To Be Pure Labour Work— Writ Petition Dismissed On Ground Of Availability Of Alternative Remedy — Appellate Authority Rejecting Benefit On Ground Of Contravention Of Provisions By Appellant By Making Inter-State Purchases Goods For Use In Execution Of Works Contract—Suo Motu Proceedings Initiated By Revisional Authority And Assessee Failing appear Though Notice Acknowledged— Ex Parte Order Passed Rendering Order Of Assessing Authority — Appeal— Adjudication To On Basis Of Substantial Question Of Law That May Be Frame After Considering Grounds Urged By Assessee— Matter Remitted back To Revisional Authority For Giving Opportunity To Assessee—Karnataka Sales Tax Act (25 Of 1957), Ss. 17(6), (7), 22A

### Statute: Service Tax

Decision In Favour Of: Assessee

**Title: DELHI INTERNATIONAL AIRPORT LIMITED v CGST-DELHI III**

ANIL CHOUDHARY (Judicial Member) and  
C. L. MAHAR (Technical Member)

Citation: [2019] 68 GSTR 313 (CESTAT-New Delhi)  
Bench/Court: Before the Customs, Excise And Service Tax Appellate Tribunal — New Delhi

Service Tax—Charge Of Tax -Condition Precedent -Rendering Of Service—Airport Services—Definition—Assessee Entering Into Operation, Management And Development Agreement With Airports Authority Of India—Permitted To Collect “Development Fee “ From Passengers At Airport Based To Bridge Funding Gap Of Project Cost—No Services Being Rendered For This Charge— Service Tax Not Chargeable On Development Fee—Finance Act (32 of 1994), S. 65(105)(Zzm).

### Statute: Goods And Services Tax

Decision in favour of: Department

**Title: GOVIND Enterprises v STATE OF U.P and others**

MANOJ MISRA and SURESH KUMAR GUPTA JJ.

Citation: [2019] 68 GSTR 142 (All)  
Bench/Court: In The Allahabad High Court

Goods and services tax—Offences And Prosecution — Offences Punishable Under Two Or More Enactments — General—Principal no bar on Lodging first information report for Offences punishable under code where prosecution can be launched under act on same facts— allegation that bogus firm registration showing bogus business addresses, inward e-way bills generated for purchase of goods worth Rs. 35 crores and without outward supply bills huge amounts of money deposited in cash in undisclosed bank account to evade taxes— prima facie, ingredients of offence of cheating made out—no relief—Uttar Pradesh goods and services tax act (1 of 2017) ss.69,122, 131, 132, 134, 135— indian penal code (45 of 1860), ss. 34 ,120b,420,467,468,471 —general clauses act (10 of 1897), s. 26.

### Statute: Services Tax

Decision in favour of: Assessee

**Title: COMPUCOM SOFTWARE LTD. v C. C.E. & S. T.-JAIPUR-I**

ANIL CHOUDHARY (JUDICIAL MEMBER) and C.L MAHAR (TECHNICAL MEMBER)

Citation: [2019] 68 GSTR 101 (CESTAT-New Delhi)  
Bench/Court: Before the Customs, Excise and Service Tax Appellate Tribunal — New Delhi

Service Tax—Liability To Tax—“Supply Of Tangible Goods” — Definition—Exclusion—Supply Should Be Without Transfer Of Right Of Possession And Effective Control Of Goods—Concept Of Transfer Of Ownership Of Equipment Cannot Be Imported Into Exclusion—Supply, Installation, Commissioning And Maintenance Of New Computer System, Peripherals And Provision Of Information Technology Assistant And Consumables In 568 Units Under Department Of Education—Schools Having Right To Move Computers At Will—Assessee Not Permitted To Lien, Mortgage ,Etc., Computers—Lessee Enjoying Full Control On Method ,Manner And Time Of Using Computers— Hardware And Computers Leased Out With Right To Possession And Effective Control—Exclusion Applies— Assessee Not Liable To Tax—Fi-





nance Act (32 Of1994), S. 65(105)(Zzzzj).

#### Statute: Central Sales Tax

Decision in favour of: Assessee

**Title: ASHOK LEYLAND LIMITED v  
STATE OF TAMIL NADU AND OTHERS**

*R. S. SHUKLA (Chairman)*

Citation:[2019] 68 GSTR 458 (CSTAA-New Delhi)

Bench/Court: Before the Central Sales Tax Appellate Authority  
—New Delhi

Central sales tax—Inter state sale or branch transfer—reassessment — penalty— trucks and other motor vehicles manufactured by assessee in plants in Tamil Nadu and other states regional sales offices in different states well stocked, booked orders and delivered vehicles pursuant to sales effected by them—sales tax assessed and collected by state on basis transaction local sale— reopening of assessment order pursuant to recovery of incriminating records during raid/inspection of place of business showing assessee camouflaged various interstate sale transactions as stock transfers — valid— assessing authority derives jurisdiction to direct reopening of proceedings in terms of sub-section (2) of section 6a if order found to be illegal—finding by tribunal that assessee reported all turnovers in returns and claim for exemption rejected not in to justified in setting aside penalty—central sales tax act (74 of1956), ss. 3(a), 6a(2), 9(2a)—Tamil Nadu general sales tax act(1 of 1959), s. 16(2).inter-state sales— burden of proof— declaration forms — principles stated.

#### Statute: Goods and Services Tax

Decision in favour of: Assessee

**Title: GOLDEN COTTON INDUSTRIES v  
UNION OF INDIA**

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

Citation:[2019] 68 GSTR 119 (Guj)

Bench/Court:In the Gujarat High Court

Goods and Services Tax— Confiscation — Seizure Of Goods— Prohibition Order—Order Of Seizure and prohibition issued and signed by assistant commissioner (enforcement) authorised by proper officer— form stating he had reason to believe that goods were liable to confiscation and secreted in place mentioned— reasonable belief entertained by proper officer — assistant commissioner merely carried out orders of superior officer defect for government to look into—Gujarat goods and services tax act(25 of 2017), s- 67(2) —Gujarat goods and services rules, 2017, r. 139(2), (4).

Goods and services tax—confiscation — seizure — prohibition authority empowered to release seized goods on provisional basis asking assessee to execute bond and furnish security — pending confiscation proceedings, authority has power to pass an order of prohibition pursuant to order of seizure—Gujarat goods and services tax act (25 of 2017), s. 67(2).

#### Statute: Goods And Services

Decision in favour of: Assessee

**Title: DAILY EXPRESS v ASSISTANT STATE TAX OFFICER,  
SURVEILLANCE SQUAD**

NO. 8,,STATE GST DEPARTMENT, KOLLAM

*K. VINOD CHANDRAN and ASHOK MENON JJ*

Citation:[2019] 68 GSTR 176 (Ker)

Bench/Court: In the Kerala High Court

Goods And Services Tax—Detention Or Seizure Of Goods Transporter—Is Person Interested In Goods—Part B of E-WAY Not Complete—Order For Detention Of Goods—Tax And Penalty Totalling Rs. 1,28,256—not a Case Of Minor Breach— Detention Proper— Central Goods And Services Tax Act (12 of 2017), ss.126,129.

#### Statute: Value Addedd Tax

Decision in favour of: Assessee

**Title: SIVAPRIYA AGENCY v  
COMMISSIONER OF COMMERCIAL TAXES,  
EZHILAGAM, CHEPAUK, CHENNAI AND ANOTHER  
ABDUL QUDDHOSE J.**

Citation:[2019] 68 GSTR 286 (Mad)

Bench/Court: In The Madras High Court — Madurai Bench

Value Addedd Tax— Revision Of Assessment— Purchases Made By Dealer Duly Reported To Commercial Tax Officer Without Any Supression — Revision Penalising Dealer For Failure By Seller To Report Transactions—Objections To Notice Citing Decision Of Court Not Considered— Writ Petition—High Court— Order Set Aside And Matter Remanded With Direction To Consider Matter Afresh—Tamil Nadu Value Added Tax Act (32 of 2006), Ss. 22(2), 27.

#### Statute: Sales Tax

Decision in favour of: Assessee

**Title: CHANDA SOFTY ICE CREAMS v STATE OF TAMIL  
NADU**

*T. S. SIVAGNANAM and N. SATHISH KUMAR JJ*

Citation:[2019] 68 GSTR 222 (Mad)

Bench/Court: In the Madras High Court

Sales Tax—Hotels And Restaurants— Assessment — Assessment Year 2003-04— Assessee's Appeal Before Appellate Assistant Com- -Missioner, Against Assessment Order Allowed With Direction To Assessing Officer To Assess Under Section 3d(2) Of Act—Order Attaining Finality—Commercial Tax Officer Bound By Directions Issued By Appellate Authorities Passing Order Rejecting Assessee's Case—Appeal By Assessee Before Appellate Deputy Commissioner Allowed— Tribunal Allowing Appeal Filed By State—Erroneous— Demand For Relevant Assessment Year To Be Assessed Under Section 3d(2)—Order Passed By Tribunal Set Aside And Order By Appellate Deputy Commissioner Restored—Tamil Nadu General Sales Tax Act (1 Of 1959), S. 3d(2).

#### Statute: Value Added Taxes





Decision in favour of: Assessee

**Title: ROBUST TECHNOLOGIES INC. v  
COMMISSIONER, TRADE AND TAXES AND ANOTHER**

*Dr. S. MURALIDHAR and I. S. MEHTA JJ.*

**Citation:[2019] 68 GSTR 270 (Delhi)  
Bench/Court:In The Delhi High Court**

Value Added Tax—Refund— Denial Of Refund On Basis Of “Zero-Demand Orders” —Not Sustainable— Delhi Value Added Tax Act, 2004 (3 Of 2005), S. 59(2).

Value Added Tax—Assessment— Fresh Demands Simply Stating Purchases Made From Registered Dealer “Could Not Be Verified” — Not Good Reason—Demands Unsustainable—Delhi Value Added Tax Act, 2004 (3 Of 2005), S. 9(2)(G).

#### **Statute: Service Tax**

Decision in favour of: Assessee

**Title : CCCE & ST, HYDERABAD v  
PARKER MARKWEL INDUSTRIES PVT. LTD.**

*M. V. RAVINDRAN (Judicial Member) and  
P. V. SUBBA RAO (Technical Member)*

**Citation:[2019] 68 GSTR 306 (CESTAT-Hyd)  
Bench/Court: Before the Customs, Excise and Service Tax  
Appellate Tribunal -Hyderabad**

Service Tax—Goods Transport Agency Services— Up To April 18, 2006, Service Tax Liability On Goods Transport Agency Services To be Discharged By Service Recipient—Assessee Can Use Cenvat Credit For Discharge Of Service Tax Liability On Goods Transport agency Under Reverse Charge Mechanism Up To April 18, 2006 demand On This Count Up To April 18, 2006 Unsustainable— Assessee Debiting Amount In Cenvat Credit—Not A Case Of Suppression Or Misstatement Of Information— Demand Post April 18, 2006 Hit By Limitation.

Service Tax—Management Consultancy Services And Export sales Rendered By Entities Situated Abroad—Prior To April 18, 2006, No Service Tax Liability On Recipient Of Services In India demands For Period Pre April 18, 2006 Unsustainable— Finance act (32 Of 1994), S. 66a.

Service Tax—Assessee A Manufacturer Of Various Excisable products And Availing Of Expert Knowledge Of Management Consultancy And Paying Export Sales Commission To Agents For Marketing Its Goods Abroad—Services Directly Related To Manufacture And Clearance Of Products—Assessee Could Avail Of Cenvat Credit Of Service Tax Paid On These Services Under Reverse Charge mechanism—No Intention To Evade Service Tax Post April 18, 2006— Demand For Period Post April 18, 2006 Hit By Limitation—Demand Within Period Of Limitation To Be Discharged With Interest—Assessee Eligible To Avail Of Credit.

Service Tax—Domestic Tariff Unit And Export Oriented Unit Situated Within Same Premises And Functioning Under Same name Transactions Of Domestic Tariff Unit And Export Oriented Unit

Reflected Under One Balance Sheet— Activity Undertaken Between Domestic Tariff Unit And Export Oriented Unit Not Services Rendered To Any Outsider— Demands Raised On This Account Not Sustainable.

#### **Statute: SERVICE TAX**

Decision in favour of: Assessee

**Title: VENDHAR MOVIES AND OTHERS v  
JOINT DIRECTOR, O/O. DIRECTORATE GENERAL OF GST  
INTELLIGENCE, CHENNAI AND OTHERS**

*Dr. ANITA SUMANTH J.*

**Citation:[2019] 68 GSTR 372 (Mad)  
Bench/Court:In the Madras High Court**

Service tax— Taxable service—Intellectual Property Right— Temporary Transfer Of Right—Cinematograph Film—is an Asset Comprised Of Various Components, Such as Script, Screenplay, Background score, Song lyrics, Melody, Instrumentation, Orchestration— Each Component Carries Independent And Distinct Copyright— “Right” Relates to Right in Film as well as in Each Component Comprised in Film—Independent Rights Relating to Exhibition of Cinematograph Films Transferred to Television Channels— Documentation Specifically Using Word “Perpetual” —Transfer Specifically for 99 years, in excess of period of 60 years Set Out Under Copyright Act, 1957—Assignment Permanent or Perpetual And Not Temporary—Transaction Outside Ambit Of Service Tax—Finance Act (32 of 1994), s. 65(55b), (105) (zzzzt)—copyright act (14 of 1957), ss. 13, 14, 17, 18, 19.

Writs Under Constitution—Maintainability— Validity Of Notice Or Assessment —Challenge On Ground Of Legal Infirmary—Court Can Entertain Writ—Constitution Of India, Art. 226.

Service Tax—Assessment— Burden Of Proof—Initial Burden On Assessee to Establish Proper Nature Of Transaction—Once Assessee Has Done So, Burden Shifts To Department To Disprove Assessee.

#### **Statute: Value Added Tax**

Decision in favour of: Assessee

**Title: VEER INDUSTRIES LTD. v  
COMMERCIAL TAX OFFICER AND OTHERS**

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

**Citation:[2019] 68 GSTR 351 (Guj)  
Bench/Court: In the Gujarat High Court**

Value Added Tax— Recovery of Tax— Provisional Attachment —Only Property Of Defaulting Dealer Can Be Attached— Property belonging to company having common directors with dealer—cannot be attached—defaulting dealer taken property on lease—does not make it owner of leased property — Lessor of property not “other person”—meaning of “other person” —expiry of attachment after one year—Gujarat value added tax act, 2003 (1 of 2005), ss. 2(10), (15), 46, 47, 48.