



# ERNAKULAM BRANCH

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# 51<sup>st</sup>

# REGIONAL CONFERENCE

Lulu Bolgatty International Convention Centre

Grand Hyatt, Kochi, Kerala

**18th & 19th November 2019**  
(Monday & Tuesday)

CPE  
CREDIT  
**12**  
HOURS

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## Chairman's Message

Dear Professional Colleagues,

This is the time of the year when most of our professional colleagues feels relieved after a hectic tax audit season. We found relief in the fact that MCA had extended the due date for filing AOC 4 to 30th November and MGT 7 to 31st December 2019 respectively. This gave us enough time to focus on the tax audit and provide better quality service to our clients.

The One day seminar on The Companies Act 2013 held at Holiday Inn on the 5th of October, 2019

was well attended. The seminar was inaugurated by Hon'ble Justice Shaji P Chaly, Judge, High Court of Kerala and the Guest of Honours were Hon'ble Technical Member , NCLT Kochi Bench Shri Brahma Rao and Shri G C Yadav, Registrar of Companies, Kerala. Eminent speakers like CA Chinnasamy Ganeshan and R G Rajan from Chennai, CA Shwan Jeff and Adv Sherry Ommen from Kochi spoke on topics such as "Acceptance of deposits", "Related party transactions", "Corporate Social Responsibilities " and "NCLT – A New Beginning".

One day workshop on GST and Ethical Standards were also conducted in October wherein CA.Ganesh Prabhu from Chennai brought in clarity on filing of form 9, 9C with live sample cases, SIRC Chairman CA Jomon K George spoke to the attendees on Revised code of Ethics and CA Tony M P from Trichur spoke about recent amendments in GST.

In addition to the one day seminars, various evening CPE Seminars were also conducted on topics like "Sabka Viswas (Legacy Dispute Resolution Scheme) 2019", "Accounting standards for non corporate entities", Auditing Standards and study circle meetings.

We are pleased to inform you that the branch completed the 23rd batches of ICITSS – Orientation programme and the 30th and 31st batches of the ICITSS- Information Technology Training was also completed during the month.

The branch is bustling with activities these days as the various sub-committees are meeting on a daily basis for planning the 51st Regional Conference of SIRC of ICAI to be held on Nov 18th & 19th at Lulu Bolgatty



International Convention Centre, Grand Hyatt, Kochi, which will be proudly hosted by Ernakulam Branch. I am sure that many of you have already registered for the conference and for all the members who are to register for this may kindly do so at the earliest. You may register online at [www.sircoficai.org](http://www.sircoficai.org). A link has also been provided in our website [www.kochiicai.org](http://www.kochiicai.org). Alternately, you may also pay by cheque or credit card at the Ernakulam Branch office. As informed earlier, we have decided to give a special discount of Rs.300/- for members who are enrolled in the Ernakulam Branch Annual Registration Scheme (ARS), 2019. The discount will be in the form of a cash back post event. We are working towards making this gala event a grand success and earnestly request the support of each and every one for this.

May I once again request all our members to generously contribute to the Chartered Accountants Benevolent Fund (CABF). You may make your payment at the Branch office by cheque or credit card. All members contributing Rs.10,000/- or more will be specially recognised during one of our major events in December, 2019.

The Foundation day of Ernakulam Branch is 1st December. We are planning to conduct a blood donation camp and an CPE Seminar on "Ease of Doing Business" along with celebration of Foundation day on 2nd December,2019. I take this opportunity to invite all of you for this programme. We are looking forward to arranging more conferences and seminars for you in December 2019.

Jai Hind! Jai ICAI!

CA.Sreenivasan P.R  
Chairman

# Reported Judicial Decisions

CA.P.M Veeramani FCA

*Statute: Income Tax Act-Sec.4 -Additional price is not penal interest*

*Decision in favour of : Assessee*

Title : CIT vs Morgan Stanley Mauritius Co Ltd

*Citation: 413 ITR 332*

*Bench: Bombay HC*

The additional amount received by the assessee was part of the offer from the sale of shares made by it. The reason to have increased the sum per share by the company to the shareholders of might be on account of delay of issuance of the shares, but it was part of the sale price of the share. The revised offer which the company announced for issuance of the shares quoted included the additional component of the increased sum per share and was embedded in the share price. This component could not be treated as interest on delayed payment on price of the share. The additional sum was part of the sale price and retained the same character as the original price of the share. The additional receipt of the assessee relatable to this component was a capital receipt.

*Statute: Income Tax Act – Sec.5 - Credit in Form 26AS*

*Decision in favour of : Assessee*

Title : Mercury Car Rentals Private Ltd vs DCIT

*Citation: 71 ITR Trib SN 78*

*Bench: ITAT Kolkatta*

Based on form 26AS alone no additions could be made. This could at best be the starting point for necessary verification but it could not, by itself, justify the addition. Therefore the matter was remanded to the Assessing Officer for the limited purpose of verifying the information. Only if he found any independent evidence for the relevant assessment year that the assessee had actually received the interest income, could bring the interest amount to tax. The onus would be on the Assessing Officer to bring on record independent evidence after making enquiries from the payees and the assessee could not be expected to discharge the impossible burden of proving a negative, i. e., that it did not receive such interest income. Any material found adverse to the assessee, would have to be

confronted to the assessee by the Assessing Officer who shall pass a fresh speaking order after giving due and fair opportunity of hearing to the assessee.

*Statute: Income Tax Act : Sec.9 – No Surcharge and Cess under DTAA*

*Decision in favour of : Assessee*

Title : RAK Ceramics Ltd vs DCIT

*Citation: 176 ITD 294*

*Bench: ITAT Hyderabad*

Provisions of article 11 and 12 find precedence over provisions of Income Tax Act and restrict taxability at rates specified in the respective articles, tax liability on royalty income and interest income could not be enhanced by surcharge and education cess as India-UAE DTAA.

*Statute: Income Tax Act – Sec.10(23C)(iiiab) – Substantially financed*

*Decision in favour of : Assessee*

Title : DIT (E ) vs Tata Institute of Social Sciences

*Citation: 413 ITR 305*

*Bench: Bombay HC*

That the vagueness attributable to the meaning of the words "substantially financed" was removed by the addition of the Explanation to section 10(23C)(iiiab) read with rule2BBB of the Income-tax Rules, 1962 . The Explanation to section 10(23C)(iiiab) was introduced by the Finance (No. 2) Act, 2014 with effect from April 1, 2015 to clarify the meaning of the words "substantially financed by the Government". It stated that the grant of the Government should be in excess of the prescribed receipts in the context of total receipts (including voluntary donations). Rule 2BBB provided that the grant from Government should be at 50 per cent. of the total receipts. The assessee admittedly satisfied the test of "substantially financed" for the assessment years 2006-07 and 2007-08 as the Assessing Officer had recorded a finding in his order which was not disputed. If the Explanation was to be read retrospectively, the orders of the authorities would be required to measure the satisfaction of the words "substantially financed" in





terms of Explanation, i.e., qua total receipts and not qua total expenditure.

*Statute: Income Tax Act – Sec.33AC – Profit from Shipping business*

*Decision in favour of : Revenue*

Title : CIT vs South India Corporation Ltd

*Citation: 177 DTR 337*

*Bench: Kerala HC*

In order to qualify for deduction under section 33AC, the assessee has to prove that its main object was to carry on business of operation of ships; activities of clearing and forwarding or stevedores is not shipping; they are only activities relating to shipping. Assessee was therefore not entitled to deduction

*Statute: Income Tax Act – Sec.35(1)(ii) - Research Association*

*Decision in favour of : Assessee*

Title : Manipal Academy of Higher Education vs UOI

*Citation: 413 ITR 412*

*Bench: Delhi HC*

The respondents seemed to have proceeded on the basis that every department of the applicant-university must undertake scientific research. The respondents had also placed undue emphasis on the nature of the research undertaken and its commercialization. An assessment of the "value" of the research at the hands of the respondents, is not contemplated by the Act or the rules. The question required to be considered by the respondent was whether the activities claimed by the assessee were genuine, and whether the funds being paid to the assessee were intended for the stated purpose. On these, the order was silent. The order was not valid

*Statute: Income Tax Act : Sec.36(1)(viii) – Housing Loan not eligible*

*Decision in favour of : Revenue*

Title : South Indian Bank Limited vs ACIT

*Citation: 176 ITD 309*

*Bench: ITAT Cochin*

Eligible business for the deduction under section 36(1)(viii) was amended by Finance (No.2) Act 2009 with effect from 1.4.2010, by substituting the words "providing loan term

finance for construction or purchase of house in India for residential purposes" to "development of housing in India". Hence the banking company which had advanced loans to customers for purchase / construction of individual houses would not be entitled to deduction.

*Statute: Income Tax Act – Sec.37 – Irrecoverable advance*

*Decision in favour of : Assessee*

Title: DCIT vs Chloride Powers Systems and Solutions Ltd

*Citation: 71 ITR Trib SN 76*

*Bench: ITAT Kolkatta*

Advances were given by the assessee in the ordinary course of business, and any payment in this respect should be treated as revenue expenditure and any loss should be treated as trading loss. Hence, the advances written off, even in respect of a capital asset which was not ultimately acquired, would be allowed as business loss.

*Statute: Income Tax Act – Sec.40b – Remuneration from more than one firm*

*Decision in favour of : Assessee*

Title : Sachi Sarees vs ACIT

*Citation: 71 ITR Trib SN 73*

*Bench: ITAT Kolkatta*

The only ground on which the Commissioner (Appeals) had upheld the disallowance was that he did not believe that the two partners could simultaneously work for two partnerships and draw remuneration. However there is no law which prohibits a person to work in more than one partnership and draw remuneration therefrom. All that section 40(b) requires is that the remuneration should be paid to a working partner and there is no prohibition either in the Act or the Indian Partnership Act, 1932 debaring a partner to draw remuneration from more than one partnership. The expenses could not be disallowed merely because two working partners of the assessee firm were also working partners of another firm and in that capacity derived remuneration from two firms.

*Statute: Income Tax Act – Sec.54 : Delay by builder*

*Decision in favour of : Assessee*

Title : Principal CIT vs Dilip Ranjrekar

*Citation: 177 DTR 158*

*Bench: Karnataka HC*

Assessee was entitled to exemption under section 54 in respect of amount invested in new apartment within the time allowed as non-completion of the construction was beyond his control and the delay was that of the builder

*Statute: Income Tax Act – Sec.80IA(4) – Assignee entitled for deduction*

*Decision in favour of : Assessee*

Title : CIT vs Chettinad Lignite Transport Services Private Ltd

*Citation: 413 ITR 162*

*Bench: Madras HC*

A reading of the provisos to section 80-IA(4) of the Income-tax Act, 1961, it is clear that the Legislature intended to extend the benefit under section 80-IA to an enterprise involved in (i) developing; or (ii) operating and maintaining; or (iii) developing, operating and maintaining any infrastructure facility. The term "infrastructure facility" has been defined in the Explanation and includes a toll road, a bridge or a rail system, and a highway project. These are obviously, big infrastructure facilities for which the enterprise in question should enter into a contract with the Central Government or State Government or local authority. However, the proviso intends to extend the benefit of the deduction under section 80-IA of the Act even to a transferee or a contractor who is approved and recognised by the concerned authority and undertakes the work of development of the infrastructure facility or only operating or maintaining it. The proviso to sub-section (4) stipulates that subject to the fulfilment of conditions, the transferee will be entitled to the benefit, as if the transfer in question had not taken place. The proviso does not require that there should be a direct agreement between the transferee enterprise and the specified authority for availing of the benefit under section 80-IA.

*Statute: Income Tax Act – Sec.148, 292 B – Notice on dead person*

*Decision in favour of : Assessee*

Title : Chandreshbhai Jayanthibhai Patel vs ITO

*Citation: 413 ITR 276*

*Bench: Gujarat HC*

The case fell within the ambit of section 159(2)(b) of the Act. The notice under section 148, which was a jurisdic-

tional notice, had been issued to a dead person. Upon receipt of such notice, the legal representative had raised an objection to the validity of such notice and had not complied with it. In such a case, the provisions of section 292 B would not come to the rescue of the revenue. Notice under section 148 has to be treated as invalid

*Statute: Income Tax Act – Sec.153A – No incriminating evidence required*

*Decision in favour of : Revenue*

Title : CIT vs K.P.Ummar, Prop: Star Rolling Mill

*Citation: 413 ITR 251*

*Bench: Kerala HC*

When and if the assessment proceeded with and concluded under section 153A is set aside by the statutory authorities or by the High Court, then necessarily the original proceedings which stood abated would revive, which is the enabling provision under sub-section (2) of section 153A. There can be no corollary inferred from these provisions to find certain years to be of "concluded assessment" being possible of re-assessment only on incriminating material recovered in search relating to that year.

*Statute: Income Tax Act – Sec.244A – Interest on refund*

*Decision in favour of : Revenue*

Title : HHA Tank Terminal Private Ltd vs ACIT

*Citation: 177 DTR 380*

*Bench: Kerala HC*

Assessee having claimed higher refund by way of revised return, delay up to the date of filing revised return was attributable to the assessee. Interest under section 244A to be granted accordingly

*Statute: Income Tax Act – Sec.260A – New Grounds before HC*

*Decision in favour of : Revenue*

Title : TVS Motor Co Ltd vs ITO

*Citation: 413 ITR 171*

*Bench: Madras HC*

A question or issue which was never raised and adjudicated before the lower authorities and the Tribunal could not be permitted to be raised for the first time in the appeal before the High Court.



## Indirect Tax

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

## RECENT ADVANCE RULINGS UNDER GST

Statute: Goods and Service Tax

Decision in favour of: Assessee

Title: MRE Ltd.

M. AJIT KUMAR and

DR. T.V. SOMANATHAN, MEMBER

Citation:[2019] 75 GST 65 (AAAR - Tamil Nadu)

Bench/Court: Before Appellate Authority For Advance Ruling, Tamil Nadu

Where A Post-Purchase Discount Is Extended By Supplier Of Goods Or Services To Appellant MRF Ltd. On Account Of Their Registering In Interactive Automated Data Exchange Arrangement Setup By C2FO India LLP, Appellant Is Entitled To Avail ITC Of Full GST Charged On Undiscounted Supply Invoice Of Goods/Services By Their Suppliers

Ruling Considering The Facts And Circumstances Of The Appeal, The Appellant M/S. MRF Ltd. Can Avail The Input Tax Credit Of The Full GST Charged On The Undiscounted Supply Invoice Of Goods/Services By Their Suppliers. A Proportionate Reversal Of The Credit Is Not Required To Be Done By Them In Case Of A Post-Purchase Discount Given By The Supplier To Them Through The C2fo Platform, In The Circumstances Mentioned By Them And Discussed Above. This Is Subject To Their Fulfilling The Other Conditions Stipulated By Law And That The GST Paid By Them For The Said Goods/Services Is Not Reversed Or Reimbursed/Re-Credited Etc To Them In Any - Manner By The Supplier Or On His Behalf, After The Credit Has Been Availed By M/S. MRF. The Ruling Is Limited To Cases Where A Post-Purchase Discount Is Extended By The Supplier Of The Goods Or Services To The Appellant On Account Of Their Registering In The Interactive Automated Data Exchange Arrangement Setup By C2FO India LLP, Which Is The Subject Matter Of This Advance Ruling.

Statute: Goods and Service Tax

Decision in favour of: Assessee

Title: INDIAN INSTITUTE OF CORPORATE AFFAIRS.

VINAY KUMAR AND PANKAJ JAIN, MEMBER

Citation:[2019] 75 GST 413 (AAR - New Delhi)

Bench/Court: Authority For Advance Ruling, New Delhi

Section 2(31), Read With Section 7, Of The Central Goods And Services Tax Act,2017/Section 2(31), Read With Section 7, Of The Delhi Goods And Services Tax Act, 2017 - Consideration - Applicant-Society Is Engaged In Implementation Of Projects Related To Corporate Social Responsibility (CSR) - It Has Signed A Memorandum Of Understanding (MoU) With Agriculture Insurance Company Of India Ltd. (AICL) For Implementation Of 'Integrated Village Development Programme' For Improving Infrastructure Facilities In 50 Villages In States Of Bihar, Jharkhand, Madhya Pradesh, Maharashtra And Uttar Pradesh - Applicant Is Required To Provide Solar Street Lights, Solar Water Pumps And Construction Of Toilets In Selected Villages - Whether Activities Of Applicant Under MoU With AICL Are Covered In Definition Of 'Supply' Under Section 7 -Held, Yes - Whether Amount Received By Applicant From AICL Is Not In Nature Of Grant-In-Aid And Is Covered In Definition Of 'Consideration' For Supply Of Goods Or Services Under Section 2(31) In Respect Of MoU And, Hence, Applicant Is Liable To Pay GST Under Section 9(1) - Held, Yes [Para's 60, 66 And 80] [In Favour Of Revenue] | Classification Of Services - Delhi Goods And Services Tax Act, 2017 - Construction Of Toilets - Heading No. 9994 [Service By Way Of Public Convenience] - Whether On Facts Under Heading, Consideration, Said Supply Of Goods Or Services Are Not Exempted From Payment Of GST Under Si. No. 1 And Si. No. 76 Of Notification No. 12/2017-Central Tax (Rate), Dated 28-6-2017 - Held Yes [Paras 60, 66 & 80]

Statute: Goods and Service Tax

Decision in favour of: Revenue

Title: NATIONAL INSTITUTE OF BANK MANAGEMENT .

B. TIMOTHY AND B.V.BORHADE, MEMBER

Citation:75 GST 357(AAR-Maharashtra)

Bench/Court: Before the Authority for Advanced Ruling,Maharashtra

Section 7 Of The Central Goods And Services Tax Act, 2017/ Section 7 Of The Maharashtra Goods And Services Tax Act, 2017 - Supply - Scope Of - Applicant, A Registered Society, Is An Academic Cum Training Institute Established In Year 1969 By Reserve Bank Of India (RBI) In Constitution With Government Of India

As An Autonomous Apex Institute - RBI, State Bank Of India And Other Public Sector Banks Were First Members Of Governing Board Of Society To Whom, By Rules Of Society, Management

CA.P.J.Johney FCA

Of Its Affairs Was Entrusted - Applicant Receives Certain Amount Of Contribution From Public Sector Banks And RBI To Cover Certain Recurring And Non-Recurring Expenses Incurred By It - Expenses Are Incurred For Promotion And Conducting Of Research In Matters Pertaining To Improvement Of Banking Operations, Pertaining To Maximum Augmentation And Effective Deployment Of Banks' Resources Including Analytical And Perspective , Studies Of Various Sectors Of Economy With A View To Promoting National Development - Whether Contribution Received By Applicant From RBI And Other Public Sector Banks Is Nothing But Consideration For Entire Gamut Of Services Supplied By It And GST Is Payable On Such Contribution Received - Held, Yes [Para 5,11] [In Favour Of Revenue]

## JUDICIAL DECISIONS ON INDIRECT TAXES

Statute: Goods And Services Tax

Decision in favour of: Assessee

Title:

SAFARI RETREATS PRIVATE LIMITED AND ANOTHER  
v CHIEF COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND OTHERS

K.S JHAVERI C.J and K.R.MOHAPATRA J.

Citation: [2019] 67 GSTR 16

(Orissa) Bench/Court: In The Orissa High Court

Goods And Services Tax—Input Tax Credit—Prohibition On Availing Of Input Tax Credit Paid On Materials And Services Used In Construction—Provision To Be Read Down- Input Tax Paid By Assessee On Purchases Of Input Materials And Services Used In Construction Of Shopping Mall —Can Be Set Off Against Tax Payable On Rent Received From Tenants Of Shopping Mall — Central Goods And Services Tax Act(12 Of 2017), S.17(5)(D)- Odisha Goods And Services Tax Act(7 Of 2017),S.17(5)(D).

Statute: Value Added Tax

Decision in favour of: Assessee

Title: ONYX DESIGNS v

ASSISTANT COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT) 6.1,BANGALORE AND ANOTHER

Mrs. S. SUJATHA J.

Citation:[2019] 67 GSTR 209(Karn)

Bench/Court: In The Karnataka High Court

Value Added Tax — Registered Dealers— Input Tax Credit—Purchases From Registered Dealers— Input Tax Cannot Be Denied And Purchasing Dealer If He Established That He Has Paid Tax To Selling Dealer— Default By Selling Dealer In Remitting Tax Or Furnishing Monthly Returns Not Ground For Denying Input

Tax Credit To Purchasing Dealer— Proceedings May Be Initiated Against Defaulting Selling Dealer—Karnataka Value Added Tax Act, 2003 (32 Of 2004), Ss. 10(2), (3), 11(A)(9).

Statute: Sales Tax

Decision In Favour Of: Department

Title: CRAFTS INTERIORS(P) LTD

v JOINT COMMISSIONER OF COMMERCIAL TAXES (INTELLIGENCE) AND ANOTHER

A.M. KHANWILKAR AND AJAY RASTOGI JJ.

Citation:[2019] 67 GSTR 1(SC)

Bench/Court: In The Supreme Court of India

Sales Tax—Works Contract—Deduction—Rule Making Power—Rule Providing For Deduction In Respect Of Tax Suffered Goods Used In Execution Of Works Contract In Same Form—Valid—Does Not Mitigate Against Charging Provision—Karnataka Sales Tax Act(25 Of 1957),S.5b—Karnataka Sales Tax Rules,1957,R.6(4)(M)(I), Expln ii.

Statute: Goods And Services Tax

Decision in favour of: Assessee

Title: JAYACHANDRAN ALLOYS (P) LTD v

SUPERINTENDENT OF GST AND CENTRAL EXCISE,  
HEAD QUARTERS PREVENTIVE UNIT ,SALEM AND OTHERS

Dr. ANITA SUMANTH J.

Citation: [2019] 67 GSTR 300 (Mad)

Bench/Court: In The Madras High Court

Goods And Services Tax—Input Tax Credit—Wrongful Availment Of Input Tax Credit—Punishment For—Condition Precedent—That Assessee Has "Committed" Offence Has To Be Established Following Assessment—Unless Assessee Is Habitual Offender— Provisions Of Section 132 "Shown" To Assessee—Intention Of Department To Intimidate Assessee With Possibility Of Punishment—Action Not Sustainable—Central Goods And Services Tax Act (12 Of 2017), S. 132. Goods And Services Tax—Input Tax Credit—Excess Distribution—Recovery—Only After "Determination" Of Excess Credit In An Assessment—Central Goods And Services Tax Act (12 Of 2017), S. 21. Goods And Services Tax—Investigation— Application By Assessee For Copies Of Documents Seized And Statements—Allegation Of Lack Of Co-Operation And Response By Assessee Contrary To Fact—No Averment In Counter That Documents Sensitive Or Production Would Prejudice Department's Interests—Copies Of Documents And Statements To Be Furnished To Assessee—Central Goods And Services Tax Act (12 Of 2017), S. 67(5). Writs Under Constitution—Investigation—Statement Of Managing Director Agree-





ing To Pay Sum As Tax—Statement Retracted— No Statutory Provision Even Prior To Determination Of Violations By Assessee And Quantification Of Demand To Direct Assessee To Deposit Sum Admitted In Statement.

**Statute:** Goods And Services Tax  
**Decision in favour of:** Department

Title: DELTON CABLES LTD v  
STATE OF HARYANA AND OTHERS

**AJAY KUMAR MITTAL and Mrs. MANJARI NEHRU KAUL JJ.**

Citation:[2019] 67 GSTR 79 (P&H)

Bench/Court: In The Punjab And Haryana High Court

Appeal—Limitation—Condonation Of Delay—Input Tax Credit—Denial For Failure To File Form C-4—Application For Rectification Sent To Assessing Authority With Forms After Limitation For Filing First Appeal Had Expired—Rectification Seeking Input Tax Credit Of Higher Amount Than Allowed By Assessing Authority—Appeal Filed Thereafter With No Explanation For Delay—Dismissal As Beyond Limitation Proper—Haryana Value Added Tax Act (6 Of 2003), S. 19.

**Statute:** GOODS AND SERVICES TAX  
**Decision in favour of:** Assessee

Title: ATIN KRISHNA v UNION OF INDIA AND OTHERS  
**PANKAJ KUMAR JAISWAL and RAJNISH KUMAR JJ.**

Citation:[2019] 67 GSTR 351

Bench/Court: IN THE ALLAHABAD HIGH COURT -LUCKNOW BENCH

Goods And Services Tax—Sale And Supply At Duty Free Shops To Arriving And Departing Passengers At International Airports—Not An Inter-State Sale Attracting Integrated Goods And Services Tax—Central Goods And Services Tax Act (12 Of 2017), S. 9—Uttar Pradesh Goods And Services Tax Act (1 Of 2017), S. 9—Integrated Goods And Services Tax Act (13 Of 2017), Ss. 2(4), (10), 5(1), 7(2)—Customs Act (52 Of 1962), Ss. 2(11), (13), 12—Customs Tariff Act (51 Of 1975), S. 3.

**Statute:** TRADE TAX

**Decision in favour of:** Assessee

Title: HEINZ INDIA PRIVATE LIMITED v  
COMMISSIONER, TRADE TAX  
**ASHOK KUMAR J.**

Citation:[2019] 67 GSTR 67 (All)

Bench/Court: In The Allahabad High Court

Trade Tax—Penalty—Consignment Of Goods From Factory To Sale Depots—Decision Of Court In Favour Of Dealer In Revision Arising From Assessment Order—Penalty Cancelled—U. P. Trade Tax Act (15 Of 1948), S. 13a(4).

**Statute:** Sales Tax

**Decision in favour of:** Petitioner

Title: NITABEN HARISHBHAI SHAH v  
OFFICE OF ASSISTANT COMMERCIAL TAX OFFICER,  
GUJARAT

**Ms. HARSHA DEVANI and BHARGAV D. KARIA JJ.**

Citation: [2019] 67 GSTR 71 (Guj)

Bench/Court: In The Gujarat High Court

Sales Tax—Recovery Of Tax—Private Company—No Provision Enabling Recovery Of Dues Of Company From Director—Attachment-Of Property Belonging To Wife Of Director—Not Sustainable—Gujarat Sales Tax Act 1969 (1 Of 1970)—Gujarat Value Added Tax, 2003(1 of 2005)

**Statute:** Sales Tax

**Decision in favour of:** Department

Title: STATE OF MADHYA PRADESH AND OTHERS  
v LAFARGE DEALERS ASSOCIATION AND OTHERS  
**RANJAN GOGOI C.J.I, S. ABDUL NAZEER  
and SANJIV KHANNA J.J**

Citation:[2019] 67 GSTR 242 (SC) :

Bench/Court: In The Supreme Court Of India

Sales Tax—Exemption—Inter State Sale—Bifurcation Of State Into Two—Extension Of Law In Force Before Appointed Date—Movement Of Goods Between Successor States—In Nature Inter-State, Not Intra-State Movement—Madhya Pradesh Reorganization Act (28 Of 2000), Ss. 2(E), (F), (J), (K), 3, 4, 5, 78, 79, 80, 85, 86(1)—Madhya Pradesh Commercial Tax Act, 1994 (5 Of 1995)—Constitution Of India, Act .286.

**Statute:** GOODS AND SERVICES TAX

**Decision in favour of:** Assessee

Title: JAI BHAWANI CONSTRUCTION v UNION OF INDIA  
**RAJEEV RANJAN PRASAD. J**

Citation: [2019] 75 GST 412 (Patna)

Bench/Court: High Court Of Patna

Goods And Services Tax -Section 9 Of The Central Goods And Services Tax Act, 2017/ Section 9 Of The Bihar Goods And Services Tax Act, 2017 - Levy And Collection Of Tax - Assessee, A Works Contractor, Was Allotted A Works Contract By Works Department Of Government Of Bihar Prior To Coming Into Force Of GST Regime - It Filed Writ Petition Complaining That It Was Being Burdened To Pay GST In Respect Of Works Allotted To It On Basis Of Schedule Of Rates Which Did Not Take Care Of Implication Of GST - It Prayed To Issue A Writ Of Mandamus To State To Revise Schedule Of Rates So As To Make It GST Compliant - Revenue Stated That In A Meeting Held On 12-12-2018 Headed By Engineer-In-Chief In Rural Works Department Imple-

mentation Of GST Had Been Considered And After Treating Effect Of GST Schedule Of Rates Had Been Revised - Whether Since Grievance Of Assessee Had In Fact Been Redressed, Nothing Remained For Adjudication By Court - Held, Yes [In Favour Of Assessee]

**Statute:** Service Tax

**Decision in favour of:** Assessee

Title: GENERAL MANAGER (BSNL CELLULAR MOBILE SERVICES) AND OTHER v. COMMISSIONER OF G. S. T. AND CENTRAL EXCISE

**Ms. SULEKHA BEEVI C.S (Judicial Member)  
and MADHU MOHAN DAMODHAR (Technical Member)**

Citation:[2019] 67 GSTR 379 (CESTAT-Chennai)

Bench/Court: Before The Customs, Excise And Service Tax Appellate Tribunal—Chennai

Service Tax—Liability—Telecommunications Service—Inter-Connection Usage Charges Payable By One Telecommunications Service Provider To Another—Interconnectivity Provided By Cellular Mobile Telephone Services Division Of Assessee To Its Own Landline Network—Two Divisions Of Assessee Not Two Separate Service Providers—Levy Of Charges By One Division To Another By Way Of Debit Notes An Internal Financial Adjustment—Not Interconnection Usage Charges For Purpose Of Levying Service Tax—Finance Act (32 Of 1994), Ss. 65(105) (Zzzx), (109a), 65B(44), 68.

**Statute:** VALUE ADDED TAX

**Decision in favour of:** Assessee

Title : UTSAV ENTERPRISE v STATE OF GUJARAT  
**Ms. HARSHA DEVANI and BHARGAV D. KARIA JJ.**

Citation: [2019] 67 GSTR 269 (Guj)

Bench/Court: In The Gujarat High Court

Value Added Tax—Appeal—Pre-Deposit—Input Tax Credit—Disallowance—Condition Precedent—Department Must Establish That It Was In Respect Of Same Goods Purchased By Dealer That Tax Had Not Been Paid—Disallowance By Working Out Percentage Of Purchases Made From Dealer Whose Registration Was Can-Ceiled—Not Permissible—Details Of Assessments Made In Case Of Vendors From Whom Purchases Made By Dealer Not Furnished To Dealer—Vendors Later Informing Dealer That All Outstanding Sums On Its Purchases Paid—Order Of Tribunal Directing Pre Deposit Of Huge Demand Not Justified—Deputy Commissioner (Appeals) To Dispose Of Dealer's Appeal Without Insisting On Pre Deposit—Gujarat Value Added Tax Act 2003(1 Of 2005), S.11(7A).

**Statute:** Trade Tax

**Decision in favour of:** Department

Title: SHRI VISHNU RICE MILL v  
COMMISSIONER, TRADE TAX, U.P LUCKNOW  
**SAUMITRA DAYAL SINGH J.**

Citation:[2019] 67 GSTR 127 (All)

Bench/Court: In The Allahabad High Court

Trade Tax—New Rice Mill Unit Exemption—Computation Of Fixed Capital Investment Trade Tax Tribunal—Finding By Tribunal That Assessee Unable To Establish Purchase Of Machines From Dealer As Disclosed By Him And That Machines Purchased New—Not Relying Upon Bill Produced By Assessee In View Of Inquiry Report Of Assessing Officer—Alternative Plea By Assessee As To Purchase Made From Unregistered Dealer—Plea Not Raised Before Not Available At This Stage—Not Allowing Any Fresh Material To Arise In View Of Court's Restriction Of Proceedings To Materials Already Available Before It—Burden To Establish Entitlement To Exemption Not Discharged By Assessee Who Prevented Any Further Enquiry By Department—Rejection Of Claim Of Exemption By Tribunal—Valid—Recording Of Finding By Tribunal In Order Rejecting Claim Of Exemption Pursuant To Remand By Court That Investment Of Rs. 41,000 In Machineries Not Negligible In Context Of Total Investment Of Rs. 2,51,000—On Facts Not Erroneous—U.P Trade Tax Act (15 Of 1948), S. 4A.

**Statute:** Value Added Tax

**Decision in favour of:** Assessee

Title: CORSAN CORVIAM CONSTRUCCION S. A.- SADHBHAV ENGINEERING LTD. JV v  
COMMISSIONER OF TRADE AND TAXES  
**Dr. S. MURALIDHAR and TALWANT SINGH JJ.**

Citation: [2019] 67 GSTR 490 (Delhi)

Bench/Court: In The Delhi High Court

Value Added Tax—Refund Interest On Refund—When Interest Begins To Run Two Days Following Date Of Filing Return Claiming Return Holidays—Department Not Entitled To Contend That Date Of Filing Return Would Get postponed To Next Working Day—Period For Which Interest Payable Would Run From Expiry Of Two Months From Date Of Return Itself Not Two Months From Next Working Day—Dealer Entitled To Interest On Refund From That Date Till Date Of Actual Credit To His Account Although Refund Order Issued Earlier—Delhi Value Added Tax Act, 2004 (3 Of 2005), Ss. 38(3)(A)(ii), (7), 42(1), 59(2).

