

# **Goods and Services Tax ‘GST’**

04.07.2024	M/s. Nanhey Mal MunnaLal vs. Additional Commissioner and Ors	Allahabad High Court
------------	--	----------------------

***Whether the penalty can be imposed for discrepancy in the date on the E-way Bill and Tax Invoice?***

**Facts of the Case**

The petitioner has received an order for supply of M.S. Bar from M/s. Shri Radhey Enterprises, Ghaziabad. After receipt of the said order, the petitioner placed an order to the M/s. Trimbakeswar Steels for supply of M.S. Bar and directed the supplier i.e. M/s. Trimbakeswar Steels to send the goods directly to M/s Shri Radhey Enterprises.

Both the purchaser and the seller have duly been granted GSTIN while the goods in transit was intercepted on 15.02.2020 and the authorities have detained the goods and passed the seizure order on the ground that the date mentioned in 'Tax Invoice' and on the 'E-way Bill' are different.

He further submits that when the purchaser and the seller have duly been registered and their registrations are active, no adverse inference can be drawn against the petitioner. He prays for allowing to present writ petition.

Per contra, learned Additional Chief Standing Counsel supports the impugned order and submits that there are materials against the petitioner which shows that the transactions in question are bogus as the dates on E-way Bill and Tax Invoice are different. Further, the bona-fide of selling dealer was doubted by the Mobile Squad on inspection. He prays for dismissal of the present writ petition.

**Judgment / Conclusion**

The Honorable High Court of Allahabad has set aside the impugned order after reviewing the case and the records. The Honorable Court noted that the discrepancy in the date on the E-way Bill and Tax Invoice was a minor typographical error rather than an indication of intent to evade tax. Further, the Honorable Court noted that this error does not establish the necessary mensrea for imposing a penalty, as the intention to evade tax is a critical component for such imposition. The Honorable Court emphasized that imposition of penalties requires more than just minor errors and must be supported by concrete evidence of intent. Considering that both the selling and purchasing dealers are registered under GST and their registrations are active, as confirmed by the petitioner and not disputed by the respondents, and considering that the issues were based on conjectures rather than solid evidence, the Honorable Court found no grounds to attribute tax evasion to the petitioner. Thus, the Honorable Court set aside the impugned order, allowed the writ petition, and directed the refund of any amounts deposited by the petitioner in compliance with the impugned order within one month.

03.07.2024	Shokinbhai Gaphurji Sankhala V. Commercial Tax Officer and Ors	(Special Civil Application No.8153 of 2024) Gujarat High Court
------------	--	--

***Whether Order of cancellation of registration can be passed without assigning any reasons?***

**Facts of the Case**

By this petition under Articles 226 of the Constitution of India, the petitioner has challenged the show cause notice, the order for cancellation of the registration under the provisions of the Central / Gujarat Goods and

Services Tax Act, 2017 (for short 'the GST Act') as well as the order of the appellate authority, whereby the orders of cancellation of registration passed by the Assessing Officer have been upheld, dismissing the appeal filed by the petitioner on the ground of limitation.

The petitioner has challenged the order of cancellation of registration on the ground that such order was passed without assigning any reasons for cancellation of registration of the petitioner.

### Judgment / Conclusion

The Honorable Gujarat High Court set aside the impugned orders cancelling the registration of the taxpayer and relied on the decision of the Co-ordinate Bench in the case of M/s. Aggrawal Dyeing & Printing vs. State of Gujarat reported in (2022) 137 Taxmann.com 332 (Guj.) where guidelines have been issued to the respondent authorities. The Honorable Court opined that the impugned orders passed by the appellate authority as well as the Assessing Officer are hereby quashed and set aside and the matter is remanded back to the Assessing Officer to issue fresh show cause notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicants, and to pass appropriate speaking orders on merits. The petitioner is at liberty to file objections / reply to the show cause notice which may be issued by the respondent authority with necessary documents.

20.06.2024	M/s Abishek Suppliers vs The Commercial Tax Officer	Madras High Court
------------	---	-------------------

***Whether the order can be passed without giving the opportunity of hearing to explain the mismatch between GSTR-1 and GSTR-3B?***

### Facts of the Case

An order in original dated 16.04.2024 is challenged on the ground that the petitioner was unable to upload the reply to the show cause notice. The petitioner received a show cause notice dated 14.12.2023 calling upon the petitioner to explain the disparity between the GSTR 1 statement and the GSTR 3B return. By reply dated 12.01.2024, the petitioner requested for time. According to the petitioner, she could not upload the reply to the show cause notice thereafter.

Learned counsel for the petitioner submits that the mismatch occurred because the petitioner inadvertently uploaded only the November and December 2017 transactions in the GSTR 1 statement, whereas the GSTR 3B return recorded all transactions. If provided an opportunity, she submits that the petitioner would be in a position to explain the disparity. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

### Judgment / Conclusion

The Honorable High Court of Madras set aside the impugned order on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. The Honorable Court noted that it is evident that the tax proposal, which pertains to the mismatch between the petitioner's GSTR 1 and 3B, was confirmed solely because the taxpayer failed to reply to the show cause notice. In the facts and circumstances outlined above, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand on merits by putting the petitioner on terms. The Honorable Court directed that upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply.

29.05.2024	Pradip Kumar Jain vs. UOI	Criminal Misc. Bail application 18751 of 2024] - (Allahabad High Court)
------------	---------------------------	---

***Whether the bail can be granted to the petitioner in the absence of any evidence with regards to the creation of a fake firm?***

### **Facts of the Case**

Devendra Kumar Jain is proprietor of Aadi Enterprises and 5 other firms those are non-existent and operated by him. He fraudulently availed ITC amounting to Rs. 67.75 crores and passed on ITC amounting to Rs. 67.46 crores, out of which ITC to the tune of Rs. 45.39 crores was fraudulently availed by Pradip Kumar Jain. This Input Tax Credit was availed and passed on without actual supply of goods on the basis of issuance and receipt of fake tax invoices. In such a manner both of them Devender Kumar Jain and Pradip Kumar Jain committed offences under Section 132(1)(b) & (c) and under Section 132(1)(i) of Central Goods & Service Tax Act, 2017, respectively.

The applicant Pradip Kumar Jain is proprietor of M/s Arav Enterprises and M/s N.P. Industries. He conducted business in actual sense in the year 2017-18, 2018-19, 2019-20, 2020-21. He purchased the material in actual sense and did not claim ITC on fake invoices. It is also submitted that Devender Kumar Jain applied for cancellation of his G.S.T. registration on 01.12.2020 for cancellation of 5 firms those were cancelled which shows that there was no any tax liability on Devender Kumar Jain at that very time. It is further submitted that tax liability is said to be related to the year 2017-18, 2018-19, 2019-20, 2020-21 though investigation was conducted in the year 2023-2024. It is further submitted that there was no any assessment of liability made by the concerned authority and no any notice was given to them but they were arrested by the authorities and except the statement of the applicants there is no any other material on record to show the liability of the applicants that they availed the ITC fraudulently. It is also submitted that how these non-existent companies were registered and ITC was passed, the source is unknown till now and no liability of G.S.T. has been assessed till now. It is further submitted that till date penalty or taxes has not been ascertained as per the said Act. It is further submitted that offences as alleged are punishable up-to five years imprisonment and are compoundable. It is further submitted that no notice for assessment of G.S.T. has been issued against the applicants but they were illegally arrested. There is no any criminal history against the applicants. They are in jail since 28.02.2024, therefore, request to release them on bail during the pendency of case.

Learned counsel for the D.G.G.I. opposed the prayer as aforesaid and contended that the applicants operate the racket for evading the Input Tax Credit by creating fake firms. There are statements of the accused/ applicants recorded by the authorities which are relevant. Regarding device by using which non-existent firms were created, there is nothing on record. In case, applicants are released on bail they will again indulge in similar activities and will misuse the liberty of bail.

### **Judgment / Conclusion**

The Honorable High Court of Allahabad granted the bail to the petitioner subject to furnishing of a personal bond and two heavy sureties to the satisfaction of the court.

24.05.2024	EFC Logistics India (P.) Ltd., [ORDER NO. 08/ ODISHA-AAR/2023-24]	Odisha AAR
------------	---	------------

***Whether the supplier can charge and pay GST on services which are exempted and whether the recipient can claim ITC basis such invoices?***

#### **Facts of the Case**

M/s. EFC logistics India (P.) Ltd., ("the Applicant"), is engaged in the business of providing transport service as GTA and opted to pay GST @12% with ITC. The Applicant intends to enter into an agreement with M/s. Govinda Transport Pvt. Ltd. (another GTA Service provider) who supplies vehicle on rent inclusive of fuel, tool, salary of driver, and other ancillary expense related to vehicle, to the Applicant.

The Applicant contended that services received by him are of hiring/renting of vehicle which is exempt under Entry No 22(b) of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 hence the supplier is not liable to charge GST.

In such scenario, the Applicant sought advance ruling on whether the supplier, being owner of vehicle can charge GST even though the service is exempt. Further, the Applicant wanted to know whether he is eligible to claim ITC, on the basis of said supplier's invoices.

#### **Judgment / Conclusion**

The Odisha AAR held that the taxpayer can claim ITC on exempt services if the supplier has charged GST, subject to fulfilling the conditions and restrictions specified in Section 16 of the Central Goods and Services Tax Act, 2017. The Applicant contended that services received by him are of hiring/renting of the vehicle which is exempt under Entry No 22(b) of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, hence the supplier is not liable to charge GST. The Odisha AAR noted that Section 95(a) of the CGST Act, which provides the meaning of the term 'advance ruling' and the definitions states that advance ruling is the decision provided by authority or appellate authority in relation to the supply of goods or services being undertaken or proposed to be undertaken by the Applicant. The AAR stated that in the instant case, the service of renting a vehicle is not undertaken by the Applicant therefore, no ruling can be made. For the subsequent issue, noted that, as per Section 16(1) of the CGST Act every registered person is entitled to take ITC charged on any supplies of goods or services or both to him which are intended to be used in the course or furtherance of business. The AAR held that the Applicant provides transport services and pays GST at 12% under the Forward Charge Mechanism, thus, the Applicant may claim ITC provided it meets the conditions and restrictions outlined in Section 16 of the CGST Act.

20.05. 2024	M/S Excellent vision Technical Academy Pvt. Ltd. v/s State of UP And 5 Others	Writ Petition (Allahabad High Court)
-------------	---	---

***Whether Search can be conducted without recording reason to believe in form INS-01?***

#### **Facts of the Case**

The instant writ petition under Article 226 of the Constitution of India challenges the search and seizure order dated January 4, 2018, the subsequent proceedings wherein the notice was issued on February 8, 2021 and the order dated September 1, 2021 passed under Section 74 of the Uttar Pradesh Goods and

## Goods and Services Tax 'GST'

Services Tax Act, 2017 (hereinafter referred to as "the Act"). The writ petition also challenges the order passed in appeal dated January 6, 2023.

The main thrust of the petitioner in the writ petition is that the respondent authorities never complied with the mandatory provision of Section 67 of the Act, as the Joint Commissioner, while granting the authorization for search and seizure, never put forth the reasons to believe that the search was necessary.

### Judgment / Conclusion

The Honorable Allahabad High Court held that where the Revenue Department failed to put forward the actual reasons to believe as required under Section 67 of the CGST Act, 2017 before initiating a search, in such case the entire proceedings have no foot to stand on and are liable to be quashed. The Honorable High Court noted that the search was carried out on January 4, 2018, however, there are two INS-01 forms, which have been issued on two different dates; one on February 11, 2019 and another on January 4, 2018 (date of the search).

INS-01 issued on February 11, 2019 is subsequent to the search and is, therefore, an invalid document. With regard to other INS-01 that has been issued on the date of search, it further appears that no reasons to believe have been noted in the same. In fact, this document was provided to the petitioner upon the petitioner making an application. This document appears to be fabricated and created as an afterthought. Further noted that the tax Department has failed to explain and put forward the actual reasons to believe as required under Section 67 of the State GST Act in the counter affidavit filed by the tax Department. The Honorable Court opined that the entire proceedings that have originated from the illegal search and seizure carried out under Section 67 and accordingly, the entire authorization is liable to be quashed. Further, ordered the Tax Department to refund the amount deposited by the Petitioner in lieu of the order passed under Section 74 of the State GST Act within a period of eight weeks.

<b>25.09.2023</b>	<b>Chelliah Meenambigai (Applicant) vs. Commercial of CGST and Central Excise (Respondent)</b>	<b>Madras High Court</b>
-------------------	--	--------------------------

### Facts of the Case

This writ petition has been filed to quash the impugned order of cancellation of Registration in and seeking direction to the respondents to revoke the cancellation of Petitioner's

The Petitioner was unaware of the cancellation of the Registration Certificate and after some time, the petitioner was informed by the other end tax payers that the petitioner became aware that his GSTN registration stood cancelled. Thereafter, the Petitioner preferred an appeal before the appellate authority. The appellate authority has rejected the appeal on the ground that it was beyond the period of limitation.

### Judgment / Conclusion

In the light of the discussion, Writ Petitions are allowed subject to the following conditions:

- i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.
- ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be

made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

- iii. If any Input Tax Credit has remained utilized, it shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.
- iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.
- v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.
- vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.
- vii. The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.
- viii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.
- ix. The respondents shall take suitable steps by instructing GST Network, New Delhi to make suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.
- x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.
- xi. No cost.

<b>13.06.2023</b>	<b>Agrawal &amp; Brothers (Petitioner) vs. Union of India (Respondent)</b>	<b>High Court of Madhya Pradesh</b>
-------------------	--	-------------------------------------

***Whether the taxpayer should pay taxes along with interest due to the supplier's error in GST reporting?***

### **Facts of the Case**

M/s Agrawal and Brothers ("the Petitioner") has procured goods under e-auction from Railways dated August 12, 2017 at a total consideration of INR 51,97,142 including GST of INR 9,35,486 and had claimed ITC.

However, the Railway Department filed the GSTR-1, reflecting the supplies under the wrong GSTIN. It is an undisputed fact that the Railway department had deposited the tax.

Since the Petitioner had claimed the ITC, which was not reflected in GSTR-2A due to a mistake of the Railway Department.

The Revenue Department issued a demand notice compelling the Petitioner to repay the GST. Railway Department had mistakenly deposited the GST amount against an incorrect GSTIN, causing this discrepancy. The Petitioner filed various representations before the Railway Department but was not considered. In order to save the GST registration, the Petitioner deposited the amount of ITC along with interest.

Further, the Petitioner filed a writ before the High Court seeking refund of the amount paid under protest.



Goods and Services Tax 'GST'

### Judgment / Conclusion

The Hon'ble Madhya Pradesh High Court in Writ Petition No.14297 of 2020 held as under:

- the taxpayer should not suffer due to a supplier's error in GST reporting.
- Directed that, the Railway Department can seek a refund, as the Revenue Department has received the amount of tax contained in ITC twice.
- Held that, the Petitioner may seek refund from the Railway department.

06.06.2023	Seoyon E-Hwa Summit Automotive India (P.) Ltd. v. Deputy Commissioner	Madras High Court
------------	---	-------------------

***Rectification application rejected due to non-cooperation by assessee during assessment.***

### Facts of the Case

Seoyon E-Hwa Summit Automotive India (P.) Ltd. ("the Petitioner") was issued various notices including ASMT-10, Form GST DRC-01A and a Show Cause Notice ("the SCN") dated December 6, 2021, June 29, 2022 and November 18, 2022 respectively by the Revenue Department, all pertaining to issues related to Input Tax Credit ("ITC").

The revenue department contended that the Petitioner was given sufficient opportunities prior to finalisation of assessment to justify its claim of ITC, and the SCN has clearly set out the claim of ITC calling upon the Petitioner to furnish the details of ITC category wise/tax type wise and to explain the variations that he has noticed and the Petitioner has not cooperated in the proceedings for assessment.

The Petitioner responded to the notices furnish the break-up of the ITC claimed under GSTR 3B as sought for by the officer and attempt to reconcile its claim of ITC in the GSTR 3B return with the ITC reflected in GSTR 2A and GSTR 9 as GSTR 2A is auto populated based on the input set out in GSTR 9, which is filed by the supplier.

The Petitioner filed an application under Section 161 of the CGST Act seeking rectification of errors allegedly apparent on record.

### Judgment / Conclusion

It was held that the rejection of rectification application filed under section 161 of the Central Goods & Services Tax Act, 2017 on the ground of violation of the principles of natural justice. The writ petition was dismissed by observing that the appellant has not co-operated in the proceedings for assessment leaving the Assessing Officer no choice, but to complete the assessment on the basis of the available materials and without any explanation for his benefit.

10.05.2023	Gajraj Vahan (P.) Ltd. (Petitioner) vs. State of Jharkhand (Respondent)	High Court of Jharkhand
------------	---	-------------------------

***Can the refund application filed u/s 77 of CGST Act, 2017 be rejected on the grounds of limitation?***

### Judgment / Conclusion

As per Section 77 of CGST Act read a registered person who has paid the Central tax and State tax or, as



the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed. As per Rule 89(1A) before the expiry of a period of two years from the date of payment of the tax on the inter-State supply an application electronically in FORM GST RFD-01.

In the given case the Gajraj Vahan (P.) Ltd. (Petitioner) made payment in a wrong head and there is no dispute regarding the same. However, his claim for refund has been rejected by the authority.

It is held that the application for a refund under section 77 for the payment made in the wrong head cannot be rejected on the grounds of limitation.

24.04.2023	Ritesh Infratech (P) Ltd. (Petitioner) vs. Union of India (Respondent)	High Court of Patna
------------	--	---------------------

***Can the assessee be deprived of the statutory benefit of stay under Section 112(9) of CGST Act, 2017 due to non-constitution of the GST Appellate tribunal?***

#### **Facts of the Case**

In the Given case, the writ petition has been filed under Article 226 of the Constitution of India seeking multifarious reliefs. The petitioner essentially is desirous of availing statutory remedy of appeal against the impugned order before the Appellate Tribunal under Section 112 of the CGST Act. However, due to non-constitution of the Tribunal, the petitioner is deprived of his statutory remedy. Under the circumstances, the petitioner is also prevented from availing the benefit of stay of recovery of balance amount of tax.

#### **Judgment / Conclusion**

It was held that, petitioner could not be deprived of the statutory benefit of stay under sub-section 9 of Section 112 of CGST Act, due to non-constitution of GST Appellate Tribunal and recovery of balance amount was to stay subject to deposit of twenty per cent of the remaining amount of tax in dispute in addition to the amount earlier deposited.

As per Section 112(9) of CGST Act, where the appellant has paid the amount as per section 112(8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

18.07.2022	Pradeep Goyal (Appellant) vs. Union of India (Respondent)	Supreme Court
------------	---	---------------

***Supreme Court directs GST Council to issue advisories to all the States for implementation of Document Identification Number to every communication sent to taxpayers.***

#### **Facts of the Case**

A Public Interest Litigation has been filed and prayed for an appropriate writ, order, or direction to the respondents – respective States and the GST Council to take all necessary steps to implement a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons to promote transparency and accountability in the Indirect Tax administration. It was also requested to direct the GST Council to consider and take a policy decision in respect of the implementation of the DIN system by all the States, as it may prevent any

## Goods and Services Tax 'GST'

abuse by the Departmental Officers of pre-dating communications and ratifying actions by authorizations subsequently made out in the files. The same has till date only been implemented only by two States, i.e., the States of Karnataka and Kerala.

### **Judgment / Conclusion**

Supreme Court held that in view of the implementation of the GST and as per Article 279A of the Constitution of India, the GST Council is empowered to make recommendations to the States on any matter relating to GST. The GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration. The Supreme Court has directed the Union of India and the Goods and Services Tax (GST) Council to issue advisory to states for implementing a digital system for all communication sent by GST officers to taxpayers.