



INDIRECT TAX NAVIGATOR DEC 2020-VOL I

S.K.KANODIA & ASSOCIATES
CHARTERED ACCOUNTANTS

CONTENTS

RECENT CASE LAWS

RECENT NOTIFICATIONS

CONTACT US



RECENT CASE LAWS

RECENT CASE LAWS

P.H. Mueammad Kunju & Brothers vs. Assistant State Tax Officer - Goods-detention for mis-match in value shown in job-work invoice and e-way bill 'unjustified'

[TS-1020-HC-2020\(KER\)-NT](#)

Kerala HC

A consignment of HR plates was sent from Ernakulam to Salem for the purposes of job work. The onward transportation from Ernakulam to Salem was duly accompanied by a tax invoice and an e-way bill generated by the Registered Taxpayer (Petitioner). After completion of the said work, the goods were returned to Ernakulam from Salem, and in the said leg of transportation, the consignment was accompanied by a job work invoice issued and an e-way bill generated by the job worker. **The defect pointed out by the Assistant state tax officer is in respect of value shown in the e-way bill generated by job worker is only Rs.3469.76/- as compared to the Consignment of the HR plates that was sent for job work valued at Rs.8,27,708.87/-.** The said difference in the value is shown as the reason for the detention as the value shown in the e-way bill did not match the value of the consignment itself.

Kerala HC observed the followings :

1. The documents that ought to have accompanied the transportation (Return journey) were the job work invoice, the delivery challan and the e-way bill. In the instant case it was covered by such documents.
2. The value shown in the e-way bill on the return journey had to correspond with the value shown in the invoice raised by the job worker and the rate of Rs. 3469.76/- shown in both the documents.

RECENT CASE LAWS

3. In the e-way bill and also the job work- invoice, the quantity of the goods is correctly shown as 15,490 Kgs and the description of goods is also shown as "HR plates".

Kerala HC thus concluded that “the detention was wholly unjustified” and allows release of goods & Vehicle detained as there could be no doubt with regard to the identity of the goods that were being transported, and the difference in the value shown in the e-way bill (from that shown in the original delivery challan) was only on account of the requirement of maintaining uniformity in the value shown in the tax invoice raised by the job worker and the e-way bill generated by him.

SKKA Comments: Above judgement by HC has come as a relief for bonafide tax payers and protects them from arbitrary detention of goods & Vehicle under section 129 by department merely on mismatch in the value shown in Job-work Invoice and e-way bill. Department should refrain from such type of detention because As per the statutory provisions, when goods are sent to other premises for job work, it is the same delivery challan that has to accompany the transportation for the onward and return journey as well.

RECENT CASE LAWS

Rainbow Infrastructure Pvt. Ltd. & Anr. vs. Assistant Commissioner, SGST - Time-limit restriction for availing ITC basis GSTR-3B/annual-return u/s 16(4) challenged before Calcutta HC

[TS-997-HC-2020(CAL)-NT]

Calcutta HC

Calcutta HC issues notice challenging the denial of ITC when not taken within due-date of furnishing return u/s 39 of CGST Act, 2017 for the month of September following the end of financial year to which any invoice or debit note pertains or furnishing of annual return, whichever is earlier; Hears petition challenging vires of section 16 (4) of the CGST/WBGST Act as well as constitutional validity of retrospective amendment of Rule 61 of CGST/WBGST Rules wherein GSTR-3B has been notified as return u/s 39.

The key grounds of challenge are as follows:

- If the restriction under Section 16(4) of the Act is invoked and ITC is denied then the 'non-obstante clause (i.e. Notwithstanding anything contained)' in Section 16(2) of the Act would cease to have any meaning or purpose.
- ITC is not taken through return but instead it is taken through the books of accounts immediately on receipt of goods or services in terms of 1st proviso to Section 16(2) of the Act.
- It is also being argued that the provision of section 16(4) of the CGST Act, 2017/WBGST Act, 2017 is arbitrary and unreasonable as they are violative of Article 14.
- The provisions is also violative of Article 19(1)(g) and Article 300A of the Constitution.
- The denial of ITC would defeat the object of the 122nd Constitutional Amendment Bill, 2017, that is to avoid the cascading effect of taxes.

SKKA Comments : The above move by Calcutta HC is good for registered tax payer as provision of 16(4) of the CGST Act, 2017 is in itself is arbitrary and illegal. The restriction under 16(4) also results double taxation for the registered person as he would have paid the tax amount to his supplier once at the time of making payment. Now if the input tax credit is not allowed then he needs to pay it either by way of making payment or adjusting his credit ledger by making DRC-03.

RECENT CASE LAWS

Ganga Ram vs. State of Punjab & Anr. - Criminal trial for offences u/s 132 of GST act and arrest lack constitutional backing, grants bail

[TS-1011-HC-2020(PandH)-NT]

The Punjab and Haryana HC

P&H HC grants bail to Petitioner accused for alleged GST evasion holding that the he is not required for further custodial investigation, and directs the Petitioner to surrender passport and furnish bail/surety bonds; Petitioner contended that he was falsely implicated in this case, and moreover, the matter is of civil nature; Observes that Petitioner has been in custody for a period of 4 months and the trial shall take time to conclude owing to the COVID situation; Lastly, opines that the criminal trial for offences u/s 132 of the PGST Act, 2017 and arrest u/s 69 are without jurisdiction, have no backing of the constitutional provisions.

SKKA Comments : Arrest is necessary so that investigation can be conducted smoothly and evidences are not tampered with. Unnecessary custody is not needed especially when it is a civil matter.

RECENT CASE LAWS

Heritage Lifestyles and Developers & Pvt. Ltd. vs. UOI & Ors. - HC Allows benefit of ITC, denial merely on technical grounds, “travesty of justice”

[TS-1010-HC-2020(BOM)-NT]

Bombay HC

Owing to technical glitches on GST portal, Petitioner could not file GST TRAN-01 on or before December 27, 2017 but had manually filed the same which came to be rejected as IT Grievance Redressal Cell (ITGRC) found that Petitioner has not tried to save or submit or file TRAN-1 before December 27, 2017; Debunks ITGRC’s view, holding that “There is no further explanation or clarification on this issue by the Respondents except to state the ITGRC’s description”; Highlights that “this information of rejection of the Petitioner’s application for manual GST TRAN-1 has not been communicated to the Petitioner despite several reminders/ communications from the Petitioner and it is only by way of the affidavit in reply filed to this Petition that the Petitioner has become aware of the rejection”; Referring to ratio laid down by SC in Mangalore Chemicals, Court observes that “Merely on technical ground an admitted input credit is sought to be denied to the Petitioner. That according to us would be wholly unfair and a travesty of justice”; Accordingly, directs Revenue to accept GST TRAN-01 filed by the Petitioner within 2 weeks from the order.

SKKA Comments : Time and again the Courts have ruled that ITC cannot be denied on technical grounds especially when delay was due to inaction of the Revenue

RECENT CASE LAWS

Shiv Kishor Construction Pvt. Ltd. vs. UOI & Ors. -HC Quashes SCN for violation of natural justice principles, remands matter for fresh consideration

[TS-1012-HC-2020(PAT)-NT]

Patna HC

Patna HC quashes and sets-aside order passed by Deputy Commissioner, SGST in view of manner of issuance of order holding that “On all fours, principles of natural justice stand violated”; Notes that a show-cause notice has been issued alleging suppression of tax seeking reply from Petitioner by a particular date while order passed in Revenue’s favour entail civil and pecuniary consequences, causing prejudice to Petitioner; However, for unexplained reasons and circumstances, without any prior intimation or knowledge, the matter was pre-poned and order passed without affording any opportunity of hearing; Accordingly, remands the matter for fresh consideration while directing the Petitioner to appear before the Authority who shall, after complying with the principles of natural justice, pass a fresh order, with liberty to Petitioner to raise all issues.

SKKA Comments: Principles of natural justice needs to be followed at every level of adjudication and cannot be taken lightly.

RECENT CASE LAWS

Lite Bite Travels Foods Pvt. Ltd. vs. UOI & Ors. - HC Orders to deposit principal profiteered amount, stays interest, penalty & further investigation

[TS-1013-HC-2020(DEL)-NT]

Delhi HC

Delhi HC issues notice in writ petition filed challenging the order of National Anti-Profiteering Authority (NAA) booking Petitioner for profiteering of Rs. 61,67,097/- (inclusive of GST of Rs. 3,23,927) along-with consequential directions; Petitioner submits that GST component of total amount confirmed in view of profiteering has already been deposited with Tax Department; In view of the aforesaid, HC directs Petitioner to deposit the principal profiteered amount (excluding GST component) with Central Consumer Welfare Fund within 3 months; Instructs further that “The interest amount as well as the penalty proceedings and further investigation with regard to other outlets are stayed till further orders”.

SKKA Comments : Registered persons need to pass the benefit of reduced rates of taxes to the buyers failing which they are bound to be hit by the anti-profiteering provisions.



RECENT NOTIFICATIONS/CIRCULARS

Instruction No. 4/3/2020-GST dated 27/11/2020

Standard Operating Procedure (SOP) for verification of taxpayers granted deemed registration

1. With effect from 21.08.2020, rule 9 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) provide **that in cases where Aadhaar authentication has either not been opted for by the applicant or where such authentication has failed, the proper officer has to mandatorily initiate physical verification of the premises, or in cases where the physical verification is difficult, certain additional documents may be called for by the proper officer** (upon approval of an officer not below the rank of Joint Commissioner) for verification before deciding upon grant of registration. Further, the present provisions allow for deemed registration upon completion of 21 days of application in such cases if the proper officer has not issued any notice within the said 21 days.

Instruction No. 4/3/2020-GST

4.1 The Standard Operating Procedure (SOP) to be followed by the proper officer for carrying out the physical verification of the persons who have been granted a deemed GST registration is outlined below.

4.2 The proper officer shall conduct physical verification of the principal place of business and wherever possible, additional place of business, indicated in GST registration FORM REG-01 of the concerned registrant. During the physical verification, the officer, among other things, would also verify the following details:

- a. In case the applicant intends to carry out manufacturing activity, whether capital goods, if required for the said manufacturing activity, have been installed.*
- b. Electricity connection, bills paid in the relevant period.*
- c. Size of the premises – whether it is commensurate with the activity to be carried out by the applicant.*

Instruction No. 4/3/2020-GST

- d. Whether premises is self-owned or is rented and documents relating ownership/ registered lease of the said property. In case of doubt, enquiry may also be made from the landlord/ owner of the property in case of rented / leased premises.*
- e. No of employees already employed and record of their employment*
- f. Aadhaar and PAN of the applicant and its proprietor, partners, Karta, Directors as the case may be and the authorised signatories.*
- g. Bank's letter for up to date KYC.*

4.3 In addition to the physical verification conducted, the proper officer, in the interest of revenue, would carry out the preliminary financial verification of the registrants by seeking the following documents and carrying out its scrutiny:

Instruction No. 4/3/2020-GST

- a. ITRs of the company / LLP from the date of incorporation or for last three financial years, whichever is less. ITRs of proprietor, partners, Karta, etc. may be taken in other cases.
- b. The status of activity from the date of registration of all the bank account(s) linked to registration; the same may be taken through a letter / undertaking from the applicant. Phone number declared / linked to each of the bank accounts may also be obtained.
- c. Quantum of capital employed/proposed to be employed.
- d. Out of the amount mentioned at (c) above:
 - (i) Own Funds:
 - (ii) Loan Funds: (indicate the names, complete address, PAN and amount borrowed from each such lender separately):

Notification No. 90/2020 Dated 1st December, 2020

The Central Board of Indirect Taxes and Customs, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2017 - Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017, namely:-

In the said notification, after the first proviso, the following proviso shall be inserted, namely, -

Provided further that for class of supply as specified in column (2) and whose HSN Code as specified in column (3) of the Table below, a registered person shall mention **eight number of digits of HSN Codes** in a tax invoice issued by him under the said rules -

Notification No. 90/2020 Dated 1st December, 2020

S.No. (1)	Chemical name (2)	HSN Code
1	Mixture of (5-ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate (CAS RN 41203-81-0) and Bis [(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate (CAS RN42595-45-9)	38249100
2	Dimethyl propylphosphonate	29313200
3	(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl methyl methylphosphonate	29313600
4	Bis[(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate	29313700
5	2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane 2,4,6-trioxide	29313500

Notification No. 90/2020 Dated 1st December, 2020

S.No. (1)	Chemical name (2)	HSN Code
6	Dimethyl methylphosphonate	29313100
7	Diethyl ethylphosphonate	29313300
8	Methylphosphonic acid with (aminoiminomethyl) urea (1: 1)	29313800
9	Sodium 3-(trihydroxysilyl) propyl methylphosphonate	29313400
10	2,2-Diphenyl-2-hydroxyacetic acid	29181700
11	2-(N,N-Diisopropylamino)ethylchloride hydrochloride	29211400
12	2-(N,N-Dimethylamino)ethylchloride hydrochloride	29211200
13	2-(N,N-Diethylamino)ethylchloride hydrochloride	29211300
14	2-(N,N-Diisopropylamino)ethanol	29221800

Notification No. 90/2020 Dated 1st December, 2020

S.No. (1)	Chemical name (2)	HSN Code
15	2-(N,N-Diethylamino)ethanethiol	29306000
16	Bis(2-hydroxyethyl)sulfide	29307000
17	2-(N,N-Dimethylamino)ethanethiol	29309092
18	Product from the reaction of Methylphosphonic acid and 1,3,5- Triazine-2,4,6- triamine	As applicable
19	3-Quinuclidinol	29333930
20	R-(-)-3-Quinuclidinol	29333930
21	3,9-Dimethyl-2,4,8,10-tetraoxa-3,9-diphosphaspiro [5.5] undecane 3,9- dioxide	29313900
22	Propylphosphonic dichloride	29313900
23	Methylphosphonic dichloride	29313900

Notification No. 90/2020 Dated 1st December, 2020

S.No. (1)	Chemical name (2)	HSN Code
24	Diphenyl methylphosphonate	29313900
25	O-(3-chloropropyl)O-[4-nitro-3-(trifluoromethyl)phenyl] methylphosphonothionate	29313900
26	Methylphosphonic acid	29313900
27	Product from the reaction of methylphosphonic acid and 1,2- ethanediamine	As applicable
28	Phosphonic acid,methyl-, polyglycol ester (Exolit OP 560 TP)	38249900
29	Phosphonic acid,methyl-,polyglycol ester (Exolit OP 560)	38249900
30	Bis (polyoxyethylene) methylphosphonate	39072090
31	Poly(1,3-phenylene methyl phosphonate)	39119090

Notification No. 90/2020 Dated 1st December, 2020

S.No. (1)	Chemical name (2)	HSN Code
32	Dimethylmethylphosphonate, polymer with oxirane and phosphorus oxide	38249900
33	Carbonyl dichloride	28121100
34	Cyanogen chloride	28531000
35	Hydrogen cyanide	28111200
36	Trichloronitromethane	29049100
37	Phosphorus oxychloride	28121200
38	Phosphorus trichloride	28121300
39	Phosphorus pentachloride	28121400
40	Trimethyl phosphite	29202300

Notification No. 90/2020 Dated 1st December, 2020

S.No. (1)	Chemical name (2)	HSN Code
41	Triethyl phosphite	29202400
42	Dimethyl phosphite	29202100
43	Diethyl phosphite	29202200
44	Sulfur monochloride	28121500
45	Sulfur dichloride	28121600
46	Thionyl chloride	28121700
47	Ethyldiethanolamine	29221720
48	Methyldiethanolamine	29221710
49	Triethanolamine	29221500



Notification No. 90/2020 Dated 1st December, 2020

The principal notification number 12/2017 - Central Tax, dated the 28th June, 2017 which was further amended vide Notification No.78/2020 dated-15th October, 2020

For reference both the Notifications have been reproduced below-

Notification No. 90/2020 Dated 1st December, 2020

Notification No.78/2020 Central tax dated 15th October,2020

Serial Number	Aggregate Turnover in the preceding Financial Year	Number of Digits of Harmonised System of Nomenclature Code
1	Up to rupees five crores	4
2	more than rupees five crores	6

Notification No.12/2017 Central tax dated 28th June,2017

Serial Number	Aggregate Turnover in the preceding Financial Year	Number of Digits of Harmonised System of Nomenclature Code
1	Upto rupees one crore fifty lakhs	NIL
2	more than rupees one crore fifty lakhs and upto rupees five crores	2
3	more than rupees five crores	4



CONTACT US

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THANK YOU

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