





PEE BEE Enterprise VS Asst. Commissioner SGST & Ors - Service of order through web portal is statutorily prescribed thus order can't be held invalid merely for service of physical order copy at a later stage.

#### 2020-TIOL-1394-HC-KERALA-GST

It is the case of the petitioner that the assessments pertaining to the months April and May 2019 were completed u/s 62 of the SGST Act on best judgment basis, taking note of the non filing of returns by the petitioner assessee for the said month - While the assessment orders are dated 20.8.2019, it is the case of the petitioner that these orders were not served on him till much later and within 30 days after the from the date of receipt of the orders, he filed the returns as permitted under Section 62 of the SGST Act - Petitioner, therefore, contends that the assessment orders have to be treated as withdrawn by virtue of the provisions of Section 62 of the Act.

Held - From a reading of the statement of the respondent, it is found that the assessment orders dated 20.8.2019 were served on the petitioner through publication on the web portal on 20.8.2019 itself - Over and above that, an email was also sent to the petitioner at his registered email id, although the petitioner says that he did not receive the email but received only a copy of the same through registered post much later - Bench notes that the service of an order through the web portal is one of the methods of service statutorily prescribed under Section 169(1)(c) and (d) of the SGST Act and if that be so, then the petitioner cannot deny the fact of receipt of the order on 28.9.2019 for the purposes of filing the returns as contemplated under Section 62 of the SGST Act with a view to getting the assessment order withdrawn -

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Inasmuch as the return filed by the petitioner for the period April and May 2019 was only on 30.10.2019 i.e. 71 days after the date of service of the assessment order through the web portal (20.8.2019), the petitioner cannot aspire to get the benefit of withdrawal of the assessment orders contemplated u/s 62 of the SGST Act - The assessment orders would, therefore, have to be held valid and the remedy of the petitioner against the said assessment order can only be through an appeal before the appellate authority under the Act - Taking note of the submission of the petitioner that he would require some time to move the appellate authority, Bench directs that the recovery steps for recovery of amounts confirmed against the petitioner by Exts.P1 and P2 assessment orders and Exts. P8 and P9 demand notices shall be kept in abeyance for a period of one month so as to enable the petitioner to move the appellate authority in the meanwhile and obtain orders of stay in the stay application filed along with the appeal - If the petitioner files the appeal within a period of two weeks from the date of receipt of a copy of this judgment, then the appellate authority shall treat the appeals as filed within time, and proceed to consider the stay applications preferred by the petitioner on merits after hearing the petitioner

SKKA Comments: Section 169(1)provides for manner of service of any order under the act, clause (d) of which allows service of order "by making it available on the common portal". Thus the contention of the applicant that physical copy of order under section 62 was received much later isn't a valid claim as the same was timely served via common portal. HC has rightly ruled that since order has been served through web portal, 30 days for filing return shall be calculated from date of service of order on web portal and not from date of receiving physical copy of order.

It is therefore suggested that all the taxpayers shall at regular interval check the web portal to ensure if any communication has been received from department and take necessary actions thereafter.

Jagdish Arora & another Vs UOI - Merely on bald statement of employee of company, person can't be held responsible for its functions, bail granted

#### 2020-TIOL-1395-HC-MP-GST

GST - Bail application filed u/s 439 of the CrPC on behalf of applicants Jagdish Arora and Ajay Kumar Arora who have been taken into judicial custody in connection with Crime no. DGGI/BhZU/1204/03/2020-21/SDPL in respect of the offence punishable u/s 132(1)(a) r/w s.132(1)(i) of the CGST Act - Instant case arises out of proceedings initiated by the GST department in relation to the purported evasion of GST by the company - Some Distilleries Pvt. Ltd. [SDPL] purportedly leviable and evaded on account of production and sale of sanitisers - Petitioners claim that they are neither Directors/Managers/Officers/employees or authorised representatives of the SDPL and as such, they are not responsible for the day-to-day business affairs of the company; that both the applicants had resigned their Directorship from SDPL on 01.04.2009 i.e. nearly 11 years ago; that the department has not collected or placed on record even an iota of documentary evidence in order to substantiate their version; that the applicants are entitled to bail on this ground alone.

Held: Bench has gone through the record in order to ascertain the existence of 'reasons to believe' for the proceedings being initiated against the applicants - Bench does not perceive any material, except the statement of the employee - Binay Kumar Singh; that there is no documentary material produced on record to show that the present applicants were legally in-charge and responsible for the day-to-day working of the company; that they had already resigned from the Directorship of the company and merely on a bald statement of an employee of the company, it cannot be held that the present applicants were incharge and responsible for the functions of the company Contd...

- without commenting on the merits of the case, the application for grant of bail to the applicants stands allowed - It is directed that the applicants be released from custody on their furnishing a personal bond in the sum of Rs.5 lakhs each, with separate sureties of like sum to the satisfaction of the trial court, for their appearance before it, as and when required and subject to the conditions laid down - Original records of the case to be returned to the respondent in a sealed cover

**SKKA Comments:** Above Judgment of HC brings relief to genuine taxpayers as it highlights the fact that a person can't be held liable for day to day functionalities of the company merely on the bald statement made by employee of the company. Any such allegations shall be backed by legal document which was lacking in the given case. Therefore, department should take due care and gather enough documentary evidence before alleging a person liable for any act.



M/S Thoppil Agencies Vs ACCT & Ors - HC: Quashes impugned order u/s 129(3) being violative of Principle of Natural Justice.

#### 2020-TIOL-1367-HC-KAR-GST

GST - Petition is filed seeking quashing of the impugned penalty order dated 25.11.2019 in Form GST MOV 09 by the respondent No.1 under Section 129 (3) of the CGST Act and for other reliefs - Petitioner submitted that the impugned order is violative of principles of natural justice inasmuch as without giving any personal hearing to the petitioner and without affording sufficient and reasonable opportunity to the petitioner, the respondent NO.1 has proceeded to pass the impugned order at Annexure-E placing reliance upon several documents which were never brought to the notice of the petitioner prior to passing of the impugned order - Counsel for Revenue submits that there is no merit in the petition, particularly in the light of the remedy by way of appeal available to the petitioner and as such, the writ petition is liable to be dismissed.

Held - It is not in dispute that no opportunity of personal hearing was given to the petitioner before passing the impugned order - The material on record also indicates that several documents relied upon by the respondent No.1 in the impugned order at Annexure-E were neither brought to the notice of the petitioner nor was he permitted to cross-examine the witnesses with reference to the said documents - aforesaid facts and circumstances will indicate that in the absence of sufficient and reasonable opportunity being granted in favour of the petitioner, the impugned order is clearly in contravention of principles of natural justice and that the same deserves to be set aside on this ground alone and the matter deserves to be remitted back to the respondent No.1 to consider and dispose of the same afresh in accordance with law after providing sufficient and reasonable

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opportunity to the petitioner - respondent No.1 is directed to dispose off and conclude the proceedings within a period of one month

SKKA Comments: In recent past, HC has set aside/ quashed may impugned exparte orders by department being violative of principle of natural justice. It has been found in many cases that department violates the principle of Audi alteram partem i.e., has passed order without giving opportunity of being heard to the taxpayer which is also evident in the given case. HC has rightly quashed the impugned order as section 129(4) specifically provides that "No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard". Thus, the order is a relief to the taxpayers and an eye opener for the tax officials.



Nitesh Wadhwani Vs State of Madhya Pradesh - Facts are a paramount consideration for granting or refusing the protection of a pre-arrest bail - It is nowhere stated that the anticipatory bail is barred by law or cannot be granted in a case registered under GST Act

#### 2020-TIOL-1392-HC-MP-GST

GST - Application is filed under section 438 of the Cr.P.C. seeking anticipatory bail in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act - petitioner began with the arguments that the only fault of the petitioner is that he is the landlord of the premises where his tenant, who runs a factory, allegedly evaded the tax by clandestine sale of Pan Masala; that the petitioner is neither a Partner of his tenant M/s Vishnu Essence nor in any other way concerned with it; that he has been posed as if he is the only responsible person for whatever has allegedly been done against the law by his tenant, while no document has been produced by the department to show his involvement in the alleged tax evasion - Pendency of investigation is also taken as a ground to press for dismissal of the petition, which is countered on the ground that the department has already completed custodial interrogation of Kishore Wadhwani, who is real uncle of the petitioner and is impleaded for the same charge on the basis of the same set of evidence, therefore, no further custodial interrogation of the petitioner as requested by the department is necessary -It is further submitted that the officials of the department have harassed the co accused persons and have recorded their statements to suit their whims under threat, coercion and duress - The petitioner have all reasonable apprehension that in case of his arrest,

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he will be treated in the same fashion and may be forced to signed the statements against his wish under the threat and undue pressure of the officials - It is impressed by Revenue counsel that this Court does not possess the power to grant anticipatory bail as the provisions of Section 438 Cr.P.C. are not applicable in cases registered under the GST Act.

Held: It emerges from most of the judgments on the issue of granting anticipatory bail cited by the respondent that the Courts have held that the facts of a particular case are the paramount consideration for granting or refusing the protection of a pre-arrest bail - It is nowhere stated that the anticipatory bail is barred by law or cannot be granted in a case registered under the GST Act - Elaborate discussion of evidence, which is otherwise confidential, would not be appropriate as it may affect the case of either party but on careful consideration of the evidence on record, Bench is of the considered opinion that it would be appropriate to allow the petition, therefore, without commenting on merits of the case, the petition is allowed - Bail application is allowed and it is directed that in the event of the petitioner's arrest or surrender before the police within a month of this order, the petitioner Nitesh Wadhwani S/o Late Shri Ashok Wadhwani shall be released on bail on his furnishing a personal bond of Rs.10,00,000/- with one solvent surety of the like amount to the satisfaction of Station House Officer of the Police Station concerned

**SKKA Comments:** This is a welcome judgment from HC wherein two important points has been highlighted –

- a) Facts of particulars case are paramount consideration for granting/refusing pre arrest bail.
- b) It is nowhere stated that anticipatory bail is barred by law or cannot be issued in a case registered under GST Act.

Thus, the judgment opens door for other genuine taxpayers to move to court for anticipatory bail if any such circumstances arises.



# COMPULSORY E HEARING IN GST, SERVICE TAX, CENTRAL EXCISE AND CUSTOMS MATTERS

The CBIC on Friday 21/08/2020 announced compulsory virtual hearings in Central Indirect taxes of GST, Service tax, Central Excise and Customs matters before any adjudicating authority, first appellate authority i.e. Commissioner (appeals) or ADC (Appeals) and compounding authorities w.e.f 21/08/2020.

The above would go a long way in fast disposal of all the pending matters before the forums above and timely disposal of justice to assessees.

The Instruction further specifies the below process for the same:

- a. The hearing would take place over video conferencing facility
- b. The date and time to be informed from official email of the authority to the concerned parties
- c. The assessee should submit proof of authorized representative along with photo ID CARD of the representative.
- d. The submission made by the assessee will be reduced in writing and a statement of the same will be prepared which shall be called as "RECORD OF PERSONAL HEARING".
- e. The soft copy of the above should be emailed to the assessee within 1 day of the hearing
- f. The assessee can modify the contents and send the same back after signing within 3 days of the date of PH.
- g. In extra ordinary matters, the authority may approve personal physical hearings for reasons to be recorded in writing.

#### **SKKA COMMENTS**

Though the above is a welcome move for the pending litigations of the Service tax and Central Excise regime, however for GST the same would still take time as the State GST authorities have not notified any such mechanism and hence the same make not meet the intended objective in the GST regime.



