



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NATIONAL CONFERENCE ON GST

Important Judgments and AARs under GST law

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List of Key Judgments and Rulings

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- 1 *Bai Mamumbai Trust v. Suchitra (Bombay High Court)*
- 2 *Radhe Krishna Industries v. State of HP (Supreme Court)*
- 3 *VKC Footsteps v. Union of India (Supreme Court)*
- 4 *Union of India v. Bharti Airtel (Supreme Court)*
- 5 *DY Beathel Enterprise v. State Tax Officer (Madras High Court)*
- 6 *Dharmendra M Jani v. Union of India (Bombay High Court)*
- 7 *Jyoti Construction v. DCCT (Orissa High Court)*



1. What Constitutes 'Supply' under GST ?

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❖ *Bai Mamumbai Trust v Suchitra (Commercial Suit (L) No. 236 of 2017)* *(Bombay High Court)*

- Issue involved was whether a Court Receiver is liable to pay GST on fees and royalty received from an occupant of premises under dispute?
- Hon'ble Court laid down that no GST is payable by enumerating the following principles with respect to scope of 'supply':
 - ❑ Where no reciprocal relationship exists, a 'supply' cannot be said to have taken place
 - ❑ 'Supply doctrine' does not contemplate or encompass a unilateral act
 - ❑ For a supply to fall under sub-sections (a), (b) or (c) of Section 7(1) of the CGST Act, there must be a **contemplated consideration**
 - ❑ Only activities specified in Schedule I to the CGST Act are considered as supply, even if made without consideration. This is evident from the insertion of sub-section (1A) in Section 7 of the CGST Act vide the Amendment Act of 2018

Provisions



2. Provisional Attachment of Bank Accounts

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❖ *Radha Krishan Industries v. State of HP, 2021-VIL-18-SC* (Supreme Court)

- Petitioner's bank account and receivables amounting to Rs. 5 Crores were provisionally attached under Section 83 of the CGST Act
- Against the attachment, Petitioner filed its objections. However, the Adjudicating Authority, without affording an opportunity of hearing to the Petitioner, passed order giving rise to demand against the Petitioner
- Petitioner filed writ petition before High Court challenging proceedings under Section 83 of the Himachal Pradesh GST Act
- High Court dismissed writ petition on the ground of existence of alternate remedy
- Petitioner filed Special Leave Petition before Supreme Court against the High Court's verdict

Provisions



2. Provisional Attachment of Bank Accounts

- Hon'ble Supreme Court quashed High Court's judgment and set aside provisional attachment order basis following observations:
 - ✓ In spite of availability of alternative remedy, High Court may still exercise its writ jurisdiction in some contingencies, e.g., in the cases where there is breach of the principles of natural justice
 - ✓ Power available to the revenue under Section 83 is draconian in nature
 - ✓ Revenue needs to strictly fulfill all pre-conditions before undertaking provisional attachment
 - ✓ Commissioner's opinion must be based on tangible material that the revenue's interests are endangered and provisional attachment is only means to protect such interest
 - ✓ Commissioner is duty bound to deal with the taxpayer's objections and pass reasoned provisional attachment order



3. No Refund of Accumulated ITC

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- ❖ *VKC Footsteps India Pvt Ltd v Union of India (Order in Civil Appeal No. 4810 of 2021) (Supreme Court)*
- Apex Court upheld constitutional validity of Section 54(3) of CGST Act and Rule 89(5) of CGST Rules
- Apex Court made following observations from Constitutional angle:
 - ❑ Doctrine of equivalence qua goods and services inapplicable
 - ❑ This is clearly an area of law where judicial interpretation cannot be ahead of policy making
 - ❑ Constitution only guarantees that levy should be legal, and that collection should be in accordance with law (Article 265)
 - ❑ Claim to refund is governed by statute. No constitutional entitlement to seek refund
 - ❑ Court cannot redraw legislative boundaries on the basis of an ideal which the law was intended to pursue

Provisions



4. Revision of Form GSTR-3B not allowed

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- ❖ *Union of India v Bharti Airtel Civil Appeal No. 6520 of 2021 [2021-VIL-87-SC]*
(Supreme Court)
- Supreme Court set aside the judgment of Delhi High Court on the basis of following observations in respect of rectification/ revision of GSTR-3B filed for the period July 17 to September 17 (missed availing ITC for the invoices pertaining to this period)
 - ❑ Taxpayer is required to maintain proper books of account and do self assessment of ITC and tax liability including determination of balance amount lying in cash or credit ledger
 - ❑ Non-operation of GSTR-2A does not absolve taxpayers from their obligation of doing self assessment; GSTR-2A only acts as a facilitator
 - ❑ The primary source is in the form of agreements, invoices/ challans, receipts of the goods and services and books of accounts which are maintained by the assessee manually/ electronically. These are not within the control of the tax authorities
 - ❑ Delhi High Court wrongly allowed rectification of GSTR-3B as the GST Law allows rectification of any error only in subsequent return and not revision of return already filed



4. Revision of Form GSTR-3B not allowed (contd.)

- ❑ Even if there is no provision regarding refund of surplus or excess ITC in the electronic credit ledger, once assessee has discharged output tax liability in cash, it cannot later on ask for swapping of the entries, so as to show the corresponding amount in the electronic cash ledger from where they can take refund
- ❑ Payment for discharge of output tax liability by cash or by way of availing of ITC, is a matter of option, which having been exercised by the assessee, cannot be reversed unless the legislation permits



5. Recovery of ITC from Recipient

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❖ *D.Y. Beathel Enterprises v. State Tax Officer, 2021-VIL-308-MAD*
(Madras High Court)

- The Petitioner (i.e., recipient/ buyer) filed writ petition before the High Court challenging recovery of ITC on the ground that the revenue did not take any action against the supplier before proceeding to recover ITC from recipient
- Section 16(2)(c) provides that tax charged by the supplier should be actually paid to the government either through cash or ITC
- Court held that orders passed by the tax authority against the Petitioner suffer from fundamental flaws of non-examination of seller in the enquiry and non-initiation of recovery action against seller in the first place strict action should be taken against the supplier who did not remit tax in the Government account
- Press Release dated May 4, 2018 provides that non-payment of tax by the supplier will not lead to automatic reversal of ITC by the buyer and in case of the supplier's default, recovery shall be first made from the supplier

Provisions



5. Recovery of ITC from Recipient

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Key Points:

- This judgment brings relief for the taxpayer where recovery is initiated if the supplier defaulted in payment of tax to the government
- It is pertinent to note that a recipient avails ITC on the basis of the outward supply return filed by the supplier in GSTR 1 and thereby invoices getting reflected in GSTR 2A /2B of the recipient whereas the GST liability is discharged under GSTR 3B
- As a recipient of goods/ services, there is no mechanism by which recipient can check and ensure that the tax collected from the recipient has been duly deposited with the government by the supplier
- This case has also been relied upon by the Chhattisgarh High Court in the case of *BALCO V Union of India* (Writ Petition No. 94 of 2021)



6. Intermediary Services

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❖ *Dharmendra M Jani v. Union of India, Writ Petition No. 2031 of 2018*

(Bombay High Court)

- ❑ The Division bench of Bombay High Court reached a split view on the constitutional validity of the provisions relating to 'intermediary' and the said issue will now be decided by a third judge

Justice Abhay Ahuja's opinion: Upholding the levy of as constitutional

- ✓ In terms of Articles 269A and 286 of the Constitution, the Parliament has validly formulated policies regarding place of supply and pertaining to inter-state and intra-state supply under Section 13(8)(b), Section 7 and Section 8 of the IGST Act, respectively
- ✓ Section 13(8)(b) cannot be said to have extra-territorial implication, as it merely provides the place of supply as the location of the supplier of service who is located in India, and does not seek to levy tax on service recipient outside India. In any case, Article 245 is a 'notwithstanding' provision and is subject to other provisions of the Constitution

Provisions



6. Intermediary Services

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Justice Ujjal Bhuyan's opinion: Declaring tax on intermediary services as unconstitutional

- ✓ Articles 246A and 269A empower the Parliament to lay down principles for determining the place of supply and when such supply takes place in the course of inter-state trade or commerce, **but do not empower the Parliament to impose tax on export of services by treating the said supply as a local supply**
- ✓ Article 286(1) puts a restriction on imposition of tax by a State on supplies in the course of import or export. Article 286(2) empowers the Parliament to formulate principles as to when a supply takes place in the course of import or export, **but the said empowerment is not for the purpose of thwarting the entire scheme of the restriction imposed under Clause (1)**
- ✓ In terms of Article 245 of the Constitution, while a law cannot be held as unconstitutional merely on account of extra-territorial operation, **the said law should have some real connection to India**, which is not fanciful or illusory



7. Cash Payment of Pre-deposit

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❖ *Jyoti Construction v. Deputy Commissioner of CT & GST* (Odisha High Court)

- The Hon'ble High Court of Odisha held that payment of pre-deposit at the time of filing of appeal under Section 107(6) of the CGST Act could not be made by debiting the ECRL and the same should be paid through debiting ECL only on account of following key reasons:
 - ✓ “Output Tax” as defined under Section 2(82) of CGST Act could not be equated to the pre-deposit required to be made in terms of Section 107(6) of the CGST Act
 - ✓ Section 41(2) of the CGST Act restricts utilization of ITC only toward self-assessed output tax
 - ✓ Section 107 (6) of the CGST Act is not merely a machinery provision



8. ITC on CSR Expenses

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❖ *Dwarikesh Sugar Industries Ltd- AAR ,UP 2021-VIL-168-AAR (UP)*
(Authority for Advance Ruling, UP)

- The Applicant undertook various activities as a part of Corporate Social Responsibility ('CSR'), viz.:
 - ❑ Construction of school buildings
 - ❑ Free supply of furniture and fittings, electrical goods
 - ❑ Other expenses for charitable purposes
- Held that:
 - ❑ CSR expenses are mandated under the Companies Act, 2013 ('Companies Act').
 - ❑ CSR activities are undertaken in the course or furtherance of business and hence ITC is eligible under Section 16 of the CGST Act
 - ❑ CSR expenses cannot be considered as 'gift'. Accordingly, ITC cannot be restricted under Section 17(5)(h) of the CGST Act on the basis that the goods were supplied free
 - ❑ Regarding construction expenses, section 17(5) only restricts ITC on goods and services used for construction of immovable property to the extent of capitalization



8. ITC on CSR Expenses (contd.)

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Other Key Points:

- Covid related expenses i.e., 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities **are eligible CSR activities** (*Ministry of Corporate Affairs vide General Circular No.09/2021 dated 5th May 2021*)
- Spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families is an eligible CSR activity (*Ministry of Corporate Affairs vide General Circular No.13/2021 dated 30th July 2021*)
- However, recently the Gujarat AAR in Adama India (P.) Ltd [Advance Ruling No. Guj/GAAR/R/44/2021 dated 11-8-2021] rejected ITC towards expenses incurred for undertaking mandatory CSR activities

Charging Section

❑ Charging Section: Section 9(1) of CGST Act

Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person

Definition of Goods, Service

❑ Goods: Section 2(52) of CGST Act, 2017

“goods” means every kind of movable property other than money and securities but **includes actionable claim**, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

❑ Section 2(102) of CGST Act, 2017

“services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

❑ Article 366(26A) of the Constitution of India

“services” means anything other than goods

Meaning of 'Supply'

❑ Section 7 of CGST Act, 2017

(1) For the purposes of this Act, the expression **“supply”** includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b)

(1A)

Issues Concerning Supply

- ❑ Whether GST applicable on the payments such as:
 - Liquidated damages/ compensation
 - Grants
 - Drawing money as salary from partnership firm/ LLP by the Partner
 - Alimony
 - Winnings from game-show

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Attachment of Property

Section 83. Provisional attachment to protect revenue in certain cases.-

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, **the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account,** belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

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Refund of Inverted Duty

Section 54. Refund of tax: -

...

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Refund of Inverted Duty

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

...

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services x Net ITC/ Adjusted Total Turnover)} - tax payable on such inverted rated supply of goods and services

Explanation: - For the purposes of this sub-rule, the expressions -

(a) **"Net ITC" shall mean input tax credit availed on inputs** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

"Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

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Recovery of Tax

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

...

(c) subject to the provisions of section 41 or section 43A, the **tax charged in respect of such supply has been actually paid to the Government**, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

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Intermediary Services

Section 13. Place of supply of services where location of supplier or location of recipient is outside India.-

...

(8) The place of supply of the following services shall be the location of the supplier of services, namely:-

...

(b) **intermediary services;**

GST: Relevant Constitutional Provisions

- ❑ Article 366(12A) “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption
- ❑ Article 245. Extent of laws made by Parliament and by the Legislatures of States
 - (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State
 - (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation
- ❑ Article 246A(1): Notwithstanding anything contained in articles 246 and 254, Parliament and [subject to clause (2)] the State, have power to make laws with respect to **goods and services tax** imposed by the Union or by such State
- ❑ Article 246A(2): Parliament has exclusive power to make laws with respect to supply of goods/ services in the course of inter-State trade or commerce

GST: Relevant Constitutional Provisions

- ❑ Article 269A(1): Goods and services tax on supplies in the course of inter-State trade or commerce (including import) shall be levied and collected by the Government of India
- ❑ Article 269A(5): Parliament may formulate the principles for determining the place of supply, and when a supply of goods/ service takes place in the course of inter-State trade or commerce
- ❑ Article 286(1): No law of a State shall impose a tax on the supply of goods or of services or both, where such supply takes place:
 - outside the State; or
 - in the course of the import or export of the goods or services
- ❑ Article 286(2) : Parliament to formulate principles for determining when the supply of goods/ services takes place in any of the ways mentioned above

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Appeal Pre-deposit

Section 107. Appeals to Appellate Authority.-

...
(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) **a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order**, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

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