We are glad to share our GST litigation support communique and get you everything that you need to know from the world of litigation, along with incisive analysis from the CA. Rajat Mohan. This Newsletter brings you key judicial pronouncements from the Supreme Court, various High Courts, AARs, and Appellate Authorities emerging in the GST era and the erstwhile VAT, Service tax, and Excise regime.[1]

Synopsis of all changes in GST is given below for your quick reference:

S.No.	Subject	Authority
1	Unilateral appropriation of a part of a refundable amount for settling dues not justifiable	HC
2	Award of interest @ 9% when the authorities fail to explain the issue of delay.	HC
3	Assessing Officers to independently deal with the assessment. No influence from higher officials	HC
4	If the assessee files returns within 30 days of assessment orders, there is no occasion to issue recovery notice.	HC
5	Statutory time limit has to be strictly construed	HC
6	Demand cannot be raised for the difference in ST-3 returns and Form 26AS without further examining the reasons	CESTAT
7	No violation of principles of natural justice where the discretion exercised is for convincing reasons.	HC
8	No advance ruling in case of a question relating to the determination of place of supply	AAAR
9	No advance ruling when applicant is not a supplier	AAR
10	Applicant's request to withdraw the application considered by AAR	AAR

Unilateral appropriation of a part of a refundable amount for settling dues not justifiable

The assessee challenged the unilateral appropriation of a part of the refundable amount in terms of the impugned FORM-GST-RFD-06 dated 13-6-2018 to the arguable dues of other Assessment Year/s.

The court observed that the appropriation of money being a mode of recovery of dues under the Central Goods & Services Act, 2017, could not have been done without notice to the Assessee; therefore, a unilateral decision as to appropriation ought not to have been made.

It was further observed that the respondents being statutory authorities, need to practice fairness while dealing with a citizen and that, the unilateral recovery by way of appropriation falls short of fairness standards which the respondents are expected to maintain. The existence of power is one thing and its exercise is another; the existence per se does not justify the exercise.

It was observed that no case is made out for excluding an opportunity of hearing to the Assessee before making the impugned order.

Thus, the Court set aside the impugned which appropriated a portion of the refundable amount and the other part was left intact.

DPK Engineers (P.) Ltd. v. Union of India - [2020] 119 taxmann.com 108 (High Court of Karnataka)

Award of interest @ 9% when the authorities fail to explain the issue of delay.

[1] *DISCLAIMER: The views expressed are strictly of the author. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.*

While disposing of the main matter *i.e.* the *Saraf Natural Stone* v. *Union of India, the* High Court of Gujarat held the respondents liable to pay simple interest on the delayed payment of refund at the rate of 9% per annum from the date of filing of the GSTR-03. By this application, the applicants sought review of its order to the limited extent that the directions could not have been for making payment @ 9% per annum but in fact, it should have been @ 6% per annum as provided under Section 56 of the CGST Act.

High Court held that no case is made out for the review of the order passed by this Court dated 10.07.2019. Having regard to the peculiar facts and circumstances of the case, this Court thought fit to award interest @ 9% per annum.

Union of India v. Saraf Natural Stone - [2020] 118 taxmann.com 282 (High Court of Gujarat)

Assessing Officers to independently deal with the assessment. No influence from higher officials

Writ Petitioner contended that the impugned proceeding/notice is made based on the Audit Reports/Inspection Proposals proceeded from the Enforcement Wing or from ISIC Authorities.

Assessing Officer, who is a Quasi-Judicial Authority who has not independently applied his mind while dealing with the impugned proceedings, but had adopted the reports and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

The issue was whether the impugned proceeding/notice made by Assessing Officer based on the Audit Reports/Inspection Proposals proceeded from the Enforcement Wing or from ISIC Authorities is sustainable?

High Court observed that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement directors and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. It was observed that the Commissioner of State Tax, Chennai had issued Circular No. 3 dated 18-1-2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

Therefore, the High Court in view of Circular No. 3 dated 18-1-2019 issued by the Commissioner of State Tax, Chennai, set aside the impugned proceeding which proceeded based on the proposals/reports of the Enforcement Wing/ISIC, and the writ petition was allowed.

Jain Granites & Projects (P.) Ltd. *v.* Assistant Commissioner (CT) - [2020] 120 taxmann.com 66 (High court of Madras)

If the assessee files returns within 30 days of assessment orders, there is no occasion to issue recovery notice.

Petitioner is engaged in the production and distribution of films and had been regularly filing returns without fail. For the period from July 2018, the petitioner submitted the payment of GST under CGST and SGST instead of IGST.

On account of the fault committed by the petitioner to file returns in July 2018 to March 2019, the petitioner received notices dated 31 May 2019 in the form of GSTR-3A. Petitioner on receipt of notices filed returns within thirty days.

High Court observed that there could not have been an occasion for issuing of recovery notices as assessment orders were in law required to be withdrawn. There appear an apparent error and omission on the part of the revenue in not adhering to the fact. High Court, therefore, set aside the impugned recovery notices and allowed the writ petition.

Joy Mathew *v.* Union of India - [2020] 120 taxmann.com 344 (High Court of Kerala)

Statutory time limit has to be strictly construed

The petitioner defaulted in the filing of returns from April 2018 onwards. The assessment order was passed on the best judgment basis. Petitioner prayed for a direction to quash order issued by the 1st respondent on the ground that the 1st respondent while passing the said assessment orders on best judgment basis, did not adhere to the yardsticks indicated in section 62 for the exercise of the power. The issue under consideration was whether the petitioner is entitled to an extension of the period beyond the statutory period of 30 days so as to get the benefit of withdrawal of an assessment order passed on the best judgment basis under section 62(1) of the GST Act?

High Court observed that the assessee failed to file the returns within the time normally available under the SGST Act. The statutory provisions enable the assessee aggrieved by the assessment order passed on the best judgment basis to furnish his returns within a further period of 30 days and pay tax thereon based on the return filed by him. Petitioner submitted that he cannot resort to this procedure as he would not be able to pay the admitted tax liability on account of the paucity of funds.

High Court held that the statutory prescription of 30 days from the date of receipt of the assessment order passed under sub section (1) of section 62 has to be strictly construed against an assessee and in favor of the revenue since this is a provision in a taxing statute that enables an assessee to get an order passed against him on best judgment basis set aside. The provision must be interpreted in the same manner as an exemption provision in a taxing statute. Petitioner cannot be granted an extension of the period contemplated under sub section (2) of section 62, so as to enable the assessee to file a return beyond the said period to get the benefit of withdrawal of assessment order passed on best judgment basis under section 62(1) of the GST Act.

Mangomeadows Agricultural Pleasure Land (P.) Ltd. v. State Tax Officer - [2020] 119 taxmann.com 109 (High Court of Kerala)

Demand cannot be raised for the difference in ST-3 returns and Form 26AS without further examining the reasons

An appeal has been filed against the impugned order wherein service tax of Rs. 93,000/- was confirmed against the appellant along with an equal penalty. The issue under consideration was whether raise of demand on account of service tax by comparing the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant sustainable?

The court observed that the revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the provisions of Income-tax Act, 1961. Without further examining the reasons for the difference between the two, Revenue has raised the demand based on the difference between the two.

The court observed that Revenue cannot raise the demand based on such difference without examining the reasons for the said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement since it is not legal to presume that the entire differential amount was on account of consideration for providing services.

The court, therefore, *set aside* the impugned order and allowed the appeal.

Kush Constructions *v.* Central Goods and Services Tax, NACIN - [2020] 118 taxmann.com 164 (Allahabad - CESTAT)

No violation of principles of natural justice where the discretion exercised is for convincing reasons.

Petitioner-firm is engaged in the trading of food grains and sugar. A search was conducted in the premises of the assessee which led to the seizure of certain material documents. A show-cause notice

was issued u/s 74 of the CGST Act. Since account books and cash books were not seized and therefore demand was made from the proprietor to produce the same but the proprietor did not produce the same despite grant of sufficient opportunity.

The competent authority found that intention on the part of petitioner-proprietor while seeking copies/extracts of the documents seized was to cause interpolations in the account books maintained in his computer. Accordingly, the competent authority exercising its discretion available u/s 67 of the CGST Act denied the prayer for grant of copies of the seized books. Taking note of the failure of the petitioner to produce incomplete record competent authority held that verification cannot take place and therefore exercising discretion based on the compelling reason attributed to the petitioner, proceeded *ex parte* and issued impugned order adjudicating tax liability which included tax/cess, interest, and penalty. The issue under consideration was whether the discretion exercised by the competent authority u/s 67(5) of the CGST Act to withhold supply of copies/extracts of documents seized was judiciously exercised?

High Court observed that ever since conduction of search till the passing of the impugned order due and sufficient opportunity was afforded to the petitioner to produce the remaining relevant documents which had not been recovered during the search. The explanation given by the petitioner for not producing documents sought by Revenue was that the same is maintained in soft copy in a computer while regarding other documents sought by the Revenue, there was no explanation. This obviously gives an impression that the remaining relevant documents which could not be seized during the search are still in possession of the petitioner and therefore supply of copies or extracts of the seized documents to the petitioner can enable the petitioner to carry out interpolations for reducing or depressing tax liability and with a corresponding loss to the Revenue. The formation of this opinion is founded upon reasonable apprehension in the mind of the competent authority that the supply of copies/extracts of seized documents can lead to adversely affecting the investigation.

High Court held that the discretion available to the competent authority u/s 67(5) of the CGST Act while withholding supply of copies/extracts of documents seized appears to be judiciously exercised by the competent authority for reasons which *prima facie* appear to be cogent and convincing. Thus, it cannot be said that the competent authority has traveled beyond its jurisdictional purviews prescribed by law, and therefore in the absence of jurisdictional error in the order impugned, no interference was called for, especially in the face of unavailed alternative statutory remedy of appeal.

Agrawal Oil Mill *v.* State of Madhya Pradesh - [2020] 119 taxmann.com 303 (High Court of Madhya Pradesh)

No advance ruling in case of a question relating to the determination of place of supply

The Appellant is engaged in the business of selling Volvo branded trucks and thereafter providing after-sales support services, including warranty services for Volvo branded trucks and buses in India. In terms of the arrangement between the Appellant and M/s. Volvo Sweden, the Appellant undertakes the distribution and aftermarket support of Volvo products in India. The Appellant is responsible for the servicing of warranty claims of its customers and the onus to reimburse such expenses incurred for discharging the warranty obligation lies with M/s. Volvo Sweden. The applicant sought advance ruling on whether the supplies by the Appellant amounts to the export of services to M/s. Volvo Sweden and hence zero-rated under GST law?

AAR held that the transaction is an intra-State or inter-State transaction (but not an export transaction) depends on the place of supply. Since this transaction is not an export of services, the transaction is not a "Zero-rated Supply" under the IGST Act. On appeal to AAAR

AAAR observed that the determination of 'place of supply' of service by the appellant is a must before concluding whether a supply of service is export or not. Determination of place of supply is not a question on which an advance ruling can be sought. The Authority for Advance Ruling and the

Appellate Authority for Advance Ruling has to function within the legal boundary mandated by the Act.
AAAR, therefore, held that as the 'place of supply' is not covered by section 97(2), the question is not answered on the grounds of lack of jurisdiction.
Volvo-Eicher Commercial Vehicles Ltd., *In re* - [2020] 119 taxmann.com 176 (AAAR-KARNATAKA)

No advance ruling when applicant is not a supplier
The applicant was incorporated with the sole objective of the development of the "Multifunctional Complex" at Erode Railway Station, a project of the Rail Land Development Authority("RLDA") for the furtherance of business.
The offer by RLDA involves the payment of Rs. 3, 08, 27,800/- towards upfront Lease premium and Rs. 7, 80,000/- towards annual rent.
The applicant sought advance ruling on whether the One Time Lease Premium paid/payable by the said applicant to RLDA is exempted or not?
AAR observed that the lease agreement for the consideration of an upfront payment and annual rent to lease out the property by RLDA is a supply of services in the course or furtherance of business by RLDA to the applicant.
Further, as per Section 2(105), RLDA is the 'supplier' as they are supplying the leasing of property service. In this transaction, the applicant is the recipient and their contention that they are the supplier is incorrect.
AAR held that in the instant case the applicant is not making the supply but RLDA. Accordingly, the application is not admitted and rejected without going into merits.
Erode Infrastructures (P.) Ltd., *In re* - [2020] 120 taxmann.com 368 (AAR - TAMILNADU)

Applicant's request to withdraw the application considered by AAR
The applicant Company is engaged in the manufacturing of the Galvanized Transmission Line Tower. It sought a ruling on whether GST is payable under the Reverse Charge Mechanism (RCM) on the salary paid to Directors of the company who is paid a salary as per employment contract?
A request to withdraw the application was submitted by the authorized representative of the applicant.
AAR accepted the request to withdraw the application.
Man Structurals (P.) Ltd., *In re* - [2020] 119 taxmann.com 122 (AAR- RAJASTHAN)

About the author

CA. Rajat Mohan is Fellow Member of Institute of Chartered Accountants of India (F.C.A.) and Fellow of Institute of Company Secretaries of India (F.C.S.). Furthermore, he also has qualified post qualification course of Institute of Chartered Accountants of India on 'Information Systems Audit' (D.I.S.A.).

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For any areas of improvement do let us know.

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