



Caselaws on
GST

Prepared by Mr. Mohit Kalani from Sandesh Mundra & Associates

SGST CASELAW HIGH COURT DECISION



TOTAL 25 CASELAWS SO FAR....

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SRI SHAJI GREGORY G.S. Vs THE STATE OF KERALA:

27.10.2017



Brief of the Case:-

- **Detention of Goods on inter state transport of granite.**
- **Demand of CGST & SGST for value of goods.**
- **No documents as prescribed by the Central govt.**
- **Still no prima facie documents issued.**
- **Writ petition disposed off, gods released.**

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COIMBATORE ROAD CONTRACTORS WELFARE ASSOCIATION Vs STATE OF TAMIL NADU: 10.10.2017



Brief of the Case:-

- **Works Contract agreements executed prior to 01.07.2017.**
- **GST cannot be imposed & only VAT @ 2% is leviable.**
- **If any amount compelled to pay above 2%, the respondents have to remit the GST as paid.**
- **Appeal accepted by Commissioner of Commercial Taxes.**

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**M/s ASCICS TRADING COMPANY Vs THE ASSISTANT
STATE TAX OFFICER: 04.10.2017**



Brief of the Case:-

- **Power to state Govt. to detain goods as per IGST Act.**
- **Till date Central Govt. has not notified documents for inter state movement of goods.**
- **Nor the state govt. has power to make laws/rules in interstate movement of goods & for purpose of levy of tax.**
- **Writ petition allowed.**

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**M/s ASCICS TRADING COMPANY Vs THE ASSISTANT
STATE TAX OFFICER: 04.10.2017**



Brief of the Case:-

- **Petitioner a company registered under Companies Act,1956 & also also registered as trader in U.P. VAT Act.**
- **In GST, the VAT Dept. issued provisional Id & password for migration process.**
- **The PAN no. mentioned in the letter was of one of the director of the Co. & not that of Co.**
- **Petitioner requested to mention correct PAN NO.**

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**M/s ASCICS TRADING COMPANY Vs THE ASSISTANT
STATE TAX OFFICER: 04.10.2017**



Brief of the Case:- (contd..)

- **Petitioner checked the reg. status on GST website and found provisional id with correct pan no.**
- **But no password was allotted.**
- **Till date the return of July month was required to be filed.**
- **Ask the GST help desk to allot password for the provisional id.**
- **Request ID no. was generated thereof.**

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**M/s ASCICS TRADING COMPANY Vs THE ASSISTANT
STATE TAX OFFICER: 04.10.2017**



Brief of the Case:- (contd..)

- **No further reply from GST help desk.**
- **In absence of migration process, the petitioner was unable to file return, deposit due tax of July Month.**
- **Also cannot avail the online services.**
- **With the aforesaid direction, the writ petition was allowed.**

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FILCO TRADE CENTRE PVT LTD Vs UNION OF INDIA:

06.10.2017



Brief of the Case:-

- Challenged the condition of clause (iv) of sub-section (3) of section 140 of CGST Act.
- The petitioner has sizable stock of goods purchased prior to one year of GST implementation date.
- By virtue of condition, no CENVAT credit is available.
- Notice returnable on 17.11.2017, let there be notice to the learned Attorney General also.

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CHEMICO SYNTHETICS LIMITED Vs UNION OF INDIA:

27.09.2017



Brief of the Case:-

- Petitioners seeking duty free imports against Advance Authorization (AA) license issued prior to 01st July, 2017.
- The petitioner will be allowed to clear the consignments of imports of inputs for export orders without any additional levies.
- Subject to that the petitioner have to give an affidavit to the effect of not succeeding in writ petition or failing to fulfil its export obligation.
- Liable to pay IGST as determined.

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CHEMICO SYNTHETICS LIMITED Vs UNION OF INDIA:

27.09.2017



Brief of the Case:- (contd..)

➡ The interim direction will apply to those imports made for fulfilment of export orders placed prior to 01st July 2017 & not any export thereafter.

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RAJASTHAN TAX CONSULTANTS ASSOCIATION Vs UNION OF INDIA: 20.09.2017



Brief of the Case:-

- **GSTN system is not working upto the level and reuired correction & updation.**
- **CA/ Tax practitioner will inform by email to the District Information Officer of concerned district & problem will be resolved expeditiously.**
- **No coercion action will be taken for above clients.**
- **Composition scheme extended upto 30.09.2017**

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**M/s M.J.S. ENTERPRISES Vs THE CONTROLLER OF STORES
& PURCHASE, KSRTC & THE COMMISSIONER OF
COMMERCIAL TAXES: 13.09.2017**



Brief of the Case:-

- ➡ **Auction of old & scrap busses of KSRTC.**
- ➡ **Petitioners seeking direction to collect GST at 18% instead of 28% as rate applicable to normal buses.**
- ➡ **Scrap buses cannot be piled on road and rate of normal buses cannot be applied.**
- ➡ **Justified that it will be premature for the court to decide such academic question at this stage**

Prepared by Mr. Mohit Kalani from Sandesh Mundra & Associates

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**M/s M.J.S. ENTERPRISES Vs THE CONTROLLER OF STORES
& PURCHASE, KSRTC & THE COMMISSIONER OF
COMMERCIAL TAXES: 13.09.2017**



Brief of the Case:- (contd..)

- **The petitioner can either approach such authorities for advance ruling about the rate of GST tax in the matter.**

- **Or the determination of correct tax will be made at the time of assessment.**

- **Hence cannot invoke writ petition at this stage.**

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**Brief of the Case:-**

- **Impugned Show Cause Notice issued by the Directorate General of Central Excise Intelligence(DGCEI), notice was received by the Petitioner from the Director General of Goods Service Tax Intelligence (earlier known DGCEI)**
- **Petition challenging on the ground that if the DGCEI could not have issued the SCN in the first place then afortiori the DGGSTI cannot continue the proceedings pursuant thereto.**
- **HELD- SCN issued to petitioner should give reply and appear after DGCEI.**

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**Brief of the Case:- (contd..)**

➤ **Unless the Respondents are able to satisfy the Court that the DGGSTI (earlier DGCEI) is duly authorised in terms of the Finance Act to proceed with the SCNpetition challenging on the ground that if the DGCEI could not have issued the SCN in the first place then afortiori the DGGSTI cannot continue the proceedings pursuant thereto.**

➤ **The continuation of the proceedings would amount to a parallel exercise of determination of service tax liability**

➤ **It is directed that till the next date of hearing further proceedings pursuant to the SCN shall remain stayed**

Prepared by Mr. Mohit Kalani from Sandesh Mundra & Associates

**Brief of the Case:-**

- **Petitioner states that its attempt to make payment of IGST partially from CGST & SGST credit got frustrated when pop-up error message came from portal.**
- **Points out that this pop-up error is appearing only on the system and there is no such rule prescribed in terms of Section 49 (4) . It appears only after the figures are entered.**
- **Message stated: "Offset the CGST Credit completely before cross utilization [of] SGST Credit against IGST tax liability."**

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A & M DESIGN & PRINT PRODUCTION Vs UNION OF INDIA: 08.09.2017



Brief of the Case:- (contd..)

- **Reference of section 49 (4), rule 86 (2) & section 146 of CGST Act.**
- **The system cannot be programmed so as to deny the utilization of CGST and SGST credit**

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**Brief of the Case:-**

- **Utilisation of credit of the Clean Energy cess already paid –**
- **Seeking directions to amend the Form Tran-I, GSTR-3B, GSTR-1, GSTR 2 and GSTR-3 where utility of Cess is to be shown and/ or carried forward as cess or any other appropriate directions to the Respondents so use the credit of cess already paid on the stock held on 30th June 2017.**
- **HELD - it is directed that the Petitioner will continue to pay the taxes as and when they fall due after availing and utilizing the credit for the cess already paid, subject to the final orders passed by the Court.**

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MOHIT MINERALS PVT LTD Vs UNION OF INDIA:

08.09.2017



Brief of the Case(contd...)

➡ **The Respondents will not take any coercive steps against the Petitioner for the failure to file such electronic returns on time - matter listed for next Date.**

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KUNDAN CARE PRODUCTS LIMITED Vs UNION OF INDIA: 25.08.2017



Brief of the Case

- Challenge to Rule 44A of the Central Goods and Services Rules, 2017 requiring reversal of 5/6th of the CENVAT Credit which had already accrued to the Petitioner on account of payment of additional duty of customs levied under Section 3(1) of the Customs Tariff Act, 1975 paid at the time of importation of gold dore bar.
- Inserted Rule 44 A to deny the credit already accrued to the Petitioner.
- HELD - the Petitioners have made out a prima facie case for grant of interim relief in their favour. Further, the balance of convenience is in their favour for grant of interim relief.

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**KUNDAN CARE PRODUCTS LIMITED Vs UNION OF
INDIA: 25.08.2017**



Brief of the Case(contd..)

➡ **Directed till the next date of hearing, no coercive steps shall be taken by the Respondents to recover the credit already availed by the Petitioners.**

Prepared by Mr. Mohit Kalani from Sandesh Mundra & Associates

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APHRO ECOMMERCE SOLUTIONS PVT LTD Vs UNION OF INDIA: 25.08.2017



Brief of the Case

- **Condition to furnish a bond or a letter of undertaking ('LUT') in Form GST RFD-11 for exporting goods or services without payment of IGST.**
- **The export services provided by the Petitioner are covered under 'zero rated supply' under Section 16(1)(a) of the IGST Act**
- **In order to avail of the input tax credit, an export turnover of less than Rs.1 crore per annum, has to necessarily furnish a bond with a bank guarantee. Such a condition does not apply to an exporter with an annual turnover exceeding Rs. 1 crore. This is the Petitioner's understanding**

Prepared by Mr. Mohit Kalani from Sandesh Mundra & Associates

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APHRO ECOMMERCE SOLUTIONS PVT LTD Vs UNION OF INDIA: 25.08.2017



Brief of the Case (contd..)

- **However, para 4 of the Circular No. 4/4/2017-GST envisages that the bond has to be for a sum equal to the export tax liability.**

- **When it is 'zero rated supply', is there a necessity to furnish a bond with a bank guarantee? And if so, for what amount.**

- **Respondent requests for a short adjournment to seek a clarification on this aspect - matter listed for later date**

Prepared by Mr. Mohit Kalani from Sandesh Mundra & Associates

28.07.2017

Brief of the Case

- Petitioner engaged in entertainment facility. Launches a scheme valid upto 31st March, 2020 & collects entertainment tax thereon.
- GST implemented on 01.07.2017 has repealed vide Section 174 of U.P.G.S.T. Act with the saving clause that it will not effect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act provided the tax exemption granted under the repealed Act by any notification has not been rescinded or revoked by a fresh notification on or after the enforcement of the GST..

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28.07.2017**Brief of the Case(contd....)**

- **petitioner is that in view of Section 174 of the U.P.G.S.T. as there is no notification repealing the benefit conferred upon the petitioner under the scheme of the Act, he is entitle to collect entertainment tax as in the past upto 31st March, 2020 and to retain the percentage of it in accordance with the scheme.**

- **Petitioner amended the petition.**

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Brief of the Case

- **Petitioner prayed that implementation of GST be deferred till all legal flaws are removed and/or till full decision of final rates for all items including State surcharge items preparation is done by all India States and Union Territories.**
- **HELD - petitioner cannot urge and/or seek directions to the respondents to postpone the decision to implement GST with effect from 1.7.2017, for simple reason that herein levy and collection of taxes on goods and services has sanction of law.**

Brief of the Case

- **Ensure implementation of the GST, as it appears (i) over 65 Lakhs tax-payers have already migrated to GST network and obtained registrations, (ii) the rates and taxes have been notified; (iii) rules have been framed and notified ; (iv) wide publicity is given in public domain.**

- **In view of these facts, we are not inclined to entertain PIL and the same is dismissed**

18.07.2017

Brief of the Case

- Applicability of GST on Legal Services provided by individual Advocates including Senior Advocates and a Firm of Advocates
- Whether the recommendations of the GST Council could be modified, clarified, amended etc by a notification/notice/circular of 'press release.
- HELD - considering that the Respondents are seeking more time to address the important legal and constitutional issues, the Court directs that till further orders (i) no coercive action would be taken against advocates, law firms of advocates.

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18.07.2017

Brief of the Case

➤ (ii) Any registered advocate, law firm of advocates, LLPs of advocates will not be denied the benefit of this interim order.

➤ Till further orders, all legal services provided by advocates, law firms of advocates, or LLPs of advocates will be continued to be governed by the reverse charge mechanism unless of course any such legal service provider wants to take advantage of input tax credit and seeks to continue with the voluntary registration under CGST Act and the corresponding provision of IGST or DGST Act

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Brief of the Case

- The petitioner has been registered as sole proprietor in place of a partnership firm.
- The Commissioner State Tax, Lucknow is expected to issue new GST ID/pass word to the petitioner as a partnership firm shortly whereupon necessary amendment in the registration certificate shall be made.
- In the meantime, no penal action would be initiated against the petitioner on non filing of the GST return and deposit of tax thereon provided the returns and the tax is deposited within two weeks of the issuance of the correct registration certificate.

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Brief of the Case

➤ The petitioner contends that the goods were purchased from the manufacturer on payment of Central and State, Goods and Services Tax as is evidenced from the invoice at Ext.P7.

➤ The learned Government Pleader states that, there were no. 18 mm commercial plywood available for transport.

➤ The invoice is for 12mm commercial plywood of 1005.28 Sqm and 18 mm plywoods of 1255.83 Sqm.



Brief of the Case

- Hence it was found that there was no nexus between the documents accompanied and actual goods under transport. Hence Ext.P5 was issued.
- The Intelligence Inspector shall made a fresh assessment recomputing the value of the goods and shall compute the CGST and SGST payable together with penalty.
- the Intelligence Inspector shall made a fresh assessment recomputing the value of the goods and shall compute the CGST and SGST payable together with penalty.



Brief of the Case

- Imports under the Advance Authorization licenses issued prior to 1st July, 2017.
- Requirement of additional discharge IGST with option of subsequent refund
- HELD - the Petitioner-Exporter is not questioning the legislative competence to levy the additional IGST. It is only questioning the applicability of such levy even to imports that are made for fulfilment of export orders that have been placed on and accepted by the Petitioner prior to 1st July, 2017

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Brief of the Case

- The Court is of the view that the Petitioner has made out a prima facie case for grant relief.
- Direction issued to the Respondents to allow the Petitioner to continue making the imports under the Advance Authorization licenses issued prior to 1st July, 2017 in terms of their quantity and value subject to certain conditions.
- The writ petition is set down for final hearing on later date.

Brief of the Case

- **Detention of goods, nexus between the documents accompanied and actual goods under transport.**
- **Revenue challenge to Single Bench order allowing provisional release of goods pending adjudication.**
- **Section 129(2) provides that, the provisions of Section 67(6) shall apply for detention and seizure of goods and conveyances.**

Brief of the Case

➡ **Section 67(6) provides that, the goods seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.**

➡ **These statutory provisions, therefore, provide a mechanism for adjudication following detention of goods including for the provisional release thereof pending adjudication. When the statute itself provides for such a mechanism, a deviation therefrom cannot be ordered.**

➡ **Writ appeal is disposed of in favour of Revenue**

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14.09.2017**Brief of the Case**

- **Petition challenging restriction of reverse charge mechanism only to 'representational services' rendered by advocates / law firms including LLPs**
- **Learned Additional Solicitor General of India, states that Central Govt. to issue two fresh notifications, by way of corrigendum to Notification Nos. 8 and 13/2017**
- **The Central Government, the Govt. of NCT of Delhi has also to issue a notification on the same lines by way of corrigendum to Notification No.13/2017-State Tax (Rate)**

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14.09.2017

Brief of the Case

➡ **The issue concerning exemption of lawyers from registration under Section 23 (2) of the CGST Act; the position concerning those lawyers whose registration under the Finance Act 1994 has 'migrated' to the CGST Act in terms of Section 22(2) thereof and other issues raised in these petitions will be taken up for consideration on the next date.**

Prepared by Mr. Mohit Kalani from Sandesh Mundra & Associates

18.09.2017**Brief of the Case**

- **Facility of filing Advance Ruling application through GST Portal.Feedback from GSTN.**
- **Court questions the authority of GSTN to postpone the facility of application for seeking advance ruling manually till 20th October 2017 when the provisions of law are already in force. Neither the counsel for GNCTD nor the counsel for the Union of India is able to provide an answer.**
- **Notice issued to the GSTN**

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Brief of the Case

- **Input tax credit mineral purchased in the e-auction**
- **HELD - we direct the Monitoring Committee to take necessary action to enable the lessee to claim and obtain input tax credit under the Central Goods and Services Tax Act, 2017.**
- **We specifically direct that the GST payable on the sale value of the mineral purchased in the e-auction shall be paid by the buyer directly to the lessee and the lessee would be responsible for all compliances as may be required under Act.**

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**SAMAJ PARIVARTANA SAMUDAYA Vs STATE OF
KARNATAKA: 05.10.2017**



Brief of the Case

➔ **We further direct that the Monitoring Committee to prepare appropriate proforma and also take steps for carrying proper Tax Identification Number of the respective lessees on the invoices as may be required.**

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Brief of the Case

➡ Constitutional validity of the GST (Compensation to States) Act, 2017 on the ground that Section 18 of the Constitution (101st Amendment) Act 2016 does not enable the Parliament to levy any cess which stood abolished in terms of the Third Schedule of the Taxation Laws (Amendment) Act, 2017.

➡ Validity of levy of cess on Coal in the context of abolition of Clean Energy Cess with effect from 1st July 2017 –

➡ Stay order of Delhi High Court. There shall be stay of the impugned order passed by the High Court

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Brief of the Case

➤ **GST on cup of tea, rate of taxes and type of tax missing on tax invoice - consumer approached the Forum on ground of deficiency in service.**

➤ **HELD - the service provider has not shown rate of taxes and which type of tax is charged by it. The service provider has also not produced any authentic documents that they have collected the taxes as applicable.**

➤ **The 'Restrictive Trade Practice', means a trade practice which trends to bring about manipulation of price of its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the customers unjustified costs and restrictions.**

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Brief of the Case

➤ On referring the said provision, in present case it can be said that there is Restrictive Trade Practice conducted by the opponent and by doing so opponent has shown deficiency in service.

➤ Opponent to pay Rs.7.63 to the complainants with interest @ 6% P.A. from the date of institution the complaint till realization of the said amount and Rs.1,000/- as compensation for mental agony and harassment and Rs. 500/- as cost of the complaint.



THANK YOU.....

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