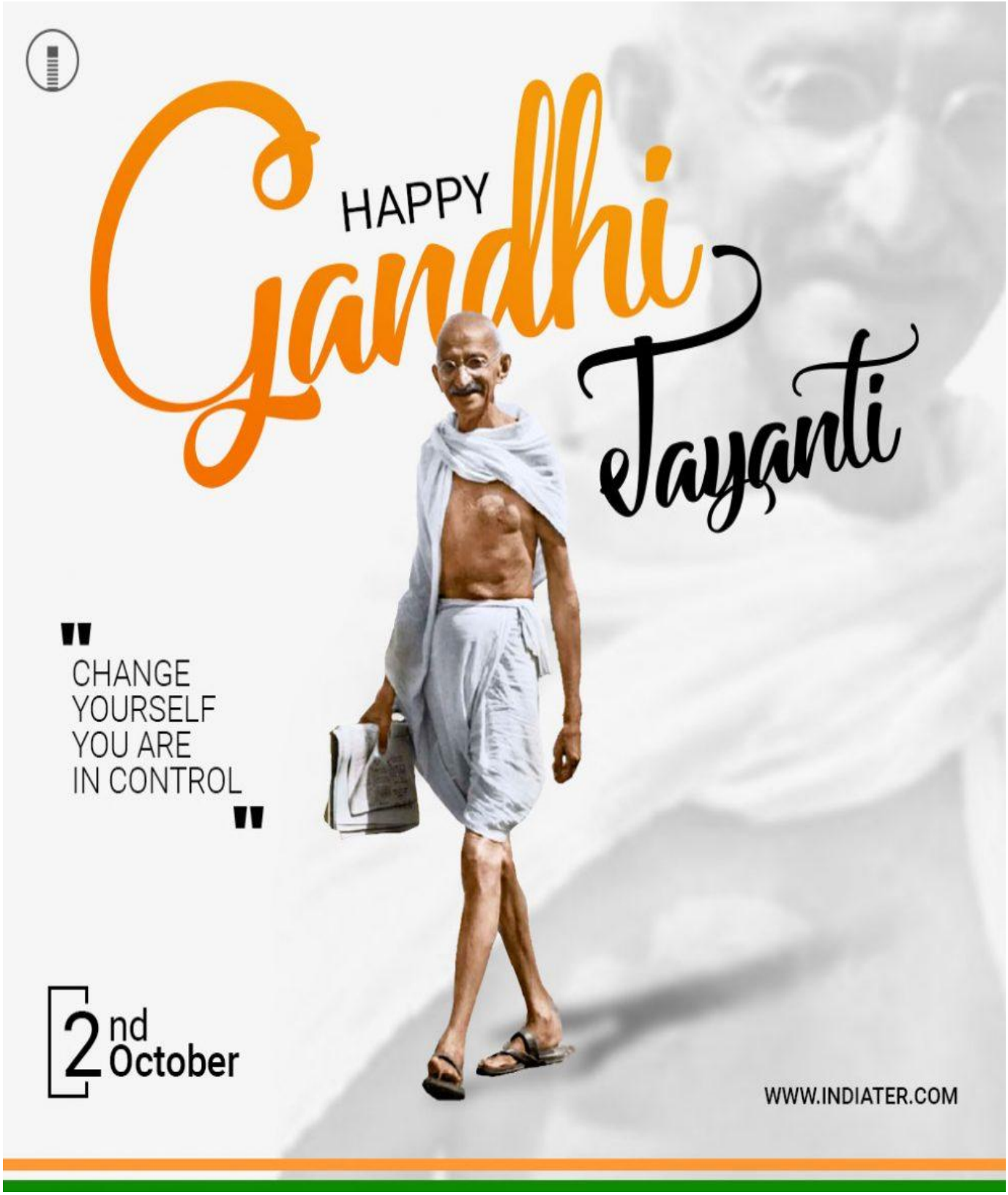
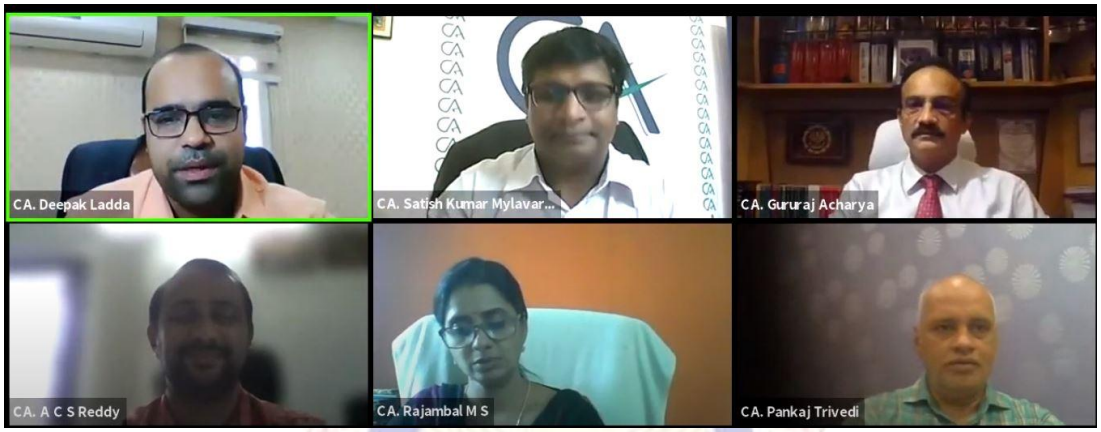
The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)
Hyderabad Branch of SIRC
E-Newsletter

www.hydicai.org | Volume : 12 / issues: 3 / October, 2021 | hyderabad@icai.org



Resource Persons at Virtual CPE Meetings of Hyderabad Branch of SIRC of ICAI



Dear Professional Colleagues,

We take this opportunity to wish each one of you a Happy Dussehra.

The months of September and October is expected to be busy months, as many of us will be busy with various reports and returns under the statute. Let us all gear up our resources to meet these time bound assignments and ensure that the same is completed within the timelines. We also urge the members to be cautious, as the threat of Covid-19 is still looming.

Hyderabad Branch of SIRC has planned series of programmes on Tax Audit and GST in the month of September and the details of the same are also published elsewhere in the newsletter. We request all the members to participate and make the programmes a success.

During the month of September 2021, we conducted various programmes at the branch which was well received by the members. I thank the members for their continued support which has engouraged us to do such programmes. ICAI has announced the schedule of forthcoming December Exam Schedule and the details regarding the same are also hosted in the website www.icai.org. ICAI has also given extension for old syllabus students wherein the students can attempt exams in old syllabus for the forthcoming exams. We at Hyderabad branch are always supportive of student cause and in this connection we have extended the timings of students reading room for the benefit of students. Team Hyderabad Branch conveys its best wishes to all the students appearing in December 2021 exams. Let me also emphasis that quality is a hallmark of professionalism and I urge all my professional brethren to maintain high standards of quality in our professional life so that the flag of our profession fly high.

Signing off with a quote:
“Quality is Everyone's Responsibility” – W. Edwards Deming

With Warm Regards ,
CA. Machar Rao Meenavalli
Chairman

Virtual CPE Programmes for the month of October, 2021

Day & Date	Timings	Topic	Resource Person	CPE	Free
Monday 04th Oct, 2021	6 PM to 8 PM	"Overview of Remissions of Duties and Taves on Exported Products (RODTEP) Scheme in GST"	CA. Umesh Kumar Agrawal, & CA. Sumeet Sethia	2 hrs	Free
Thursday 07th Oct, 2021	6 PM to 8 PM	"GST implications in Gems and Jewellery Industry"	CA. Vivek Agarwal	2 hrs	Free
Second Saturday 09th Oct, 2021	5PM to 7PM	"Constitution of India and it's linkage with GST"	CA. Pritam Mahure	2 hrs	Free
Saturday 16th Oct, 2021	5PM to 7PM	Important Definitions Concept of Supply & Levy Concept of Mixed & Composit Supply Transactions under SCh- I, II & III	CA. Mandar Telang	2 hrs	Free
Saturday 23rd Oct, 2021	5PM to 7PM	Important Exemptions & R C M	CA. K. Sriram	2 hrs	Free
Thursday 28th Oct, 2021	10AM to 5PM	Seminar on Tax Audit	Eminent Speakers At The Park Hotel	2hrs	1180/-
Saturday 30th Oct, 2021	5PM to 7PM	Place of Supply of Goods & Services	CA. Jatin Christopher	2 hrs	Free

Recent & Important decisions under GST

CA Satish Saraf &
CA Venkat Prasad. P

1. **Refund for unutilised ITC on account of 'input services' under inverted duty structure disallowed – Constitutional validity of Section 54(3) of the CGST Act and Rule 89(5) of the CGST Rules upheld**

[UOI v. VKC Footsteps India Private Limited, 2021-TIOL-237-SC-GST]

The issue arose before the Supreme Court from the contrary judgments of the High Courts of Gujarat and Madras. While the Gujarat High Court had held that Explanation (a) to Rule 89(5) of the CGST Rules, 2017 which denies the refund of "unutilised input tax" paid on "input services" as part of "input tax credit" accumulated on account of inverted duty structure' is ultra vires the provision of Section 54(3) of the CGST Act,2017.

On the contrary, the Madras High Court held that Section 54(3)(ii) of the CGST Act 2017 ('CGST Act') does not infringe Article 14 of the Constitution of India. It was further held that refund is a statutory right and the extension of the benefit of refund only to the unutilised credit accumulated on account of the rate of tax on inputs being higher than the rate of tax on outputs by excluding unutilised ITC accumulated on account of input services is a valid classification and a valid exercise of legislative power.

The Supreme Court affirmed the judgment of the Madras High Court and over-ruled the Gujarat High Court ruling observing as below:

a. Section 54(3) of the CGST Act should be read in plain terms. As first proviso to Section 54(3) restricted entitlement of refund, it would be unconstitutional for the Court to redraw boundaries or expand refund provision beyond what legislature provided.

b. Right to refund is governed by the statute. Parliament has legislative authority to decide whether refund should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. Proviso to Section 54(3) is a restriction governing grant of refund rather than condition of eligibility.

c. 'Input' is defined in Section 2(59) of the CGST Act by bracketing it with goods other than capital goods. The plural term 'inputs' as employed in Section 54 of the CGST Act, is not defined. While interpreting 'inputs,' principle of 'construing plural in same plane as singular' should be applied. Reading 'inputs' as inclusive of 'input services' would result in refund entitlement beyond what legislature intended.

d. Challenge to Rule 89(5) as a piece of delegated legislation on the ground that it is ultra vires Clause (ii) of Section 54(3)'s first proviso lacks substance. A statutory provision need not anticipate every eventuality arising in carrying out provisions of the Act. As a result, rule-making authority can make rules as long as they are consistent with the parent enactment. The absence of the words 'as may be prescribed' in Section 54(3) does not preclude rule-making authority from making rules to carry out provisions of the Act.

e. The Court also noted that the formula prescribed in Rule 89(5) is not ambiguous, but its practical application may result in certain inequities. Given the anomalies pointed out, the Court strongly urged the GST Council to reconsider the formula and take a policy decision regarding the same.

Comments: In view of the authors, the statutory provision under section 54(3) provides for refund of unutilized ITC and the proviso only prescribes situations wherein refund is available. The restrictions placed by way of rules clearly travels beyond the statutory provisions of the act. With utmost respect, the Hon'ble Apex Court has not appreciated the true meaning & intent of law makers and appears to have taken a narrow view.

2. Supreme Court recalls Suo motu extension of limitation period

[In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No.3 of 2020]

Amidst second wave of COVID-19 pandemic, the Supreme Court vide an order dated April 27, 2021, restored its earlier order dated March 23, 2020 and extended limitation period prescribed under general or special laws for filing of applications, suits, appeals, petition before judicial or quasi-judicial authorities, from March 15, 2020 till further orders.

As COVID-19 situation has improved across the country, the Court has now passed order dated September 23, 2021, recalling its previous order and bringing an end to aforesaid extension. The Supreme Court vide its recent order has prescribed the following limitation for any petitions, applications, suits, appeals, applications or other proceedings under general or special laws, before any judicial or quasi-judicial authorities:

a. Period between March 15, 2020 to October 2, 2021 ('excluded period') will be excluded for computation of limitation period. Consequently, balance limitation period will be available from October 3, 2021;
b. If balance limitation period is less than 90 days from October 3, 2021, 90 days will be available from October 3, 2021; and
c. If the balance limitation period exceeds 90 days from October 3, 2021, then such balance period will be available.

Comments: This will be the last opportunity for the taxpayers to file any appeal, petition, suit or take any other action for which the limitation period may have expired in the aforesaid period. The taxpayers must take a stock of the pending litigations and avail this opportunity in order to ensure timely filing within the limitation period prescribed by the Supreme Court.

3. Non-adherence to the procedure given in the rules shall invalidate the entire proceedings

[M/s SHRI TYRES Vs State tax officer, 2021-TIOL-1912-HC-MAD-GST, Madras High Court]

The Hon'ble Madras High Court had held that requirements of issue of FORM GST DRC-01 and FORM GST DRC-01A have been statutorily ingrained in the rules made under the CGST Act i.e., Rule 142. A careful perusal of Section 73 of the CGST Act in conjunction with Rule 142 makes it clear that non-adherence to Rule 142 had caused prejudice to the writ petitioner qua impugned order and, therefore, it is a rule which necessarily needs to be adhered to and if prejudiced, then it is to be eliminated in the case on hand.

It is not a mere procedural requirement but, on the facts, and circumstances of this case, it becomes clear that it tantamount to trampling the rights of writ petitioner. Therefore, impugned order dated 25.08.2021 was set aside solely on the ground of non-adherence to Rule 142 of the CGST Act, 2017 with a direction to commence proceedings afresh.

Comments: It is very important to highlight the technical inefficiencies on the part of the department when a notice is received. If there is non-compliance with regard to the procedure, mode of issuance, or with the person who is issuing the notice, all such points have to be brought out in the initials paragraphs itself. If not or merits, there is a fair chance of the proceedings getting dropped on the technical non-compliances.

A similar view is held by the Madhya Pradesh High Court in the case of Shri Shyam Bab Edible Oil Vs. The Chief Commissioner & others vide WP. No: 16131/2020, Dt: 19-11-2020.

4. Levy of Interest on availment of inadmissible ITC

[M/S. FI AUTO COMPONENTS P LTD VERSUS THE STATE TAX OFFICER, CHENNAI (2021 (7) TMI 600 - Madras High Court)

The issue involved in the instant case is whether the reversal of inadmissible ITC would attract interest under Section 50 of the CGST Act, 2017. Before the discussion of the order issued by the Hon'ble HC, it is apposite to note that a registered person can discharge his GST liability either by utilising the ITC availed by him which is held in the electronic credit ledger or by cash deposited in the electronic cash ledger. So, when ITC availed by a registered person is ineligible, the amount of GST paid in cash falls short of the amount of GST payable in cash for that particular tax period. In the light of these facts, the HC held that;

- Interest on ITC paid back through electronic credit ledger: - The HC placed reliance on the order passed in a writ petition filed by M/s Maansarovar Motors Private Limited (WP. Nos. 28437 of 2019 etc. batch, order dated 29.09.2020) and held that interest is not liable to pay to the extent of reversal of ITC through electronic credit ledger.
- Interest on ITC paid back through electronic cash ledger: - The Hon'ble HC held that Section 50(3) of the CGST Act, 2017 makes provision for levy of interest in case of mismatch of ITC claimed by a recipient with GSTR 1 by the supplier. Thus, interest under Section 50(3) of the CGST Act, 2017 would be levied only if the excess availment is a result of a mismatch of ITC claimed by a recipient with the GST liability reflected by its supplier. Consequently, if a registered person avails any ITC which is otherwise ineligible as per the provisions of the GST law then, interest would not be levied under Section 50(3) of the CGST Act, 2017 and it would be levied on the rates prescribed under Section 50(1) of the CGST Act, 2017.
- In the instant case, the Petitioner availed ineligible ITC. Thus, the HC held that interest would be levied only on such ITC which is paid back through the electronic cash ledger and would be levied under Section 50(3) of the CGST Act, 2017.

Comments: The interest prescribed under Section 50(1) of the CGST Act, 2017 is 18% whereas the interest prescribed under Section 50(3) of the CGST Act, 2017 is 24%. Section 50(1) *supra* provides for levy of interest on ineligible ITC whereas Section 50(3) *supra* provides for levy of interest on reversal of ITC excessively availed owing to mismatch in ITC under Section 42 of the CGST Act, 2017. It is pertinent to note that the system of matching under Section 42 of the CGST Act, 2017 is not in place as of date. Further, Section 50(3) of the CGST Act, 2017 is the only provision that provides for levy of interest on inadmissible ITC thus, many times the Department proposed levy of interest at the rate of 24% on ineligible ITC. This order could be used in such cases to contend that the interest on ineligible ITC would be levied at 18% and not at 24%.

5. Exemption from payment of GST Compensation Cess in case of re-import into India

[Interglobe Aviation Ltd Vs UOI 2021-TIOL-1589-HC-DEL-GST]

Petitioner is a scheduled Airline operator engaged in the business of transportation of passengers and goods by air within and outside India. Petitioner was re-importing Aircrafts and spare parts sent outside India for repairs and maintenance. Not No. 45/2017 -Cus. exemption from levy of BCD, IGST and Compensation Cess in case of re-import into India wherein Sl No.02 provides exemption in excess of duty of customs which would be leviable. Since the Sl No 02 did not refer IGST and Compensation cess, Petitioner has claimed exemption on the same but the department has disputed the same. On an appeal, the Hon'ble CESTAT has held that exemption is available for IGST and Compensation cess (2020-TIOL-1587-CESTAT-DEL). Though the CESTAT has held that exemption is eligible, the officers continued to deny the exemption in subsequent imports. Against this action of department, the Petitioner approached the High Court.

The High Court held as follows

a. Once the illegal action in depriving the benefit of Exemption has been set aside by the CESTAT, the action of the Respondents in once again placing a wrong interpretation on the Notification is completely unwarranted and certainly a harassment to the Petitioner.
b. It is imperative that the Respondents keep in mind that if on similar facts or legal issues, decisions have already been rendered by the competent Courts or Tribunals, they must be followed by the Respondents in subsequent matters
c. If the facts are similar and there is a binding judgment in existence, it is bound to be followed by the officers of the Respondents. Even if officers of the Respondents keep changing, decision making process must be consistent and in accordance with binding judgements rendered by competent Courts or Tribunals. Consistency is the virtue of the adjudicating Authority.

Comments: Even though many issues are settled by various courts and tribunals, the department continues to dispute which is not in line with the litigation policy of the Govt and is also violate of judicial discipline. The current issue has been discussed at 41st GST Council meeting and recommended to insert an explanation in Not No. 45/2017 -Cus clarifying that IGST is applicable. By following the recommendations, the board has issued Not No.19.07.2021 and Circular No.16/2021-Cus dated 19.07.2021.

6. Mere pendency of proceedings before the State authorities is not a ground to restrain the Central authorities from issuing summons and conduct investigation

- *Kuppan Gounder Vs DGGSTI 2021-TIOL-1624-HC-MAD-GST*

The petitioner has challenged the summons issued by Senior Intelligence Officer, DGGI u/s 70 being lack of jurisdiction. The petitioner has placed reliance on Sec 6(2)(b) and argued that the State Tax authorities has already issued a notice under Section 61 and the same is pending, thereby, the parallel proceedings cannot be initiated.

The Hgh Court held as follows

a. The issue being the Summons, the authorities need not be restrained unnecessarily to conduct investigation or proceedings under the Statute. It is an opportunity for the petitioner to submit his documents and prove his innocence, therefore, directed to submit the information.
b. The writ petitioner has approached this Court on every stage, which would reveal that he is attempting to prolong the proceedings, instead of defending his case by producing documents and evidences and establish his case or otherwise which cannot be appreciated.
c. To get covered u/s 6(2)(b), it is to be established that subject matter is one and the same. Mere pendency of proceedings before the State authorities is not a ground to restrain the Central authorities from issuing summons and conduct investigation.

Comments: In the instant case, the Petitioner has approached the Hgh Court at every stage of investigation, therefore, the Hgh Court has restrained to accept the Writ Petition. Further, it is always advisable to submit the information unless the data is huge and takes lot of time to explain the department. Also, to get covered under Section 6(2)(b) the subject matter of proceedings should be one and the same and what is meant by proceedings is nowhere defined.

7. No tax demand can be issued or raised when investigation is still in progress

[Deem Distributors Pvt Ltd Vs UOI 2021-TIOL-1654-HC-Telangana-GST]

The department has issued a letter dated 25.04.2019 to petitioner stating that it has availed ITC on fake invoices and requested to reverse ITC of Rs.1.52 crores immediately. To buy peace, the petitioner has paid Rs 10 lakhs on 30.04.2019 and Rs.25 lakhs on 13.09.2019. Later, the department has sent an intimation of tax payable on 22.01.2021 stating that Appellant is liable to pay Rs.1.17 crores and failing payment of same, SCN u/s 74 would be issued. Summons dated 22.12.2020 and 22.01.2021 were issued to director to appear on 24.12.2020 and 25.01.2021.

The High Court held as follows

a. Sub-Section (5) of Section 74 of the Act gives a choice to the tax payer to make any payment, if he is so chooses, but it does not confer any power on the department to make a demand as if there has been a determination of liability and demand tax along with interest and penalty.
b. Before ascertainment of liability, the department could not have issued the letter dated 25.04.2019 asking to immediately reverse the ITC allegedly availed.
c. No advisory jurisdiction is conferred on the department to issue any 'advises' of the nature issued to the petitioner on 22.1.2021
d. No tax demand can be issued or raised when investigation is still in progress. The respondents cannot be allowed to put the cart before the horse and collect any tax, interest or penalty before they determine, in an enquiry, after putting the petitioner/assessee of notice, and that their action is wholly arbitrary and without jurisdiction.

Comments: It is quite common that the department authorities while conducting the audit or investigations, demands the assesses to make payment of the disputed taxes along with interest and penalties before completion of investigation or audit. Also, it is not mandatory to make payment during the course of audit or investigation unless the assesses wish to close the matter by making payment. The department is not having any authority to demand the payment before completion of audit or investigation. The option provided under Section 74(5) is to the assesses and the department cannot use such provision to recover taxes from the assesses during the course of audit or investigation.

8. Service tax liability under reverse charge mechanism after introduction of GST is eligible for refund

NSSL Pvt Ltd Vs COE, GST Nagpur-I 2021-TIOL-469-CESTAT-MUM

The Appellant had paid service tax liability under reverse charge mechanism after introduction of GST. Since the same cannot be claimed as ITC under GST, the Appellant has filed a refund application. The jurisdictional officer had returned the applications stating that ITC can only be claimed under GST and not otherwise. On appeal, the Commissioner (Appeals) rejected stating that ITC is not eligible in view of Sec 142(8)(a).

The CESTAT, Mumbai held as follows

a. The appellant is not falling under the scope and ambit of sub-section (8)(a) of Section 142 in as much as no assessment/adjudication orders were passed by the competent authorities in determining the tax liability. Rather, the case of the appellant is governed under the provisions of sub-section (3) of Section 142.
b. The authorities below have not questioned the issue regarding the entitlement of CENVAT credit under the erstwhile CENVAT statute. Hence, the refund claims filed by the appellants should merit consideration under the provisions of sub-section (3) of section 142 and as such, it should be entitled for the benefit of refund of service tax paid by it.

Comments: This is a very welcome judgement as many taxpayers who missed to make payment of reverse charge liabilities before 01.07.2017 was not able to take the credit of liabilities paid under reverse charge mechanism as the GST was implemented. In such cases, there is no option left to the taxpayers except to claim such amount as refund. The CESTAT has appraised such difficulty and held that the refund is eligible. The taxpayers who have not filed any claim of refund can go back and check the possibility of claiming the refund based on this decision.

9. Refund of EC and SHEC is eligible

[Kirloskar Toyota Textile Machinery Pvt Ltd. Vs COE, GST Bengaluru, Final Order no. 20697/2021]

Refund application filed for closing balance of EC and SHEC under Section 11B of the Central Excise Act, 1994 as the same cannot be transitioned into GST. Application was rejected and the issue was travelled up to CESTAT.

The Hgh Court held as follows

a. The credits earned were a vested right and will not extinguish with the change of law unless there was a specific provision which would debar such refund and there is no provision in the newly enacted law that such credits would lapse

b. Merely by change of legislation suddenly the appellants could not be put in a position to lose this valuable right.

c. It has been consistently held by the Tribunals and the Hgh Court that when the assessee has moved out of the Modvat Scheme/Cenvat Scheme, portion of unutilized credit should be allowed as refund.

d. Jurisdictional Hgh Court decisions prevail over other Hgh Court decisions and the closing balance of EC and SHEC credit is eligible for refund in cash

Comments: This is one of the landmark decisions as it has considered contrary decisions of various tribunals and Hgh Courts on this issue. It has stated that the Delhi CESTAT decision in case of M/s Bharat Heavy Electricals Ltd. Vs. CCGST, CE&ST 2021-TIOL-1341-CESTAT-DEL will prevail over the Hyderabad CESTAT decision in case of M/s Bharat Heavy Electricals Ltd. Vs. CCGST, CE&ST 2020-TIOL-255-CESTAT-Hyd as the former being the decision of Division Bench and later being the Single Member decision. Also, it has followed the decision of Slovak India Trading Co. Pvt. Ltd [2006 (201) ELT 559 (Kar)] being the Jurisdictional Hgh Court decisions as against the decision of Gauri Plasticulture Pvt Ltd. [2019 (6) TMI-820-Bombay HC].

The assesses whose refund application is pending at various stages can take help of this decisions and get the refund. Also, the assesses who have not filed any refund application can check the possibility of claiming the refund now.

(For queries/feedback: ss@ssnc.in, venkataprasad@hiregange.com)

Survey, Search and Seizure Update

CA. Hari Agarwal &

CA. Vivek Agarwal

1. (A) rightly cancelled sec. 271AAB penalty as only survey was conducted by Dept.: HC

Principal CIT Commissioner of Income-tax, (Central) V. Silemankhan and Mahaboob khan] (2021)130 taxmann.com 62 (Andhra Pradesh)

Section 271AAB, read with sections 132, 153 and 143, of the Income-tax Act, 1961 - Penalty - Where search has been initiated (Applicability of) - Whether notice under section 156 is incidental to search proceedings under section 132 thereof and cannot be a foundation to impose penalty under section 271AAB on assessee who has not been searched - Held, yes - Whether thus, where no search was conducted in case of assessee under section 132 and only survey was conducted and assessment order was passed under section 153C read with section 143(3), Commissioner (Appeals) had rightly cancelled penalty levied under section 271AAB - Held, yes [In favour of assessee].

2. Seizure has to be conducted after due care and caution and not merely on account of reasons to suspect.

HARSHVARDHAN CHHAJED &ANR vs. DIRECTOR GENERAL OF INCOME TAX (INVESTIGATION) &ANR (2021)112 CCH0002 Raj HC.

Search & Seizure—Seizure of jewellery—Assessee No.3 was intercepted and searched by Income Tax Authorities at Jaipur Airport during his journey while he was carrying jewellery and diamonds—Said jewellery was seized in terms of Section 132—Assessee No.1 and 2 have submitted that apart from jewellery two challans were seized which had been issued in relation to jewellery and entire jewellery was part of stock-in-trade and stock-in-hand with assessee No.3 who was employee of assessee No.2—Letters were sent by assesses to release stock attached—Assessees have filed writ petition praying that authorities be directed to release attached stock-in-hand and quash and set aside the wrongful action taken against them—Held, seizure has to be conducted after due care and caution—Merely on account of reasons to suspect, seizure of goods ought not to be undertaken—In fact investigation wing has to show reason to believe that a person is carrying undisclosed asset—Before seizure is conducted explanation ought to be taken from concerned firms and if they are able to produce the related books of account and necessary proof of articles, Income Tax Authorities ought to take a decision at this stage and ought not to be allowed to seize the goods for years together to await for the assessment order to be passed in relation to concerned employee—As claim of goods in terms of Section132(1)(iii) of the Act of 1961 has been made by the assessee Nos.1 and 2 as the jewellery seized in stock-in-trade and required material has already been placed before the Income Tax Authorities, same was required to be released as seizure itself is found to be unjustified and illegal—Non mentioning of price of the goods in challan would not construe that goods are not part of stock-in-trade—Seizure itself was wholly illegal and all consequential actions based on such seizure are illegal and contrary to the provision of Section 132(1)(iii)—Assessees were entitled to receive back the goods—Assessee's would also be entitled to interest of a sum of Rs.1 lakh which was paid as a gross amount towards retention of the jewellery which is stock-in-trade and is marketable—Writ petition allowed.

3. In the absence of incriminating materials being found in the course of the search, the impugned assessment order and the consequential demand order are unsustainable in law and are hereby set aside.

SRI SIA CASHEWS vs. CHIEF COMMISSIONER OF INCOME TAX. (2021) 111 CCH0213 Orisha HC.

Search and seizure—Assessment in case of person other than person searched—Assessee firm is engaged in business of manufacturing/processing of cashew nuts into cashew kernel—It filed its original return declaring income—ITO undertook a survey operation under Section 133A—Instead of conducting a survey, authorities invoked jurisdiction under Section 153C for making a block assessment for the AYs 2010-11 to 2016-17 as a result of searches being conducted in the premises of JR and JS—Held, documents relied upon by AO were found in the course of survey of Petitioner and not during search of JR and JS—No incriminating

materials concerning Petitioner were found in premises of two searched persons—Absence of satisfaction note of AO of searched persons about any such incriminating material vis-à-vis the present assessee is also not disputed—Assessment order challenged in present petition relates to disallowance of expenditure under Section 140A(3) that is payable to the cultivators, expenses towards Hamali i.e. labour charges, unexplained money under Section 69A of the Act, negative cash and unaccounted stock—This was not on account of the discovery of incriminating materials concerning assessee found in the course of search—There was no search warrant under Section 132 of against assessee—Impugned assessment order and consequential demand order were unsustainable in law and set aside—Writ petition was allowed.

4. There has to be some prima facie reason and cogent material that seized documents do not belong to searched person but to someone else.

ASSISTANT COMMISSIONER OF INCOME TAX vs. VISION TOWN PLANNERS PVT. LTD.
(2021) 62 CCH 0420 Del Trib.

Search and seizure—Assessment in case of other person—Assessee company incorporated to carry out business of Real Estate Development filed its return of income declaring loss—A search and seizure action was carried out on various premises of BPTP Group—Assessee company was subsidiary of BPTP—Assessee company was found during course of search—AO of Assessee Company recorded satisfaction however, no satisfaction was recorded by AO of searched person—Assessing Officer observed that during year Assessee Company which was a subsidiary of BPTP had received 10,000 shares and certain share application money letters were found from residence of N, who was a Company Secretary of BPTP—Share application money was received with premium of Rs. 50 per share from four entities—Assessing Officer thereafter after detailed discussion had made addition of entire share application money along with premium u/s. 68—CIT (A) quashed assessment order passed U/s 153C as without jurisdiction—Held, on scrutiny of documents and nature of documents which are basis for acquiring jurisdiction and recording of 'satisfaction' u/s.153C, if analysed deeply, it cannot lead to a satisfaction that these documents belong to assessee or it is capable of drawing any inference that there is any element of undisclosed income which can be held as incriminating—There has to be some prima facie reason and cogent material that seized documents does not belong to searched person but to someone else—Any statutory record or Company Law requirement documents are found from possession of professional of company that does not meant it is a document belonging to assessee company which can extrapolate to as incriminating—Had there been any document found from searched person indicating that assessee company has arranged some bogus entry or rotated some undisclosed income or any such similar transaction and that document belong to assessee, then of course Assessing Officer can reach to his satisfaction that undisclosed income for that assessment year needs to be assessed for assessment years falling within 6 years of section 153C—Nowhere it has been brought on record that there is any statement or disclaimer by N that these documents does not belong to him or pertain to him or based on these documents any adverse inference can be drawn that there is an element of any undisclosed income belonging to or pertained to assessee—Assessment cannot be interfered unless there is incriminating material discovered from seized documents belonging to assessee, and no additions can be made where assessments are framed u/s.153C for unabated year—It is relevant to note here that proceeding U/s 153C has been initiated on basis of search action on BPTP group and not on basis of S—Therefore, AO has to first justify basis to investigate issue of share capital based on documents found from BPTP group and if there is some indication of any undisclosed income based on documents found from BPTP group then he/she can rely on search finding of other group—Whether documents/assets seized could possibly reflect any undisclosed income has to be considered by Assessing Officer after examining seized assets/documents handed over to him—It is only in cases where seized documents/assets could possibly reflect any undisclosed income of assessee for relevant assessment years, that further enquiry would be warranted in respect of those years—Whilst, it is not necessary for Assessing Officer to be satisfied that assets/documents seized during search of another person reflect undisclosed income of an assessee before commencing an enquiry under section 153C, it would be impermissible for him to commence such enquiry if it is apparent that documents/assets in question have no bearing on income of assessee for relevant assessment year—Additions made by Assessing Officer are beyond scope of Section 153C r.w.s. 153A—Revenue's appeal is dismissed.