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	Delay in filing appeal condoned when delay sufficiently explained	AAAR
2	High Court cannot direct the appellate authority to entertain the appeal.	HC
3	Merely because the petitioner feels that the rate applied on masks and sanitizers is excessive, cannot be a reason for issuing a writ	HC
4	Applicant to make good his case that show-cause notice deserves to be discharged.	HC
5	No Subject	HC
6	No Subject	HC
7	No Subject	HC
8	Where the excess amount is deposited with authority, the petitioner is entitled to refund the excess amount	HC
9	No tax shall be levied or collected except by authority of Law as per Article 226	HC
10	Bail was granted to the applicant on executing a personal bond	HC
11	No Subject	HC

Delay in filing appeal condoned when delay sufficiently explained

Appellant sought for condonation of delay of 19 days in filing the appeal on the ground that the concerned authorized personnel of the Company were engaged in the Statutory Audit under the Companies Act, 2013 and hence were unable to provide the documentation required for filing the appeal within the due date.

AAAR observed that Appellant explained the reason for the delay that the concerned authorized personnel of the Company were engaged in the Statutory Audit under the Companies Act, 2013 and hence were unable to provide the documentation required for filing the appeal within the due date.

AAAR held that the Appellant sufficiently explained the reason for the delay and hence condoned the delay of 19 days in filing the appeal.

Volvo-Eicher Commercial Vehicles Ltd., *In re* - [2020] 119 taxmann.com 176 (AAAR-KARNATAKA)

High Court cannot direct the appellate authority to entertain the appeal.

Petitioner's Registration Certificate was canceled. Against the said order, the petitioner filed an appeal before appellate authority beyond the limitation of four months. The appeal was dismissed on the ground of delay. Hence, a writ petition was filed.

High Court observed that the appeal in question against cancellation of the Registration Certificate is to be filed within a period of three months U/S. 107 of the OGST Act and, if the appeal is not filed

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within that period, the competent appellate authority has the necessary jurisdiction to condone the delay up to a period of one month at best thereafter.
When the Statute is clear about the limitation, this Court, in the exercise of the jurisdiction under Article- 226 of the Constitution of India, cannot direct the appellate authority to entertain the appeal.
Debabrata Mishra v. Commissioner of Central Tax and GST - [2020] 119 taxmann.com 116 (High Court of Orissa)

Merely because the petitioner feels that the rate applied on masks and sanitizers is excessive, cannot be a reason for issuing a writ
During the initial period of spread of the Covid-19 pandemic in the country, masks and sanitizers were included in the list of 'Essential Commodities' under the Essential Commodities Act, 1955 vide gazette notification dated 13th March 2020 which was in force till 30th June 2020. Similarly, vide notification dated 21st March 2020, the price of masks and sanitizers were regulated. Thereafter, there was no extension by the respondents. Being aggrieved, this writ petition has been preferred. Moreover, the petitioner has also sought for a reduction in the GST rate applicable on masks and sanitizers.
High Court observed that what items are to be included under the Essential Commodities Act, 1955 as 'Essential Commodity', is a policy decision of the respondent/Government. Therefore, unless the decision can be shown to be manifestly unreasonable or arbitrary, this Court will be extremely slow in interfering with the policy decision of the Government. Moreover, the aforesaid notification dated 13th March 2020 has not been extended beyond 30th June 2020 as, in the opinion of the Government, masks, and sanitizers are now easily available and there is no need to control such commodities or to regulate the supply, etc. of these commodities. Thus, a conscious decision has been taken by the respondents not to extend the notification dated 13th March 2020 beyond 30th June 2020.
It was stated that the petitioners have not brought any material on record to demonstrate that the basis for the decision of the respondents is erroneous in any manner. Unless there is a cogent need for regulation, it cannot be said that normally the items should be included under the Essential Commodities Act, 1955.
It was observed that even during the period of coverage of masks and sanitizers under the Act, the only regulation in place was about the price of the aforesaid two commodities. There was no further restriction at all except regarding the price of the said two commodities in the notification dated 21st March 2020. The contentions about the regulation of the quality of these products, as sought to be raised in the petition, are therefore not relevant to the relief sought.
High Court held that the rate of tax cannot be challenged in a Court of law unless it is abundantly confiscatory in nature. Merely, because this petitioner feels that the GST rate applied on masks and sanitizers is excessive, this cannot be a reason for issuing a writ of mandamus and direct the respondents to reduce tax on the said commodities.
Gaurav Yadav *v.* Union of India - [2020] 119 taxmann.com 384 (High Court of Delhi)

Applicant to make good his case that show-cause notice deserves to be discharged.
Petitioners have filed a petition for issuance of a writ, order, or direction for quashing and setting aside detention order in Form GST MOV-6 and confiscation notice dated 24-9-2019 in Form GST MOV-10. It further seeks issuance of writ or order directing the Respondent authorities to forthwith release truck along with the goods contained therein without directing any payment of tax and penalty and/or security and bond.
High Court observed that the coordinate Bench of this Court vide order dated 23rd October 2019, had granted interim relief to the petitioners by directing the second respondent to release the truck together with the goods contained therein. Court further observed that the writ applicant availed the

benefit of the interim order passed by this Court and got the vehicle, along with the goods released on payment of the tax amount.
High Court, therefore, held that the proceedings, as on date, are at the stage of show cause notice, under section 130 of the Central Goods and Services Act, 2017. The proceedings shall go ahead in accordance with the law. Court held that it is now for the applicant to make good his case that the show cause notice, issued in GSTMOV- 10, deserves to be discharged.
Kohitoor Transport LLP v. State of Gujarat - [2020] 118 taxmann.com 246 (High Court of Gujarat)

Petitioners have filed a petition for issuance of a writ, order, or direction for quashing and setting aside detention order in Form GST MOV-6 and confiscation notice dated 21-8-2019 in Form GST MOV-10. It further seeks issuance of writ or order directing the Respondent authorities to forthwith release truck along with the goods contained therein.
High Court observed to the order passed by a Co-ordinate Bench of this Court, dated 27th September wherein it was held that the documents produced on record prima facie indicate that the old and used Winch Machine was being transported from the premises of Yadav Trading Co. where it had been sent for repairs and was being transported back to Nirma Ltd. Court by way ad-interim relief directed the respondents to release the Truck along with the goods contained therein subject to the petitioner depositing a sum of Rs.10,000/- with the respondent authorities.
High Court, therefore, held that since the writ applicant availed the benefit of the interim order passed by this Court and got the vehicle, along with the goods released on payment of the tax amount and the proceedings, as on date, are at the stage of show cause notice, it is now for the applicant to make good his case that the show cause notice, issued in Form GST-MOV-10, deserves to be discharged.
Valimohammed Jusab & Co. v. State of Gujarat - [2020] 118 taxmann.com 373 (High Court of Gujarat)

Applicants filed a writ for issuance of a writ of certiorari for quashing the Mov-10 (Notice for confiscation), quashing the Circular No. 41/15/2018-GST, dated April 13, 2018, and issuance of the writ of Mandamus directing the respondent no. 3 to forthwith release the goods and vehicle without demanding any security.
High Court observed that writ-applicant No. 1 is the owner of the goods and the writ-applicant No. 2 is the owner of the vehicle. The writ-applicant No. 1 is a registered dealer under the GST. The writ-applicant No. 2 had given his vehicle on a rental basis to the transporter for transportation of the goods. While the goods were in transit, the GST authorities detained and seized the goods as well as the vehicle on the ground that the goods were being transported in contravention of the provisions of the Act and the Rules. The position as on date is that the goods, as well as the vehicle, is in the custody of the GST Authorities. A show-cause notice in the form GST MOV-10 has been issued. The court permitted the writ-applicants to prefer an appropriate application addressed to the authority concerned under section 67(6) of the Act for provisional release of the goods and the conveyance.
High Court held that if such application is filed, the authority concerned shall immediately look into the same and pass an appropriate order within one week from the date of receipt of such application. Writ-applicant shall file an appropriate reply and make good his case that the notice in the form GST MOV-10 deserves to be discharged.
Sawariya Traders *v.* State of Gujarat - [2020] 118 taxmann.com 296 (High Court of Gujarat)

Applicants filed a writ for issuance of the appropriate writ, order, or direction to direct the respondent to release the goods and vehicle on payment of applicable tax and penalty in terms of clause (*a*) of Sub-section (1) of section 129.

High Court held that since the writ applicant availed the benefit of the interim order passed by this Court and got the vehicle, along with the goods released on payment of the tax amount and the proceedings, as on date, are at the stage of show cause notice, it is now for the applicant to make good his case that the show cause notice, issued in Form GST-MOV-10, deserves to be discharged.
Global Knitfab *v.* State Tax Officer - [2020] 119 taxmann.com 138 (High Court of Gujarat)

Where the excess amount is deposited with authority, the petitioner is entitled to refund the excess amount

The petitioner is a dealer engaged in the business of supplying components to the wind energy industry. In the course of its business petitioner had supplied capital goods *i.e.,* blade moulds from its Bangalore unit in Karnataka to its Halol unit in Gujarat. The goods were being transported by four vehicles which were intercepted by respondent No. 4 at Solapur in the State of Maharashtra. Taking the view that the e-way bills were faulty and undervalued, orders of detention were passed by respondent No. 4 under section 129.

Simultaneously, demand notices were issued levying IGST and an equivalent amount of penalty for each of the four vehicles. Petitioner stated that it would pay the IGST as determined but requested respondent No. 4 not to impose a penalty. In this connection petitioner furnished four bonds along with eight bank guaranties covering the entire demand of IGST and penalty. Respondent No. 4 passed separate orders releasing the detained goods. He also passed four separate but identical orders confirming the entire amount of IGST levied and the penalty imposed. Petitioner paid IGST under self-assessment returns. Petitioner filed appeals against the original orders, however, the appellate authority confirmed the levy of tax and imposition of penalty. Petitioner sent an email to respondent No. 4 requesting not to encash bank guarantees stating that the bank guarantees would be renewed and that petitioner was in the process of filing further appeals under section 112. However, respondent No. 4 encashed all the eight bank guarantees. Since no appellate tribunal under section 112 has been constituted in the State of Maharashtra, the petitioner has approached this court against the encashment of bank guarantees.

The issue under consideration was whether the petitioner is entitled to a refund of the bank guarantees encashed.

High Court observed that there is IGST demand of Rs. 2,36,63,256.00 with an equal amount of penalty imposed, together the total dues comes to Rs. 4,73,26,512.00. As against this, the petitioner had paid IGST of Rs. 2,36,63,256.00. At the stage of preferring the first appeals petitioner had deposited 10% of the IGST dues amounting to Rs. 23,66,326.00. Thereafter while filing the second appeals under section 112 of the CGST Act petitioner deposited Rs. 47,32,651.00 being 20% of the IGST dues. Thus, the petitioner had deposited an amount of Rs. 70,98,977.00 (Rs. 23,66,326.00 + Rs. 47,32,651.00) in addition to IGST dues already deposited. In all petitioner has deposited Rs. 3,07,62,233.00. The amount covered by the eight bank guarantees is Rs. 4,73,26,512.00. If both the figures are added *i.e.,* the amount covered by the bank guarantees and the dues paid by the petitioner, the amount would be Rs. 7,80,88,745.00 (Rs.4,73,26,512.00 + Rs. 3,07,62,233.00) which amount is now with the respondents as against demand and penalty of Rs. 4,73,26,512.00. From the above, it is evident that an amount of Rs. 3,07,62,233.00 (Rs.7,80,88,745.00 - Rs.4,73,26,512.00) is lying in excess with the respondents. Even if the appeals filed by the petitioner under section 112 are dismissed, the petitioner would be required to pay a further amount of Rs. 1,65,64,279.00 only whereas respondents are holding onto an amount of Rs. 3,07,62,233.00 of the petitioner much in excess of the dues.

The high court directed Respondent Nos.3 and 4 to refund the amount of Rs. 4,73,26,512.00 covered by the eight encashed bank guarantees with applicable statutory interest thereon to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Petitioner to furnish fresh bank guarantee(s) from nationalized bank to respondent No. 4 for

an amount of Rs. 1,65,64,279.00 covering the balance amount of penalty imposed on the petitioner.

LM Wind Power Blades India (P.) Ltd. *v.* State of Maharashtra - [2020] 120 taxmann.com 29 (High Court of Bombay)

No tax shall be levied or collected except by authority of Law as per Article 226

The petitioner is a proprietary concern engaged in the business of Iron and Steel and is a registered dealer on the rolls of the Hyderabad Rural STU-I, Centre Jurisdiction, Gajularamaram, Hyderabad (2nd respondent).

The petitioner purchased goods from a dealer in Karnataka and against the said tax invoice, tax at Rs.18% was levied.

When the consignment was coming from Vidyanagar, Karnataka it was detained at Jeedimetla, and a notice under Section 129 was issued alleging '*wrong destination*' and directing payment of 9% of the Central Tax and 9% of State Tax and penalty equal to tax estimating the purchase value.

Since the petitioner could not contest it on account of there being a marriage in his house and since the driver of the vehicle was pressurizing for release of the vehicle, he was forced to pay the amount mentioned in the notice issued by the 1st respondent. Vide this writ petition, it is contended that the petitioner should be granted a refund of the amount levied and collected under both the Central Tax Act and the State Tax Act, 2017.

High Court observed that the reason mentioned in the order of detention of the vehicle and the consignment was '*wrong destination'.* It was observed that under the Act, this is not a ground to detain the vehicle carrying the goods or levy tax or penalty. It was further observed that the fact the vehicle was found at Jeedimetla does not automatically lead to any presumption that there was an intention on the part of the petitioner to sell the goods at the local market evading the CGST and SGST.

A mere possibility cannot clothe the 1st respondent to take the impugned action. There is no material placed on record by the 1st respondent to show that any attempt was made by the petitioner to deliver the goods at a different place and sell in the local market evading CGST and SGST because it was found at Jeedimetla. The invoice in the custody of the driver of the vehicle indicated that IGST @ 18% was already collected and the goods were coming from Karnataka to Balanagar in Hyderabad. When the IGST was already paid, the goods cannot be treated as having escaped tax and fresh tax and penalty cannot be imposed on the petitioner.

There were no good and sufficient reasons for detention by the 1st respondent of the vehicle and the goods which it was carrying when the transaction causing movement of the goods was inter-State in nature and the provisions of the SGST were not shown to have been violated. Also, there is no warrant to levy any penalty since it cannot be said that there is any wilfulness in the conduct of the dealer.

High Court, therefore, held that there was no warrant to detain the vehicle along with goods, demand payment of Rs. 4,16,447/- as tax and penalty under the CGST and SGST Act, 2017. Court further held that the impugned order was arbitrary, violative of Articles 14, 265, and 300-A of the Constitution of India. The 1st respondent was directed to refund the same with interest at the rate of 6% per annum from 13-12-2019 till the date of payment.

Writ Petition was allowed.

Commercial Steel Company *v.* Assistant Commissioner of State Tax - [2020] 118 taxmann.com 240 (High Court of Telangana)

Bail was granted to the applicant on executing a personal bond

The application is filed under section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with matter registered with Assistant Commissioner of State Tax now converted into

Criminal Case No. 3226 of 2020 pending in the Court of Additional Chief Judicial Magistrate for an offense under sections 132.

High Court observed that the applicant was arrested on 6-12-2019 and almost 90 days were over. The applicant was facing a charge under section 132 read with section 120-B of the Indian Penal Code, which is punishable maximum for a period of 5 years. In the case of the assessee wrongful availment of the Input Tax Credit was beyond Rs. 5 crores. It was observed that though the applicant was arrested by the Officer of the concerned Department, no remand was ever sought by them. Taking into consideration the facts of the case, nature of allegations, the gravity of offenses, and the role attributed to the accused, without discussing the evidence in detail, the Court believed that it was a fit case to exercise the discretion and enlarge the applicant on regular bail.

High Court held that the applicant is to be released on regular bail on executing a personal bond of Rs. 25,000 with one surety of the like amount and subject to the conditions mentioned in the order.

Amit Chandrakant Shah *v.* State of Gujarat - [2020] 118 taxmann.com 194 (High Court of Gujarat)

Application filed under section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the case registered with Directorate General of GST Intelligence, Vapi Regional Unit, for an offence under section 132.

High Court observed that the applicant was arrested on 21st January 2020 and almost 52 days were over and a complaint was yet not filed against him by the Officer concerned. The applicant was facing a charge under section 132(1)(c) of the Central Goods and Services Tax Act, 2017, which was punishable maximum for a period of 5 years. The wrongful availment of the Input Tax Credit for the applicant was beyond Rs. 5 crores.

Though the applicant was arrested by the Officer of the concerned Department, no remand was ever sought by them. Taking into consideration the facts of the case, nature of allegations, the gravity of offenses, and the role attributed to the accused, without discussing the evidence in detail, the Court believed that it was a fit case to exercise the discretion and enlarge the applicant on regular bail.

High Court held that the applicant is to be released on regular bail on executing a personal bond of Rs. 25,000 with one surety of the like amount and subject to the conditions mentioned in the order.

Manoj Bhanwarlal Jain *v.* State of Gujarat - [2020] 118 taxmann.com 275 (High Court of Gujarat)

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For any areas of improvement do let us know.

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