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	**Mere apprehension or fear of the Petitioner of contracting the COVID-19 infection cannot be a ground to permit petitioner appear through video conference for recording of his statement.**	**HC**
2	**The show-cause notice/order communicated to petitioner by Email and not uploading on website of the revenue is no communication as per the law.**	**HC**
3	**Court issued notice to revenue authorities**	**HC**
4	**No Subject available**	**HC**
5	**Repair services provided to customers during the warranty period is a composite supply.**	**AAAR**
6	**Where services are rendered under the package and the package not possible without any one of the components, it is Composite Supply.**	**AAR**
7	**Supply of goods and services together by restaurant leads to composite supply.**	**AAR**
8	**Printing of content provided by the recipient on PVC materials and supply of printed trade advertising material to the recipient is a composite supply**	**AAR**
9	**Recipient of Services is Government entity**	**AAR**
10	**Supply of coal or any other inputs by JSL to JEL for the generation of electricity is a job work**	**AAAR**

Mere apprehension or fear of the Petitioner of contracting the COVID-19 infection cannot be a ground to permit petitioner appear through video conference for recording of his statement.

The Petitioner is employed by Think and Learn Private Limited ("Company") in the capacity of Chief Financial Officer ("CFO"). This company is engaged in the business of providing online courses, classes etc. through its website and mobile applications by the brand name "BYJU'S". DGGSTI is presently carrying out an investigation under section 67 of the CGST Act in relation to the Company, for evasion of GST on books/printed material being supplied by the Company, by mis-declaring such supplies under an exempted category. Authorities along with a team of officers of DGGSTI visited the premises of the Company at Bengaluru for carrying out an inspection under section 67 of the CGST Act in order to ascertain the admissibility of the exemption being availed by the company. Owing to his ill health and age-related morbidities, he fell severely unwell during the recording of his statement and accordingly consulted a doctor who prescribed medication and advised rest for a period of three days. Subsequently, he was summoned, requiring him to tender his statement and present evidence before him on 5th November, 2020 at New Delhi. The Petitioner represented that, owing to his ill health and the rising number of COVID-19 infections across the country, it was not safe for him to travel to New Delhi for recording of his statement, and requested that he be permitted to appear through video conference. The said request was declined and the Petitioner was directed to present himself for

[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.*

tendering statement on 10th November, 2020. The Petitioner once again *vide* letter dated 9th November, 2020 informed the authorities that he will be unable to appear on the said date, owing to his health issues. In these circumstances, the Petitioner has approached this Court seeking a writ of Mandamus for directing authorities to record his statement through video conference.

Court observed that the medical leave submitted by petitioner alongwith the petition indicates that the Petitioner was undergoing treatment for moderate hypertension and had been advised rest by the doctor for three days. Apart from the aforesaid document, there was no other medical document placed on record which could substantiate that the Petitioner suffered from any serious ailments, which is the main plank of the Petitioner's case. Medical prescription and blood test reports submitted with Additional Affidavits by the petitioner again do not suggest any serious ailment except for high levels of cholesterol and mean plasma glucose. The certificates given by the doctors only indicate that the Petitioner was undergoing treatment of hypertension and diabetes and has a high risk-factor for heart disease.

It was observed that the Petitioner's health condition does not impede his ability to undertake travel. Concededly, the investigation is ongoing and the authorities want to unearth the role of the Petitioner in the alleged tax evasion by the Company. The previous conduct of the Petitioner, at the stage of inspection when the officers of the Respondents were visiting Bengaluru, demonstrates that the Petitioner consistently avoided recording his statement on one pretext or the other. Thus, having regard to the past non-cooperative conduct of the Petitioner, and the mere apprehension or fear of the Petitioner of contracting the COVID-19 infection, court was not inclined to interdict or interfere in the investigation process. The evidence being recorded at this stage would impact the entire investigation of tax evasion. Judicial interference at this threshold stage, in such matters relating to investigation, has to be exercised with circumspection. The concept of balance of convenience, therefore, cannot be tilted in favour of the Petitioner to be allowed to appear through video conferencing, merely because travelling from Bengaluru to New Delhi would be a risk factor for the Petitioner of contracting COVID-19. This mere apprehension of contracting COVID-19 does not persuade the court to grant the relief sought for by the Petitioner. Writ petition was dismissed.

P.V. Rao *v.* Senior Intelligence Officer, Directorate General of GST Intelligence - [2021] 123 taxmann.com 201 (High court of Delhi)

The show-cause notice/order communicated to petitioner by Email and not uploading on website of the revenue is no communication as per the law.

Petitioner filed petition alleging that while raising the demand of tax *vide* summary of order dated 18-9-2020, the foundational show-cause notice/order No. 10 dated 10-6-2020 *qua* financial year 2019-2020 and tax period April, 2019 to July, 2019, was never communicated to the petitioner.

Court observed that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue. The show-cause notice/order was communicated to petitioner by Email and was not uploaded on website of the revenue. When a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. Statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand was struck down. Petition was allowed.

Ram Prasad Sharma *v.* Chief Commissioner - [2021] 124 taxmann.com 280 (High court of Madhya Pradesh)

Court issued notice to revenue authorities

The Petitioner has filled application that for challenging the constitutional validity of Section 16(4) of the GST Act, 2017 on the ground of being manifestly arbitrary and violative of Articles 14, 19(1)(g) and

300A respectively of the Constitution. Petitioner argued that that the taxpayers cannot be made to suffer by not allowing the ITC on account of the failure on the part of the respondents to notify the Forms GSTR - 2 and GSTR - 3 respectively. It is also argued that the retrospective amendment in Rule 61 of the Rules is also unconstitutional being violative of Article 14 of the Constitution. It is also argued that the retrospective amendment to Rule 61(5) of the Rules and the deletion of Rule 61(6) of the Rules is unconstitutional being violative of Article 279A of the Constitution. It was argued that para 4 of the C.B.I. & C. Press Release No. 56/2018 dated 10th September 2018 to the extent it purports to clarify that if there is delay in filing of the returns in the Form GSTR - 3B from the due date of furnishing of the returns for the month of September following the end of financial year or furnishing of the relevant annual returns, whichever is earlier, would render the Input Tax Credit time barred, be quashed and set aside. In the last, Petitioner submitted that appropriate directions may be issued declaring that Section 39 of the Act does not bar filing of the returns without payment of tax and the GSTN portal not allowing furnishing of such returns without payment of tax be declared as arbitrary and unreasonable being violative of Article 14 of the Constitution of India.

In view of above Fact, Court issued notice to the respondents and directed the respondents to served directly through E-mail. HC further directed that, one set of the entire paper book be furnished to Mr. Devang Vyas, the learned Additional Solicitor General of India, who would be appearing for the respondents.

Surat Mercantile Association V. Union of India [[2021] 124 taxmann.com 342 (High court of Gujarat)]

The petitioner in the present writ petition has prayed for revocation of cancellation of the Registration. In this regard pursuant to the directions issued by High Court the respondent authorities have tried to resolve the controversy by suggesting an amicable solution. The petitioner may approach the respondent authorities for the transfer of Input Tax Credit in accordance with the provisions contained in Section 18 read with Rules 41 and 41A of the Gujarat Goods and Services Tax Rules, 2017. Alternatively, the petitioner may approach the respondent authorities u/s.54 of the Gujarat Goods and Services Tax Act, 2017.

The court observed that the respondents are ready and willing to resolve the controversy as suggested in the reply. The writ-applicant shall approach the concerned authorities for the transfer of the Input Tax Credit in accordance with provisions contained in Section 18 of the Act, 2017 read with Rules 41 and 41A of the Rules, 2017. If the writ-applicant deems fit, he may approach the authorities in the alternative under Section 54 of the Act, 2017. HC dispose of writ-application with a direction to the respondents that once the writ-applicant comes forward with a request for transfer of the Input Tax Credit in accordance with the provisions contained in Section-18 of the Act, the request shall be immediately look into and needful shall be done. For this purpose, if some assistance of the GSTN is required, the same may be availed from the GSTN. The GSTN is directed to cooperate and see to it that the problem is solved.

Netrika Trends v. Deputy Commissioner Appeals [2021] 124 taxmann.com 268 (High court of Gujarat)

Repair services provided to customers during the warranty period is a composite 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 on behalf of Volvo Sweden. 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 made by the Appellant to M/s. Volvo Sweden is a supply of services?
AAR held that the applicant is providing a composite supply of goods and services to the customers wherein the principal supply is that of goods or services depending on the nature of the individual case. On further appeal to AAAR
AAAR observed that the Volvo vehicle which is sold by the appellant is covered by the International Warranty given by the manufacturer Volvo Sweden. When the customer approaches the Distributor from whom he has purchased the Volvo vehicle about a complaint or defect during the warranty period, the manufacturer must provide the repair of the vehicle and/or replacement of parts. Once it is agreed upon that there is a valid warranty claim by the customer, the manufacturer authorizes the Distributor to carry out the repairs and/or replacement of parts and reimburses the cost of the repairs and parts to the Distributor. What is obligatory on the part of the manufacturer is done by the Distributor and for this, the Distributor receives reimbursement of costs. Accordingly, the recipients of the service supplied by the Appellant during the warranty period will be the manufacturer Volvo Sweden as it is at their behest that the Appellant has undertaken the activity of repair and/or replacement of parts to the customer during the warranty period. The reimbursement received from Volvo Sweden is in the nature of consideration paid by the manufacturer to the Appellant for carrying out the service during the warranty period, which was part of the obligations of Volvo Sweden.
AAAR therefore held that the supply by the Appellant to Volvo Sweden is a composite supply of goods and services with the principal supply being a supply of service.
Volvo-Eicher Commercial Vehicles Ltd., *In re* - [2020] 119 taxmann.com 176 (AAAR-KARNATAKA)

Where services are rendered under the package and the package not possible without any one of the components, it is Composite Supply.
Nimba Nature Cure Village is a unit of M/s. Oswal Industries ltd. and is one of the largest Naturopathy Centers in India and offers physical, psychological, and spiritual health overhaul with the help of the power of nature. Applicants provide different types of wellness facilities at Nimba such as Naturopathy, Ayurveda, Yoga and meditation, Physiotherapy, and Special therapy. The applicant has stated that the classification of services provided by them as per the Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 is Heading 9993 (human health and social care services) which appears at Sr. No. 31 of the said notification and that as per annexure to the said notification, the specific service provided by them appears at Sr. No. 612. The applicant stated that as per Entry No. 74 of Exemption Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017, the service of clinical health provided by them under Heading No. 9993 is eligible for exemption. The applicant sought a ruling on whether wellness packages offered by the applicant are a composite supply of services or mixed supply?
AAR observed that the packages offered by the applicant, as evident from their website www.nimba.in, indicates that the therapy offered by them is strictly on a residence basis. Total consideration mainly revolves around two factors *viz.* (1) the type of room and (2) whether single or double occupancy. This fact creates an impression that the stay is mandatory and the charges of stay depend on the above factors. Thus, the element of accommodation becomes the primary activity in the entire package. The rates of the room per night have been specified, which forms the major part of the consideration towards the selected package. Examination of the packages indicates that more than one service is being rendered under the programme: accommodation, food, and therapy. The packages would not be possible without any one of the 3 components. Thus, the packages offered by the applicant are naturally bundled.
AAR, therefore, held that the supply would be aptly covered under the definition of Composite Supply. The principal supply would be the accommodation services since the therapy can in no way be

administered without accommodation. In fact, there is no option available for the customer to avail the wellness package without opting for the accommodation. Thus, the accommodation service attains the nature of the principal supply and the other two components attain the nature of ancillary services.

Oswal Industries Ltd., In re - [2020] 119 taxmann.com 269 (AAR - GUJARAT)

Supply of goods and services together by restaurant leads to composite supply.

The Applicant owns and manages hotels and resorts. They offer a variety of services to their customers such as rooms and suites, banquet, dining, spa, etc. They sell Tobacco (Cigarettes), soft beverages to the guest. They supply Non-GST item of liquor to the guest and provide a free supply of food to their employees. The applicant sought a ruling on the taxability of beverages.

AAR observed that the applicant supplies Soft Beverages (Aerated Water) and/or Cigarette in the restaurant along with the supply of food/as a separate item and not as part of food in the buffet and bills these items separately in the bill from the restaurant. The menu is common for room service & restaurant. Further, it was observed that the applicant in the menu for the restaurant has 'aerated water' and 'soft Beverages' i.e., any guest who comes to the restaurant can have aerated/ soft beverages alone also as these are in the menu of the restaurant. When a guest (resident or non-resident) comes to the restaurant and orders from the menu either soft beverages or aerated water, it involves the supply of goods (soft beverages/aerated waters) and supply of services by the restaurant. In this case, both the supplies are taxable. The serving of any items on the menu involves the supply of the items along with the use of the facilities/ staff of the restaurant. These two are naturally bundled and supplied in conjunction with each other and hence are a composite supply as per Section 2(30) of the Act. Also, as per para. 6(b) of Schedule II, the composite supply of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment, or other valuable consideration is a Supply of Service. In this instance, the supply of soft beverages/aerated waters being drinks (other than alcoholic liquor for human consumption) and articles for human consumption as a part of any service is a composite supply of service. The payment in this case can be immediate or billed to the room for residents.

AAR, therefore, held that supply of soft beverage/ aerated waters by the restaurant whether to resident or non-resident guests, whether in person or room services, is a composite supply of service.

Mfar Hotels & Resorts (P.) Ltd., *In re* - [2020] 120 taxmann.com 442 (AAR - TAMILNADU)

Printing of content provided by the recipient on PVC materials and supply of printed trade advertising material to the recipient is a composite supply

The applicant is engaged in the printing of billboards, Building Wraps, Fleet Graphics, Window Graphics, Trade Show Graphics, Office Branding; In-store Branding; Banners; Free Standing Display Units, and Signage Graphics (hereinafter referred to as trade advertisement material).

The designing and graphics for the advertisements are provided by the customers and the applicant merely sources the desired PVC material (blank) from an independent supplier and undertakes the activity of printing on the material. The billing format raised by them on the customers is such that in the description field they specify charges on two accounts *i.e.* 'printing' and 'supply', wherein the former represents the service activity of printing carried out by the applicant and the latter represents the physical supply of printed trade advertisements on the PVC material. The applicant sought an advance ruling as to whether the transaction of printing of content provided by the customer, on polyvinyl chloride banners and supply of such printed trade advertisement material is a supply of goods.

AAR observed that the recipient gives the design, text, and images that they want to advertise on specific sheets of Poly Vinyl Chloride (PVC) materials such as Vinyl, Flex that the applicant print on and together they are supplied to the recipient. Materials are procured by the applicant independently. The printing process involves proofing of the contents, converting the provided digital content into the correct format, *etc.* After printing, the printed PVC material is made into the final product such as banners, billboards, standees, foam boards, *etc.* based on the requirement of the customer. This involves adding eyelets, metal rods, ropes, *etc.* to the PVC materials. From the purchase orders and invoices, it is seen that the customer, desires to get a printed banner or billboard, *etc.* with the advertisements that the customer has designed, printed onto the banners, billboard, hoarding materials. Thus, in this case, there is a supply of goods of banners, billboard PVC materials, *etc.*, and also services of printing. They are naturally bundled together in the course of business.

Further, the Purchase Order is raised for 'Prints' and the media/material in which the output is required are spelt in. The value of the PO is arrived at based on the number of such advertisings required and the value of the unit number is calculated per dimensions.

The invoice description is 'printing and supply of trade materials', 'Media printings', the business process furnished shows that the primary activity is to make high-quality prints with proofreading concentrated to content, color, and sharpness in the desired media/material. The digital content is given by the recipient and they desire to use the final product of printed flex banners/hoardings/ billboard/standees to serve as advertisements of their own products or services.

The recipient has undertaken this transaction with the applicant mainly to get the printing services of the applicant. Without the printing activities, the blank PVC flex cannot be used as advertisement materials by the recipients. Even if the blank PVC material is made into banners/hoardings/billboards/standees etc. by adding eyelets, metal rods, etc., the transaction would not be complete as per the purchase order placed on the applicant by the recipient. Only if the digital content provided by the recipient is digitally printed onto the PVC material would the transaction be complete.

Further, in this case, the nature of the inputs, rolls of PVC Flex materials, is changed in the final supply by the process of cutting to required dimensions, digital printing on that, and making that printed sheet into banners/hoardings/billboard/standees, etc. by adding eyelets, metal rods, etc.

AAR, therefore, held that the supply is a composite supply. The predominant supply *i.e.* the principal supply in the composite supply is the services of printing.

Macro Media Digital Imaging (P.) Ltd., *In re* - [2020] 120 taxmann.com 411 (AAR - TAMILNADU)

Recipient of Services is Government entity

The applicant is providing services viz., supply, erection, testing & commissioning of 51 Nos. 33/11KV sub-stations with associated lines to M/s Odisha Power Transmission Corporation Limited, Janpath, and Bhubaneswar ('OPTCL'. The applicant desires to get a ruling as to whether OPTCL is a Government entity.

AAR observed that as per Notification No. 31/2017 Central Tax (Rate), dated 13-10-2017 *vide* G.O. Ms. No. 253, Revenue (CT-II) Department, dt. 23-11-2017, Government entity means an authority or a board or any other body including a society, trust, and corporation:

i) Set up by an Act of Parliament of State Legislature; or

ii) Established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory, or local authority.

It was further observed from the website of OPTCL that with the enactment of the Electricity Act, 2003, the Government of Orissa through notification of a transfer scheme transferred the transmission business of GRIDCO and vested the same with OPTCL with effect from 1-4-2005.

OPTCL, registered on 29-3-2004 under the Companies Act, 1956, is a wholly-owned Government Company. Under the transfer scheme, OPTCL has been notified as the State Transmission Utility (STU) and is also mandated to discharge the State load dispatch functions. Under the provisions of the Electricity Act, 2003, OPTCL is a deemed transmission licensee. It undertakes the activities of transmission of electricity in the State of Orissa under the regulatory control of Orissa Electricity Regulatory Commission (OERC) and also in compliance with the provision of the Orissa Electricity Reform Act, 1995 and Electricity Act, 2003.

AAR, therefore, held that OPTCL falls under the domain of the Government entity in terms of the provisions of Notification No. 11/2017-CT Dt. 28-6-2017 (as amended).

Vishwanath Projects Ltd., *In re* - [2020] 118 taxmann.com 501 (AAR- TELANGANA)

Supply of coal or any other inputs by JSL to JEL for the generation of electricity is a job work

JSW Energy Limited, (Appellant) is engaged in the business of power generation. JSW Steel Limited (JSL) is engaged in the manufacture and supply of steel. The manufacturing activity undertaken by JSL requires power on a continuous and dedicated basis. For the said purpose, JSL and the Appellant entered into a Job Work Arrangement for the purpose of supply of coal and processing of the same into power for captive use by JSL. As per the arrangement, JSL would procure coal or any other inputs and supply the same to the Appellant. On receipt of the same, the Appellant would undertake certain processes to convert the said inputs into power. The power generated from the aforesaid process on inputs will be supplied back to JSL for which the Appellant would be receiving job work charges.

During the whole process under the Job Work Agreement, the title in the inputs vest with JSL along with the power generated with the use of such inputs. Fly ash and other resultant products generated at the power plant using the inputs will also vest with JSL, and the Appellant will have no ownership in such resultant products.

Appellant sought an advance ruling for determination of the applicability of GST on the supply of coal or any other inputs on a job work basis by JSL to JEL, Supply of power by JEL to JSL, and Job work charges payable to JEL by JSL.

AAR held that the proposed transaction amounts to manufacture and therefore it would not qualify as 'job work' under GST. It did not respond on the GST implication in respect of the coal and other inputs supplied by the JSL to Appellant on the basis that the transaction pertains to GST liability of JSL and not of Appellant.

On appeal, Maharashtra AAAR held that the transaction proposed to be carried out between the Appellant and M/s JSL does not qualify for Job Work envisaged under section 2(68) read with section 143 of the CGST Act, 2017. It was observed that other inputs, e.g. air, water, etc., procured by the Appellant which are essentially required for the generation of power, cannot be considered as the minor additions because of their volume and cost associated with them, the proposed arrangement/transaction will not have the essence or characteristics of the Job worker.

Appellant filed a writ petition before Bombay High Court on the grounds that the Appellate Authority had exceeded its jurisdiction by introducing or relying upon the 'new grounds', which were never raised by the Revenue before the Advance Ruling Authority. Bombay High Court directed to reconsider the appeal under question by taking into account the additional submissions.

AAAR now observed that coal is an input for JSL, as the same is used for the generation of electricity, which in turn is used for the manufacture of the final product i.e. steel. Electricity can be generated on a job work basis. When electricity can be generated on a job work basis, it is bound to happen that any inputs sent to the premises for the generation of electricity would not be sent back in the same original form.

Coal, despite being consumed in the process of the generation of electricity, thereby becoming irretrievable, will not preclude the proposed arrangement from being the job work transaction, as

understood by the Appellant. Referring to the case of Prestige Engineering (India) Ltd. V/s. Collector of C.Ex. Meerut, wherein it was observed by the Apex Court that for any activity or transaction to be construed as the job work, the job worker is allowed to add only minor inputs or raw materials to the inputs supplied the principal, and the certificate of the Cost Accountant testifying that coal and other inputs constitute a major cost i.e. more than 95% of the total cost of materials that are required for the generation of power, whereas the cost towards water and air does not exceed 0.5% of the cost of inputs, AAAR opined that the Appellant is squarely satisfying the stipulations laid down by the Apex Court in the case of Prestige Engineering (India) Ltd. It was concluded that the addition of the air and water by the Appellant to the coal proposed to be supplied by JSL will not detract the proposed transaction from being qualified as Job work.

AAAR, therefore, held that the proposed arrangement of supply of coal or any other inputs by the principal i.e. JSL to the Appellant i.e. JEL for the generation of electricity will be construed as job work.

JSW Energy Ltd., *In re* - [2020] 117 taxmann.com 319 (AAAR-MAHARASHTRA)

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