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	**In view of non-submission of full details by the Applicant, Authority could not pass a Ruling on the questions raised by the Applicant**	AAR
2	**Application rejected due to already pending proceedings on the same issue**	AAR
3	**Application for advance ruling on the issue of classification of the services provided by the applicant is not maintainable where the same issue is pending under investigation in another proceedings**	AAR
4	**Application disposed of as withdrawn where the applicant sought the permission to withdraw her application.**	AAR
5	**The delay was condoned by the authority**	AAAR
6	**AAAR dismissed the appeal pertain to original order is not set aside and original order remains on record and only mistakes are corrected therein**	AAAR
7	**Rejection of petitioner's appeal being time-barred set aside where the delay in filing of appeal was due to difficulty in uploading it electronically**	HC
8	**Writ petition not maintainable where the alternative remedy of appeal is available to the petitioner**	HC
9	**State Tax officer to afford a reasonable opportunity of being heard to the parties and after adverting to and considering the various contentions of the petitioner render a considerable decision.**	HC
10	**Tax/Penalty deleted where there was no intention of the petitioner to evade tax and the proper officer acted in haste and levied tax/penalty without giving proper opportunity of being heard**	AA-GST

In view of non-submission of full details by the Applicant, Authority could not pass a Ruling on the questions raised by the Applicant.

The applicant is engaged in recycling of the waste tyres used by vehicles and pyrolysis oil is recovered during the said process of recycle, along with other products like Iron and Steel and carbon black. The applicant has submitted that Pyrolysis oil can also be sold as a liquid fuel. The applicant has raised the question regarding the classification of Tyre Pyrolysis Oil and the rate of tax applicable thereon.

AAR observed that to arrive at the proper classification the Applicant was requested to submit the composition of the subject product, in respect of which, classification is sought. The applicant submitted that the composition of the subject product would vary depending on the types of raw materials used, namely tyres. The applicant has not shown an inclination to submit the required details and therefore, in absence of submissions of full details, this authority could not arrive at the correct classification of the subject product. The applicant has not made any submissions in respect of the chemical composition of their product nor have submitted any test report which shows the

[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.*

composition of their product. Thus, in view of non-submission of details, Authority could not pass a Ruling on the questions raised by the Applicant.

Royal Carbon Black (P.) Ltd., *In re* - [2020] 122 taxmann.com 205 (AAR - MAHARASHTRA)

Application rejected due to already pending proceedings on the same issue.

The Applicant is engaged in the processing of milk and milk products. They also manufacture flavoured milk & classify the same under tariff heading 0402 99 90, taxable at 5%. They learnt that few of the industry partners have reclassified the said product "flavored milk" from heading 0402 99 90 to 2202 99 30. Thus the applicant filed the instant application seeking an advance ruling in respect of the question as to whether the Flavored Milk is liable to be classified under HSN 0402 99 90 or under 2202 99 30 or under any other Chapter.

AAR observed that the applicant supplies the impugned product under the brand name "Nandini", to the owner of the said brand M/s KMF, against whom an offense case is pending before DGGI, Bangalore. The applicant themselves admitted that M/s KMF holds 90% shares and hence have management/administrative control over the applicant. M/s KMF are the owners of `Nandini' brand, against whom an offense case is pending before DGGI, Bengaluru on the classification of flavored milk. Thus it is very clear that the applicant, being the job worker to M/s KMF, becomes part of M/s KMF, as they also supply the same product of 'flavoured milk' and hence is bound to oblige the conclusion of the proceedings in this regard.

Hence AAR held that the pendency of the proceedings automatically applies to the applicant also. Therefore the instant application is liable for rejection, under first proviso to Section 98(2) of the CGST Act 2017.

Dempo Diary Industries Ltd., *In re* - [2021] 123 taxmann.com 22 (AAR - KARNATAKA)

Application for advance ruling on the issue of classification of the services provided by the applicant is not maintainable where the same issue is pending under investigation in another proceedings.

The applicant is a Film distributor, registered under GST, for provision of Leasing and Licensing for the right to broadcast service and shows original films which include sound recordings. The Jurisdictional authority of the applicant issued an intimation demanding differential tax of Rs.4,82,30,200/- owing to suppression of taxable value and wrong classification resorted to by the applicant for the period May 2018 to March 2020. Hence the applicant filed the instant application seeking an advance ruling in respect of the determination of the correct classification of Licensing services for the right to broadcast and show original films, sound recordings, Radio & Television Programmes etc.

AAR observed that a search, of the applicant's registered premises, was conducted by the Superintendent of Central Tax, Anti Evasion, Bangalore West Commissionerate under authorization issued by the competent authority on 30.08.2019, a Statement was recorded on 31.08.2019, an offense case was booked on 11.09.2020 and DRC-01A dated 09.07.2020 was issued on the issue of suppression of taxable value. Further, a summon dated 03.09.2020 was issued seeking clarification on the question of classification. The applicant vide letter dated 08.09.2020 to the Department sought notice on the issue and informed that they will take up the matter of classification with Karnataka Film Chamber of Commerce and CBIC. DRC-01A dated 10.09.2020 clearly specified the grounds of quantification out of which one issue is the **"Wrong classification resorted under self assessment by the applicant, under SAC 9973 instead of SAC 9996 14".** Thus it was clearly evident that the issue of classification of the services provided by the applicant was under investigation as evident from DRC-IA dated 10.09.2020. The issue raised in the instant application and the issue pending under the proceedings were one and same i.e. classification of the services provided by the applicant. Thus first proviso to Section 98(2) of the CGST Act 2017 was squarely applicable to the instant case, as all the

conditions therein were fulfilled. Thus, the application was rejected as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act 2017.

V. Mohandas Pai, *In re* - [2021] 123 taxmann.com 142 (AAR - KARNATAKA)

Application disposed of as withdrawn where the applicant sought the permission to withdraw her application.

The applicant possesses a piece of land in the State of Tamil Nadu and intends to obtain a GST registration in Tamil Nadu to engage in the business of constructing buildings for commercial use and leasing them to companies. The construction work will be sub-contracted to different service providers such as construction companies, architects and other service providers. Some of these contracts would be works contracts while others are stand-alone contracts with professionals such as architects etc. As part of the construction activity, the applicant will receive GST invoices from service providers and works contractors. GST will be charged at applicable rates and for the activity of leasing, the applicant will charge GST @ 18% on the invoices. The applicant has sought advance ruling on the question of whether input tax credit can be claimed on works contract services when the output service is not for the purpose of sale but leasing out.

Applicant *vide* her letter dated 16-1-2020 stated that she had gone through the decision of the Authority for Advance Ruling in the case of *Sree Varalakshmi Mahal LLP*. Since the facts in the application filed by the applicant were similar to the case above, the applicant sought the permission of the Authority for Advance Ruling to withdraw her application. Application filed by the Applicant seeking Advance Ruling was disposed as withdrawn.

Smt. Kamalavadani Udaya kumar, In re -[2020] 115 taxmann.com 107 (AAR - TAMILNADU)

The delay was condoned by the authority

Lions Clubs are autonomous units that collect fees from their members in order to conduct social activities and meet their administrative costs. Similarly, Lions Districts collect fees from Clubs and Cabinet Members to manage District activities. It was felt by M/s. Lions Club of Poona, Kothrud that under the principle of mutuality and since the fees so collected are only pooled together for the convenience of conducting social activities, paying meeting expenses and administrative expenses, should not be brought under the purview of GST. It sought advance ruling on the question of whether it requires registration as the amount collected by individual lions clubs and lions districts was for the convenience of lions members and pooled together only for paying meeting expenses and communication expenses and it was deposited in a single bank account, as there was no furtherance of business in this activity and neither any services were rendered nor were any goods being traded. The Authority for Advance Ruling ruled that the GST was not applicable on the fees collected by the Lions Club and hence no Registration was required under GST Act. There was a delay of 10 days in filing the appeal by the appellant and there was a request for condonation of the delay.

AAAR observed that there was an issue about the jurisdiction of the Lions Club. Lions Club was not registered and due to urgency, the authorities had represented the case before the AAR. Due to this issue, the ruling of AAR remained unattended at the hands of the authorities and time-lapsed in taking a suitable decision. The authorities were prevented by a sufficient cause from presenting the appeal within a period of thirty days from the receipt of the said ruling of AAR and accordingly were allowed to present the appeal within a further period of 30 days.

Assistant Commissioner, Central Tax *v.* Lions Club of Poona Kothrud - [2020] 115 taxmann.com 168 (AAAR-MAHARASHTRA)

AAAR dismissed the appeal pertain to original order is not set aside and original order remains on record and only mistakes are corrected therein

The appellant, a state-controlled mineral producer of Govt. of India. It is owned by Govt. of India and is under the administrative control of the Ministry of steel. It operates Donimalai Iron Ore Mine in Donimalai in Ballari District and also operates a pellet plant adjacent to Donimalai Iron Ore Mine in Karnataka. The Appellant is required to pay royalty at 15% as per section 9B of Mines and Minerals (Development & Regulation) Act, 1957. Royalty is collected by the State Gov. from the business entities for right given to them extract mineral and is payable based on the quantum mineral removed or consumed. Further, section 9B and 9C of the Mines and Minerals (Development & regulation) Act, 1957 mandates that the appellant shall contribute 30% of royalty to the district mineral foundation and 2% of royalty to national mineral exploration trust.

The AAR by its order gave the following ruling:

A. The royalty paid in respect of Mining lease is a part of the consideration payable for the licensing service for the right to use minerals including exploration and evaluation falling under the head 9973 which is taxable at the rate applicable on the supply of like goods involving transfer of title in goods upto December 12, 2018 and taxable at 9% CGST and 9% SGST from January 1 2019 onwards under the residual entries of serial no. 17 of the notification no. 11/2017- Central tax dated June 28,2017.
B. The statutory contribution made to DMF and NMET as per MMDR Act, 1957 are also part of the consideration payable for the Licensing services for the right to use minerals including the exploration and evaluation.
C. The supply is licensing services for the right to use minerals including exploration and evaluation and the value of such supply of services includes royalty, DMF and NMET contributions.
D. Since the supply of services by Govt. to a discuss entity located in the taxable territory, are covered under serial No.5 of Notification No.13/2017-Central Tax dated July 28 2017, the liability to pay tax is on the recipient of such services on RCM as the licensing services for the right to use minerals including exploration and evaluation are provided by the State Gov. to a business entity i.e. the applicant.

The ROM application was filed and stating that the Authority had not given a ruling on whether the contributions made to DMF and NMET amount and also that the Authority had erred in considering the payments as a single payment whereas they are two different transactions. This ROM application was rejected by the Authority as much as Authority had considered all the submissions and pronounced a ruling on all questions of the applicant and there was no error/mistake which was apparent on record. Against rejection of ROM, Applicant file this ruling before AAAR

AAAR observed that an appeal is maintainable only against the said order dated September 21, 2019 within the statutory period of 30 days from the date of communication of the said order. However, no appeal has been filed before us against the advance ruling dated 21-09-2019. The Appellant contends that the order rejecting the ROM application merges with the original order and hence the appeal filed against the ROM rejection order dated 23-03-2020 is to be considered as an appeal against the original order dated 21-09-2020. This argument is not legally tenable. AAAR further observed that even in cases where a rectification of mistake application is admitted and a mistake apparent on record is corrected, the original order is not set aside. The original order remains on record and only the mistakes are corrected therein. The principle of doctrine of merger will not apply in such cases. Any appeal can be made only against the original order which will be read together with the correction made in the rectification order. In this case, the rectification application was not admitted as there was no error apparent on record and hence, the original order stands without any changes. The ROM

rejection order does not merge with the original advance ruling order. The original advance ruling stands without any corrections. The appeal should have been filed by the Appellant against the advance ruling order dated 21-09-2019 within the period of 30 days from the date of communication of the said order. AAAR also observed that in the instant appeal, the Appellant is aggrieved by the entire ruling pronounced by the lower Authority. All issues which were part of the original application for advance ruling are being contested in appeal before us. Assuming for the sake of argument that we consider this appeal as an appeal against the advance ruling dated 21-09-2019, even then we observe that the statutory time limit for filing an appeal against the advance ruling order has long expired. This Appellate Authority being a creature of the statue is empowered to condone a delay of only a period of 30 days after the expiry of the initial time period for filing appeal. We are not empowered to condone any delay beyond what the statute permits us.

In view of the aforesaid, AAAR hold that the appeal filed against the order is not maintainable in as much as the impugned order is not an appealable order under Section 100 of the CGST Act, 2017. AAAR also hold that the ROM rejection order dated 23-03-2020 does not merge with the original advance ruling dated 21-09-2019. Since the appeal is not maintainable, the question of addressing the issues raised in appeal does not arise. In view of the above discussion, AAAR dismissed the appeal filed by applicant on the ground that it is not maintainable.

NMDC Ltd., In re [[2021] 124 taxmann.com 459 (AAAR-KARNATAKA)]

Rejection of petitioner's appeal being time-barred set aside where the delay in filing of appeal was due to difficulty in uploading it electronically.

The petitioner has challenged the impugned order dated 8-12-2018 denying the transitional input tax credit availed by the petitioner for the period between July 2017 and December 2017 on the works contact. The petitioner encountered difficulties in uploading the appeal memorandum through the website of the Government, hence, the petitioner sent a written representation in person regarding the difficulties faced by it. The Deputy Appellate Commissioner dismissed the petitioner's request on the ground that it was time-barred.

The court observed that the failure on the part of the petitioner to file the appeal in time was on account of the attempt of the petitioner to unsuccessfully upload the appeal memorandum on the website of the 1st respondent. This resulted in the delay and therefore the petitioner filed the appeal manually on 16-4-2019 by which time the limitations had expired under section 107(1) of the Tamil Nadu Goods and Service Tax Act, 2017. Thus, impugned order was quashed and accordingly the Appellate Deputy Commissioner was directed to take up the appeal filed by the petitioner and dispose the same on merits in accordance with law.

BVD Power (P.) Ltd. *v.* State Tax Officer – [2020] 122 taxmann.com 139 (High court of Madras)

Writ petition not maintainable where the alternative remedy of appeal is available to the petitioner.

The petitioner is engaged in manufacturing, packaging and supply of Non-Basmati rice. CGST officers visited the premises of the petitioner and seized 3204 rice bags under a seizure memo. On the premise that the petitioner had evaded payment of GST, the department issued a show-cause notice. Case of the department was that the petitioner was selling packaged marked rice with a registered trademark which activity after 22-9-2017 was subject to Central as well as State GST which the petitioner had not paid. Under the show-cause notice, therefore, the petitioner was called upon to state why the unpaid GST not be recovered from the petitioner on the seized value of the rice stock as well as on the sale of rice with a registered trademark for the period between 22-9-2017 till the date of seizure *i.e.* 17-7-2018. The adjudicating authority passed an order holding that the petitioner was liable to pay Central as well as State GST on sale of rice which was supplied in marked packages with registered trademark and which sale took place after 22-9-2017. Since the petitioner had not paid such taxes, he confirmed

the demand for payment of tax with interest and penalty. He offered an option to the petitioner to pay a reduced penalty provided the petitioner accepts the demand for payment of tax with interest.
The court observed that against the impugned order statutory appeal is available. Where the orders passed by the competent authority are subjected to appeal mechanism, interference by the High Court in a writ petition without the aggrieved party having exhausted such alternative remedy would be exceptional and on certain well recognized grounds such as, lack of jurisdiction or breach of principles of natural justice. In the present case, the order in original is appealable and eventually, if the assessee is aggrieved by such appellate order also, the further appeal would be available before the High Court. The Tribunal of GST is considered the final fact-finding authority against whose decision appeal would lie before the High Court on a substantial question of law. Petitioner has raised a number of disputed questions of facts about the nature of its activities and the manner in which the petitioner was selling rice after 22-9-2017. It is not possible for this Court, nor even necessary to examine these disputed questions of facts acting as a first appellate authority in a writ petition. The writ petition was dismissed.
Sarvasiddhi Agrotech Pvt. Ltd. *v.* Union of India - [2020] 122 taxmann.com 225 (High court of TRIPURA)

State Tax officer to afford a reasonable opportunity of being heard to the parties and after adverting to and considering the various contentions of the petitioner render a considerable decision.
The petitioner is engaged in the business of providing the supply of manpower to various establishments as per their respective requisitions. The Hindustan Newsprint Limited is a subsidiary of Hindustan Paper Corporation Limited, a Government of India Enterprise. The winding-up proceedings of the Hindustan Newsprint limited company has been initiated and the Interim Resolution Professional was appointed as the Liquidator. The petitioner had entered in to an agreement with the Hindustan Newsprint limited in the year 2015 for the up-keeping of various plants. As per the terms of the agreement, the petitioner had remitted tax for 42 items for the various services mentioned therein. Similarly, the petitioner had also entered in to an agreement with the Hindustan Newsprint limited for 20 items of services. As per the terms of the contract, the petitioner was not remitting tax for 20 items. The said agreements were subsequently extended from time to time. In the year 2017, when GST was introduced, the Hindustan Newsprint limited issued two separate work orders to the petitioner for two different types of services. With regard to the services of 42 items, as mentioned above, a work order was issued with effect from 1-7-2017 till 31-3-2018. Similarly, with regard to the 20 items of services, Hindustan Newsprint limited had issued a separate work contract and the validity of the said work contract is also with effect from 1-7-2017 to 31-3-2018. Thereafter, on the expiry of those work contracts, Hindustan Newsprint Limited has issued work contracts for the period from 1-7-2018 to 31-3-2019 for the said 42 and 20 items of services respectively. State Tax Officer issued notices under section 122 of the State Goods and Services Act demanding a penalty for the year 2017-2018 and 2018-2019.
It was observed that the petitioner has not so far responded to the impugned notice and it was for the petitioner to immediately respond to the same by giving his written submissions/written objections in the matter without any delay, at any rate, within a period of 2 weeks from the date of production of the certified copy of this judgment.
Court ordered that the State Tax officer will have to issue notices to the petitioner as well as to M/s. Hindustan Newsprint Ltd. and Interim Resolution Professional and the State Tax officer and in its notice may direct the Interim Resolution Professional to give a report regarding the factual aspects raised by the petitioner and also the constitutional contentions raised by the petitioner thereon as aforementioned. State Tax officer will afford a reasonable opportunity of being heard to the petitioner and Interim Resolution Professional and after adverting to and considering the various contentions of

the petitioner, may render a considerable decision on the matters raised in the impugned notices, without much delay.

K.J. Mathew *v.* State of Kerala - [2020] 115 taxmann.com 208 (High court of Kerala)

Tax/Penalty deleted where there was no intention of the petitioner to evade tax and the proper officer acted in haste and levied tax/penalty without giving proper opportunity of being heard.

The assessee is an unregistered dealer/transporter and engaged his vehicle for transportation of two-wheelers/Activa scooter to M/s. Motor Heaven (P) Ltd. against proper invoice dated 5-11-2018 for a sum of Rs. 3,27,842/- including GST of Rs. 71,715/- along with E-way Bill dated 5-11-2018. In the way, the vehicle broke down and the appellant arranged another vehicle and goods moved in new vehicle to its destination for Hoshiarpur. Due to weak internet connectivity, the E-way bill was not updated w.r.t new vehicle. During movement, the vehicle carrying goods was intercepted at Mehtapur barrier and tax and penalty u/s. 129(3) of the CGST Act 2017, equal to One Hundred Percent of the tax payable on the goods were levied which was deposited by the supplier. Hence, this appeal.

The court observed that the e-way bill of the consignment which was produced before the proper officer pertained to the previous vehicle. The only mistake in the e-way bill part-B was that the number of the vehicle in which the goods were transshipped had not been entered at the time of the inspection of the vehicle. The appellant updated the e-way bill and the number of the second vehicle was updated in the part-B of the e-way bill. Despite the updation of the part-B of EWB the authorities detained the vehicle and imposed tax/penalty to the tune of Rs. 1,43,432/-. The appellant had already declared the consignment on 5-11-2018 at 09:43 p.m. which made it clear that there was no intention to evade tax. Authorities also failed to prove that the appellant changed the vehicle to evade tax. The proper officer acted in haste and levied tax/penalty without giving the proper opportunity of being heard. Therefore, the tax/penalty under section 129 imposed was unsustainable.

Court further observed that the taxpayer had made a procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST rules 138(10). Appellant should have updated the part-B of EWB before resuming his journey further. Thus, the appellant was liable to pay a minor penalty. The tax and penalty deposited by the appellant under section 129(3) may be refunded and a penalty of Rs. Ten Thousand only (Rs. 10,000/-) was imposed on the taxpayer under section 122(*xiv*) of the Act.

OM Dutt *v.* ACSTE-Cum-Proper Officer - [2020] 115 taxmann.com 389 (AA- GST - HP)

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

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