

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.N o. | Subject | Authority |
|-----------|--|-----------|
| 1 | Merely on suspicion, the authorities may not be justified in invoking section 130 of the Act straightway | HC |
| 2 | In the absence of any intention to evade payment of tax, a confiscation order passed against the petitioner not legally sustainable | HC |
| 3 | The notice issued in Form in GST MOV-10 on the basis of conjectures and surmises is not sustainable | HC |
| 4 | Bail refused in case of alleged Fake ITC exceeding Rs. 5 Crore | HC |
| 5 | Bail denied to petitioners keeping in view the enormity of the scam and the colossal loss caused to the State exchequer | HC |
| 6 | The applicant was directed to be released on bail on furnishing a personal bond and sureties | HC |
| 7 | Considering the situation due to COVID-19, petitioner was released on regular bail | HC |
| 8 | Bail granted to the applicant | HC |
| 9 | Considering the fact that petitioners are in custody since a long time, they were held entitled to bail | HC |
| 10 | Petitioner held entitled to bail on his furnishing a personal bond | HC |

Merely on suspicion, the authorities may not be justified in invoking section 130 of the Act straightway.

Applicant, a Proprietary concern is engaged in the business of Arecanut. In a petition filed by the applicant against detention of goods and vehicle, the court by way of an ad-interim measure directed the authorities to release the detained goods together with the conveyance, subject to the petitioner paying the tax and penalty as computed by the authorities. The order passed by the Court was availed and the goods and the conveyance ultimately came to be released upon payment of the requisite amount towards the tax and penalty. The applicant has filed a petition challenging the legality and validity of the notice issued by the State Tax Department in Form GST MOV-10 calling upon the writ-applicant to show cause as to why the goods and the conveyance should not be confiscated under Section-130

The court observed that in the case of *Synergy Fertichem Pvt. Ltd.*, it was held that Section 135 of the Act provides for the presumption of culpable mental state but such presumption is available to the department only in the cases of prosecution and not for the purpose of section 130 of the Act. In a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the necessary intent to evade payment of tax. In all cases, without any application of mind and without any justifiable grounds or

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reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under section 130 of the Act. For the purpose of issuing a notice of confiscation under section 130 of the Act at the threshold, i.e., at the stage of section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax. The resultant effect of issue of confiscation notice at the very threshold, without any application of mind or without there being any foundation for the same, renders section 129 of the Act practically otiose. For the purpose of invoking section 130 of the Act at the very threshold, the authorities need to make out a very strong case. Merely on suspicion, the authorities may not be justified in invoking section 130 of the Act straightway. The notice for the purpose of confiscation must disclose the materials, upon which, the belief is formed.

Writ application was dismissed with permission to the assessee to make good its case before Competent Authority. Authority was directed to hear the writ-applicant or any of his representatives and take into consideration the submissions, which have been canvassed before the court.

A T Trading Company v. State of Gujarat - [2020] 115 taxmann.com 315 (High court of Gujarat)

In the absence of any intention to evade payment of tax, a confiscation order passed against the petitioner not legally sustainable.

The petitioners are dealers, *inter alia*, in brass and copper scraps, having their business concern in Coimbatore, Tamil Nadu and Jamnagar, Gujarat, respectively. A consignment of scrap that was being transported from Coimbatore to Gujarat from the 1st petitioner, as consigner, to the 2nd petitioner, as consignee, was detained by the authorities at Kodumuda in Palakkad on the ground that the documents that accompanied the transportation of the goods were found to be defective. The consignment in question was accompanied by a tax invoice and an e-way bill that showed a payment of IGST as also that the transportation of the goods was from Coimbatore to Gujarat. The authorities, however, obtained evidence that suggested that the loading of the consignment was effected in Palakkad, within the State of Kerala, and not in Coimbatore. Authorities invoked the provisions of Section 130 of the GST Act, to serve a notice in FORM GST MOV-10 on the petitioners. Thereafter an order of confiscation was passed under section 130 of the CGST Act, confiscating the goods and the vehicle. In the writ petition, the petitioner impugned the confiscation order passed against him.

Court observed that while the authorities were justified in detaining the goods and the vehicle, based on the material that was available with them which clearly showed that the transportation undertaken by the petitioners, of the goods in question, was not necessarily from Coimbatore as was declared in the invoice and the e-way bill that were produced by the petitioners, the said material does not point to any intention to evade tax, more so when, there is nothing to doubt the genuineness of the declaration of the petitioners that the goods were consigned to Gujarat from Coimbatore, or any material to suggest that the ultimate destination of the goods was any place other than Gujarat. It has to be noticed that the 1st petitioner had admitted his liability to IGST by declaring the same in the invoice, and if the goods, even assuming that they were loaded from Palakkad, were destined to Gujarat, it is the IGST that had to be paid by the 1st petitioner/consigner of the goods. To that extent, therefore, it cannot be said that there was any intention to evade payment of tax because the tax liability, in either event, would be the same. That apart, there is no specific averment in the notice served on the petitioners, as regards any act or omission, that was suggestive of an intention to evade payment of tax.

Thus, Court held that the proceedings initiated against the petitioners under section 130 of the GST Act, cannot be legally sustained. The impugned order under section 130 of the GST Act was therefore quashed, and the authorities were directed to pass orders under section 129(3) of the GST Act.

Veer Pratab Singh v. State of Kerala - [2021] 123 taxmann.com 110 (High court of Kerala)

The notice issued in Form in GST MOV-10 on the basis of conjectures and surmises is not sustainable.

The applicant is engaged in the business of trading of pan masala. The writ applicant had placed an order with one M/s. Atharva Enterprises, Ujjain, Madhya Pradesh for the supply of pan masala amounting to Rs. 35,74,155/-. The vehicle carrying the goods was intercepted by the mobile squad of the department. An order of detention was passed in Form GST MOV-06. Thereafter, notice in Form GST MOV-10 was issued. The issue was whether the show cause notice issued in Form GST MOV-10 was sustainable?

High Court observed that the show cause notice was issued on an assumption that the driver of the vehicle might have indulged in the past in contravention of the provisions of the Act and the Rules made thereunder. The entire basis for the issue of the show cause notice was conjectures and surmises. The show-cause notice under section 130 of the Act cannot be issued on a mere suspicion. There has to be some *prima facie* material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under section 130 of the Act.

Therefore, the impugned notice in Form GST MOV-10 was quashed.

Anant Jignesh Shah v. Union of India - [2021] 123 taxmann.com 317 (High court of Gujarat)

Bail refused in case of alleged Fake ITC exceeding Rs. 5 Crore

The petitioner was arrested on 30-12-2020 and produced before the Additional Chief Metropolitan Magistrate, Mumbai, who remanded the petitioner to magisterial custody. Respondent No. 2 proceeded against the petitioner on the basis that he had committed offence under section 132 (1) (b) (c) of the CGST Act and that since the input tax credit wrongly availed by the petitioner exceeded Rs. 500 lakh (Rs.5 crores) and the offence was punishable with imprisonment for a term, which could extend to five years and with fine under section 132 (1) (i) of the CGST Act, it was a cognizable and non-bailable offence under sub-section (5). It was alleged on the Petitioner that he was effectively operating four business establishments that had indulged in fake purchase invoices and sale invoices whereby bogus input tax credit was claimed to the tune of at least Rs. 11.54 crores and the amount of wrongful input tax credit passed on through fake sale invoices was not less than Rs. 9.29 crores. The petition was filed before the Bombay High Court seeking bail of the Petitioner. Petitioner contended that the entire action of arresting the petitioner and then his remand to judicial custody was illegal as four specific distinct legal entities were wrongly treated as one and thereupon it was wrongly treated as if the input tax credit illegally availed exceeded the figure of Rs. 5 crores. Petitioner submitted that on a proper application of the provisions of the CGST Act, it would be clear that in the case of each of the four individual legal entities, the input tax credit allegedly wrongly availed did not exceed Rs. 5 crores and therefore, even if it was to be treated that offences under section 132 of the CGST Act had been committed, these were non-cognizable and bailable offences. Therefore, Petitioner further submitted that the arrest and continued custody of the petitioner was wholly illegal and, therefore, unsustainable.

Respondent contended that although four firms or business establishments were the subject matter of investigation and proceedings in the present case, there was ample material on record to show that all of them were effectively operated and controlled only by the petitioner. It was submitted that the petitioner himself was the proprietor and Karta of two such firms and although his father was the proprietor and Karta of the other two firms, each and every aspect of the activity pertaining to all the four firms or establishments was controlled by the petitioner himself.

Respondent further submitted that the KYC details of bank accounts of all the four firms were that of the petitioner. It was his email ID and mobile number that were linked to all the accounts of the firms and the e-Way Bill Registration data also demonstrated that it was the email of the petitioner, that was used for registration in respect of all the four firms.

Therefore, Respondent submitted that it was the petitioner alone, who had committed the offences under section 132 (1) (b) (c) of the CGST Act and he could not claim that the offences were non-cognizable and bailable because the input tax credit wrongly availed by the four firms could not be clubbed together.

Respondent further submitted that the material available through investigation clearly demonstrated that the addresses against which the four firms were shown to be carrying out business were stated to be leased premises, but the owners of such premises had stated on affidavits that they had never met the petitioner or his father and that their signatures on the documents pertaining to the lease deeds were forged. On this basis, it was emphasized that the entire alleged business activity was fraudulent and that input tax credit was wrongly availed by the petitioner on the basis of such fake sale and purchase activities. On this basis, it was submitted that the action of arresting the petitioner could not be said to be illegal because he had clearly committed offences that were cognizable and non-bailable under section 132 (5) of the CGST Act.

High Court observed that in tax frauds the *modus operandi* of creating fictitious entities to get around the rigours of law is not unknown.

In view of the respondent's contention and above observation, Court ruled that the petitioner was the person who committed the aforesaid offences. Thus, the petition was dismissed and bail was not granted to the Petitioner.

Yogesh Jagdish Kanodia v. State of Maharashtra [2021] 124 taxmann.com 270 (High court of Bombay)

Bail denied to petitioners keeping in view the enormity of the scam and the colossal loss caused to the State exchequer.

Information was received police that petitioners make bogus firms and by transacting with bigger firms, they were getting huge amounts of money deposited in the account numbers of the said fake bogus firms so as to save GST and are thus causing huge loss to the State Exchequer on account of loss of revenue. Pursuant to receipt of aforesaid information, apprehended the accused and recovered certain articles. FIR was registered against petitioners under sections 419/420/467/468/471/120-B/259 IPC. Petitioners have filed application seeking bail.

Court observed that one of the petitioners had played an pivotal role in the entire scam for the purpose of incorporating 18 different firms wherein in a majority of the firms, his e-mail ID or phone number had been used. During the course of investigation, the police had been able to collect evidence to the effect that bank transactions of withdrawal of Rs. 1,21,17,230/- was made in the account of M/s Ansh Hospitality between 23-1-2019 and 30-6-2019 and an amount of Rs. 1,21,21,881/- was deposited and for which the owner of the said firm, could not furnish any justification as to on what count the said huge payments had been received and as to what articles had been supplied by him against the said payment. Similarly, during investigation, it was found that bank transactions of the huge amount had been effected in the account of M/s Shree Bala Ji Wooltax. Petitioner-Inder Partap Singh, owner of M/s Shree Bala Ji Wooltax, could not furnish any justifiable explanation as to on what count the said payment has been received, as the said firm was not found to be actually into business.

In view of the complicity of the kingpin Rajesh Mittal and also of Manish, owner of M/s Ansh Hospitality and of Inder Partap Singh, owner of M/s Shree Bala Ji Wooltax and the enormity of the scam and the colossal loss caused to the State exchequer, which has lost GST, this Court did not find any ground for grant of bail. The petitions on their behalf were dismissed. As far as the petitioner Satnarain is concerned, he being a lawyer had rendered his professional services and assistance for the purpose of incorporation of the firms. It could not be said that he had joined hands with Rajesh Mittal or was beneficiary of any amount other than his professional fee. Since he had already been

behind bars since the last about 8 months, his further detention will not serve any useful purpose. Satnarain was ordered to be released on regular bail on his furnishing bail bonds/surety bonds.

Rajesh v. State of Haryana - [2020] 115 taxmann.com 207 (High court of Punjab & Haryana)

The applicant was directed to be released on bail on furnishing a personal bond and sureties.

The applicant was arrested for the offence under Section 132. The applicant has filed an application seeking bail.

High Court held that considering the submissions advanced by the respective parties, the nature of allegations against the applicant, his length of custody, the pendency of the investigation, the offence being compoundable and the severity of punishment under section 132 of the CGST Act; but, without expressing any opinion on the merits of the case, Court deemed it just and proper to enlarge the applicant on bail. The applicant was directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- together with two sureties in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) each to the satisfaction of the trial Court.

Subhash Chandra Tyagi v. Directorate General of Goods and Service Tax - [2021] 123 taxmann.com 319 (High court of Rajasthan)

Considering the situation due to COVID-19, petitioner was released on regular bail.

Petitioner has filed petition praying for grant of regular bail.

High Court considering the existing situation due to COVID-19 and the fact that trial is likely to take some time, Court deemed it appropriate to direct the release of the petitioner on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate concerned, subject to his furnishing bail bonds/surety bonds. Petitioner was also directed to furnish security worth Rs. 10 lacs in the form of bank guarantee/original paper of immovable property, within 15 days.

Mitha Ram v. State of Punjab - [2020] 122 taxmann.com 138 (High court of Punjab & Haryana)

Bail granted to the applicant

Assesse for offence punishable under section 132 was in custody - In spite of bail granted by Court vide order dated May 22, 2020, he could not be released for want of sureties as per conditions mentioned in bail order. Petitioner filed writ petition seeking relief in this regard

High Court held that the applicant is directed to be released on bail under section 132(1) of Central Goods and Services Tax Act, 2017 on his furnishing a personal bond only to the satisfaction of the jail authorities, where the applicant is languishing. However, it is further directed that within a period of four weeks from the date of lifting of the complete lock-down in the District concerned resulting in resumption of normal functioning of the Courts in that district, the applicant shall furnish two sureties each of the like amount to the satisfaction of the court concerned alongwith certified copy of the bail order, failing which the bail granted by this court shall stand cancelled necessitating surrender of the applicant.

Pradeep Kumar v. State of U.P [2021] 123 taxmann.com 107 (High court of Allahabad)

Considering the fact that petitioners are in custody since a long time, they were held entitled to bail.

Petitioners have filed these petitions under section 439 of Code of Criminal Procedure, 1973 seeking regular bail.

The court observed that the allegations leveled against the petitioners are serious in nature. The complaint in the present case was filed in the year 2018, whereas, the investigation has been concluded in July, 2020. Now the case is listed before the trial court for recording of pre-charge evidence and the trial may not be concluded at an early date.

Considering the fact that petitioners are in custody since 3-8-2018, it was held that it would be just and expedient to order the release of the petitioners on bail. Petitioners were admitted to bail subject to each of them furnishing bail bond in the sum of Rs. 10,00,000/- (Rupees Ten Lacs) with one surety in the like amount to the satisfaction of the Trial Court.

Sandeep Goyal v. Union of India - [2020] 122 taxmann.com 290 (High court of Rajasthan)

Petitioner held entitled to bail on his furnishing a personal bond.

Crime no. 23/2020 was registered under section 132(1)(a) (i) of the Goods and Services Tax Act, Ss. 409, 467, 471, 120-B of the IPC against the applicant by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore ('Department'). The application under section 439 of the CrPC was filed seeking bail. It was alleged that the only fault of the petitioner was that he was the landlord of the premises where his tenant, who runs a factory, allegedly evaded the tax by clandestine sale of Pan Masala. The petitioner is neither a Partner of his tenant M/s Vishnu Essence nor in any other way concerned with it. But, he has been posed as if he is the only responsible person for whatever has allegedly been done against the law by his tenant, while no document, what-so-ever it may be, has been produced by the department to show his involvement in the alleged tax evasion. The issue was whether the applicant is entitled to bail?

The court observed that the petitioner is one of the directors of media company Dabang Duniya but it is contended that neither they are concerned nor are responsible for unauthorized use of any sticker or ID card by any vehicle or driver found indulged in clandestine transportation of any taxable goods. The court while deciding the bail petitions of co-accused Amit Bothra and Ashok Daga considered the nature and gravity of the allegation made against the petitioners and the specific evidence collected in respect of these allegations, and held that a case was made out for granting bail. Without commenting on the merits of the case, both the petitions were allowed and the petitioners were directed to be released from custody on their furnishing a personal bond in the sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) each with separate sureties to the satisfaction of the Trial Court for their appearance before it. It was observed that it would be appropriate to allow the petition.

Court directed the petitioner to be released from custody on his furnishing a personal bond in the sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) with one solvent surety to the satisfaction of the Trial Court for his appearance before it.

Kishore Wadhvani v. State of Madhya Pradesh - [2020] 118 taxmann.com 466 (High court of Madhya Pradesh)

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For any areas of improvement do let us know.

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