Top 20 Judgements of Year 2020 under the Indirect Tax Laws

Indirect Tax Research and Advisory Team

Year 2020 has been nothing less than the roller coaster ride for the economy with the advent of COVID 19 pandemic which is still not under control. With most of the hearings taking place through video conferencing, judgments pronounced either removed hardships faced by the taxpayer or did not resolve some critical issues under GST such as transitional credit, GST on Ocean Freight under CIF contracts etc. Many provisions of the GST law were also challenged before various High Courts.

In the year 2020, we have reported 4361 judgements on various laws including Income-tax, Indirect Taxes and Corporate laws, etc. In GST Act alone we have reported 1,250+ cases. Out of these cases, we have identified top 20 rulings which may be relevant for future references and to decipher some aspects under GST. The summary of these 20 cases are as under:

1. Transitional Credits: Supreme Court stayed Delhi HC decision in case of Brand Equity

[Union of India v. Brand Equity Treaties Limited [2020] 117 taxmann.com 225 (SC)]

The Hon'ble Delhi High Court in the case of Brand Equity Treaties Ltd. pronounced on 5-5-2020 held that Rule 117 of the CGST Rules is directory in nature, as far as it prescribes the time-limit for transitioning of credit. In case the credit is not availed within the period prescribed, it would not result in the forfeiture of the rights. However, it does not imply that the availing of CENVAT credit can be in perpetuity. In absence of any specific provisions under the GST Act, the residuary provisions of the Limitation Act, the period of 3 years should be the guiding principle. Therefore, period of 3 years from the appointed date would be the maximum period for availing of transitional credit.

Accordingly, all the Petitioners who have filed or attempted to file Form TRAN-1 within the aforesaid period of 3 years shall be entitled to avail the credit. Hence, petitioners were permitted to file Form TRAN-1 on or before 30-06-2020. The authorities were directed to either open the GST portal enabling Petitioners to file TRAN-1 electronically or to accept the same manually.

The department filed SLP before the Hon'ble Apex Court against the above mentioned order of the Hon'ble Delhi High Court. The Hon'ble Apex Court has stayed the said order of Delhi High Court.

2. Sale of goods to Outbound Passengers by Duty Free Shop qualify as Exports; ITC Refund is available: KER HC

[Cial Duty Free and Retail Services Ltd vs. Union of India [2020] 119 taxmann.com 388 (Kerala)]

Various petitions have been filed by the petitioners running Duty Free Shop ('DFS') in international airports wherein the sale of goods made to Outbound Passengers were disqualified as exports and accordingly, refund of unutilized ITC was denied by the authorities.

The petitioners submitted that every sale at the DFS located at departure terminal is covered by sale voucher which is deemed to be a shipping bill under the Customs Act, 1962. These transactions are carried out as per the guidelines issued by the Department of Customs from time to time. As per Section 2(11) of the Customs Act, all duty free shops in India are in Customs Area, which include a warehouse and customs station. The products brought from foreign suppliers are kept in custom bonded warehouses and are transferred to DFSs situated at the airport as and when stocks are needed. In other words, products have not crossed the customs frontiers of India.

The Hon'ble Kerala High Court observed that invoices issued by DFSs at the time of sale of goods to the outgoing passengers are duly signed by both the passengers and the cashier which envisages a condition that the passenger will not consume the goods until he lands at the final destination outside India. In other words, the passenger shall become owner of the goods only upon reaching of final destination. All the goods which are sold at the DFSs are either imported or purchased from Indian market and are stored in a customs bonded warehouses. Such goods are removed from such warehouses only under the supervision of the Jurisdictional Commissioner and are not sold for domestic purposes. The goods which are brought from customs warehouses do not cross customs frontiers as before the goods are imported in the country, they had been sold at DFSs.

Therefore, if the transaction of sale or purchase takes place when the goods are imported in India or they are being exported from India, no State can impose any tax thereon. All the DFSs are situated at international airports, which are beyond the customs frontiers of India. When any transaction takes place outside the customs frontiers of India, the transaction is said to have taken place outside India.

In view of the above, Hon'ble High Court held that sale of goods to outbound passengers by DFSs qualify as Exports and hence, refund of ITC shall be available.

3. Excess CST paid on account of denial of Form 'C' is allowed as refund to buyer: GUJ HC
[Udaipur Cement Works Ltd. v. State of Gujarat [2020] 118 taxmann.com 428 (Gujarat)]

The issue in the give was that whether the buyer of other State is eligible for refund of such excess CST collected and deposited by the seller.

Prior to introduction of GST, the Rajasthan authorities under the CST Act duly issued C Form declarations to the petitioner (located in Rajasthan) for purchase of diesel at concessional rate of tax from the seller. Owing to the ambiguity on availability of Form C after GST on petroleum products, the seller (located in Gujarat) started paying CST at the rate of 20% and recovered it from the petitioner.

In related matters of other dealers, Hon'ble Rajasthan High Court held that the authorities under the CST Act had erred in refusing to issue C Form declarations to dealers for purchase of diesel. The Court directed to issue C Form declarations to the concerned purchasing dealers and further directed that any excess amount paid on account of wrongful refusal to issue C Form declarations shall be refunded within 12 weeks of the refund claim.

Based on the above judgment, petitioner filed refund before the Gujarat CST authorities. The petitioner submitted that despite of such specific direction given by Rajasthan High Court, the authorities of Gujarat State has denied refund of tax amount to the petitioner.

The authorities argued that refund can be given to the seller (who has paid the tax in the State of Gujarat) after its assessment for the period in question is concluded and not to the petitioner who is not registered as the dealer in the State of Gujarat.

The Hon'ble Gujarat High Court relied upon other judgments pronounced on the similar matter. In those judgements it was held that there is no bar that the petitioners cannot be granted the refund for being the buyers. The diesel has been purchased by the petitioners from the seller in the course of inter-State trade for use in mining activities and they are the ultimate consumers thereof and hence, the question of passing on the tax burden to anyone would not arise. Consequently, the question of unjust enrichment would also not arise. The Courts have also relied on the judgment of the Rajasthan High Court wherein the authorities are duty bound to refund the amount to the petitioners as per the directions given by the Court.

Given the above, the authorities of the Gujarat State are directed to process the refund claim of the petitioner and grant the refund of the tax amount collected and deposited by the seller within a period of 12 weeks.

4. ITC blocked on telecommunication tower & immovable property construction; challenged before Delhi HC

[Bharti Airtel Ltd. v. Union of India [2020] 119 taxmann.com 27 (Delhi)]

Bharti Airtel Limited ('the Company') filed a WRIT petition challenging the legality of Explanation to Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 ('CGST Act') to the extent it excludes 'telecommunication towers' from the meaning of the term 'Plant and Machinery'. The Company also challenged Section 17(5)(d) of the CGST Act, to the extent it debars Input Tax Credit on construction of Immovable Property.

Inquiry letter issued by the department and subsequent proceedings initiated in this regard also challenged by the Company.

The Hon'ble Delhi High Court refused to interfere with the inquiry letter as well as the proceedings initiated under the said letter. No stay was granted to the Company. However, the Hon'ble Delhi High Court shall examine the legality and validity of Explanation to Section 17(5)(d) of the CGST Act along with similar writ petitions.

5. Denial of refund on 'Input Services' under Inverted Duty Structure Scheme is ultra-vires to Section 54 (3): GUJ HC

[High Court of Gujarat, VKC Footsteps India Pvt. Ltd. Vs. Union of India [2020] 118 taxmann.com 81 (Gujarat)]

The petitioner is a manufacturer and supplier of footwear which attracts 5% GST. It procures input services such as job work service, goods transport agency service etc. and inputs such as synthetic leather, PU Polyol, etc., on payment of applicable GST and avails input tax credit ('ITC') of the same. Majority of its inputs and input services attract 12% or 18% GST.

Since GST rate on procurements is higher than the rate of tax payable on outward supply of footwear, unutilized credit is accumulated in electronic credit ledger of the petitioner.

The department was allowing refund of accumulated ITC of tax paid on inputs. However, refund of accumulated ITC of tax paid on procurement of input services was denied on ground that explanation (a) of Rule 89(5) which defines Net ITC does not include input services. The petitioner challenged the validity of this definition Central Goods and Services Tax Rules, 2017 ('CGST Rule') to the extent it denies refund of ITC of input services.

The Hon'ble Gujarat High Court observed that explanation (a) to Rule 89(5) of the CGST Rule provides that 'Net Input Tax Credit' shall mean ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rule (4A) or (4B) or both. By prescribing the formula in Rule 89(5) to exclude refund of tax paid on 'input service' as part of the refund of unutilised ITC goes contrary to the provisions of Section 54(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act') which provides for claim of refund of 'any unutilised input tax credit'. On perusal of definitions under Section 2, it can be inferred that 'input' and 'input service' both are part of 'input tax' and 'input tax credit'.

As per Section 54(3), registered person may claim refund of 'any unutilised input tax'. Hence, by way of Rule 89(5) such claim of the refund cannot be restricted only to 'input' excluding the 'input services' from the purview of 'Input tax credit'. Moreover, clause (ii) of proviso to Section 54(3) also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST Rules.

In view of the above, Explanation (a) to Rule 89(5) which denies the refund of unutilised input tax paid on input services as part of ITC accumulated on account of inverted duty structure held as ultra vires the provision of Section 54(3) of the CGST Act.

6. **Refund restriction on Input services under Inverted Duty structure scheme is 'valid and constitutional': Madras HC**
[Tvl. Transtonnelstroy Afcons Joint Venture vs. Union of India- [2020] 119 taxmann.com 324 (Madras)]

Contrary to the Gujarat High Court Judgement *[VKC Footsteps India (P.) Ltd. [2020] 118 taxmann.com 81 (Gujarat)],* the Hon'ble Madras High Court dismissed the WRIT petitions filed challenging the restrictions imposed by Rule 89(5) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') on claiming refund of unutilised input tax credit ('ITC') on input services under inverted rate structure scheme.

The Hon'ble Madras High Court held that Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 ('CGST Act') does not violate Article 14 of the Constitution of India. It was also held that the extension of the benefit of refund only to the unutilised ITC that accumulates on account of input goods thereby excluding unutilised ITC accumulated on account of input services in case of inverted rate structure is valid.

7. **SC puts stay on Bharti Airtel Decision where Delhi HC allowed rectification in GSTR-3B**
[Union of India vs. Bharti Airtel Limited [2020] 122 taxmann.com 178 (SC)]

In the give case the petitioner for the period July 2017 to September 2017 claimed ITC in its Form GSTR 3B on estimated basis since details of actual ITC was not available to it. The exact ITC available for the relevant period was discovered only later in the month of October 2018, when the Government operationalized Form GSTR-2A for the past periods. The assessee challenged that these errors could have been avoided if the return filing process envisaged by GST Law would have operationalized on time. He further contended that the return filing system available in the law is drafted considering self-policing system, to avoid such errors. However, till date GSTR-2 and GSTR-3 could not be operationalized due to failed IT structure of GSTN. They emphasized the fact that the error in claiming in ITC was only due to the reason that the law has been partially implemented by the Government and the assessee could not get the clear picture of their claim of ITC on timely basis due to which they have to rely on the estimated figures till actual data was not available.

Analyzing the facts and the circumstances of the case Hon'ble Delhi High Court observed that the statutory scheme, as envisaged under the Act provided a facility for validation of monthly data through the IT System of the Government. However, GSTR-2 and GSTR-3 could not be operationalized by the government till date. It therefore permitted rectification in GSTR-3B for the period to which error related instead of rectification being done in subsequent months.
The Hon'ble Delhi High Court in its order observed that the statutory scheme, as envisaged under the GST Act provided a facility for validation of monthly data through the IT System of the Government. However, GSTR-2 and GSTR-3 could not be operationalized by the government till date. It therefore permitted rectification in GSTR-3B for the period to which error related instead of rectification being done in subsequent months.

The revenue filed Special Leave Petition against the order of High Court of Delhi and the Apex Court admitted the same. It stayed the order of Delhi High Court which allowed rectification in GSTR-3B to Bharti Airtel.

8. Levy of Entertainment Tax by municipality is constitutionally valid under GST regime: Madras HC

[Balaji Theatre v. Chief Secretary [2020] 118 taxmann.com 160 (Madras)]

The assessee runs a Cinema theatre. It has challenged the order of Municipality directing to pay Entertainment Tax. The assessee submitted that after introduction of GST, admission to Cinema halls is treated as supply of service which is chargeable to GST under the GST legislation. Thus, a separate Entertainment Tax cannot be collected by the Municipality, particularly when the collection of tax by the Municipality stands annulled.

The Hon'ble High Court observed that Puducherry Municipalities Act, 1973, is an enactment, which is still in force empowering the Municipal Council to impose a 'tax on entertainment'. The power so conferred on the Municipal Council to collect various taxes has not been totally taken away or subsumed under the Puducherry Goods and Services Tax Act, 2017 ('PGST Act'). Under Section 173 (1) of the PGST Act, the Legislature have consciously retained the power of the Municipal Council to collect tax on various subjects including tax on entertainment.

It has further been provided that service tax and entertainment tax is under different enactment by different authorities. Admission into the Cinema theatre is treated as service

on which GST is levied. On such admission, the viewer gets the entertainment on which tax is levied by the local authorities as 'Entertainment Tax'. Thus, the entertainment itself being a different content, will not fit into the act of service provided by the theatre owner viz., admission of the viewer into the cinema hall. Therefore, the question of subsuming the entertainment tax under the PGST Act, shall not arise in this case, so long as the Puducherry Municipalities Act, 1973, is in force and not repealed by the introduction of the PGST Act.

On the Constitutional aspect, the High Court has provided that Entry 62 of the State List of the Seventh Schedule of the Constitution of India, as amended by the Constitution (101 Amendment) Act, 2016, provides that the taxes on luxuries including the taxes on entertainment, amusements, betting and gambling are taxes authorized by law and the authorities empowered under the relevant provisions of law to collect the said taxes are justified in doing so. Therefore, going by the above constitutional provision the collection of the entertainment tax by the Municipality is within their power, competence and with authority of law.

In the above backdrop, it has been held that Municipal Council can collect Entertainment Tax even after introduction of the PGST Act.

9. GST Authorities have power to seize cash from assessee under section 67(2) of the CGST Act: MP HC

[Smt. Kanishka Matta v. Union of India - [2020] 120 taxmann.com 174 (Madhya Pradesh)]

The issue before the Hon'ble Madhya Pradesh High Court for consideration involves determination of expression 'things' under Section 67(2) of the CGST Act whether includes cash or not.

The petitioner is the wife of the proprietor of the firm functioning in the name and style of M/s. S. S. Enterprises. The firm is in the business of Confectionery and Pan Masala items. Search operation was carried out at the business premises as well as residential premises by the Department and cash of around Rs. 66 lakhs were seized.

The petitioner contended that the department is not competent to seize the cash under Section 67(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act') since cash cannot be treated as document, book or things. Therefore, the department should be directed to release the cash seized by it.

The Hon'ble Madras High Court on going through the provisions of Section 67(2) of the CGST Act observed that the said section provides that confiscation of any documents or books or things, secreted in any place, which in the opinion of proper officer shall be useful for or relevant to any proceedings under CGST Act. The meaning of the word 'things' needs to be seen widely and would include 'money' as well. Further, interpretation of statute must be adopted in a way that anomaly is avoided and which suppresses the mischief and advances the remedy.

Therefore, in view of interpretation of the word 'thing', money shall be included and hence, the cash has been rightly seized by the department from the petitioner. Further, unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise.

10. GST on lottery neither discriminatory nor violative of Constitution

[Skill Lotto Solutions (P.) Ltd. vs. Union of India [2020] 122 taxmann.com 49 (SC)]

The petitioner, an authorized agent, for sale and distribution of lotteries organized by the State of Punjab, filed the writ petition impugning the definition of goods under Section 2(52) of Central Goods and Services Tax Act, 2017 ('CGST Act') and consequential notification to the extent it levies tax on lotteries.

The Supreme Court observed that inclusion of actionable claim in the definition of 'goods' as given in Section 2(52) of Central Goods and Services Tax Act, 2017 is not contrary to the legal meaning of goods.

The Hon'ble Supreme Court held that the levy of Goods and Services Tax (GST) on the lottery is neither discriminatory nor violative of Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

11. Notifications levying IGST on importer on component of Ocean Freight paid by foreign seller unconstitutional: Guj. HC

[Mohit Minerals (P.) Ltd. v. Union of India [2020] 113 taxmann.com 436 (Gujarat)]

The writ-applicant was engaged in importing non-cooking coal from Indonesia, South Africa and U.S.A. and supplying it to various domestic industries including power, steel, etc. The writ-applicant discharged customs duty on the imported products at the time of each import including the value of ocean freight. In addition to the customs duty, it also paid IGST on the imported coal which included the value of the ocean freight.

The writ-applicant challenged the legality and validity of the Notification No.8/2017-Integrated Tax (Rate), and Entry 10 of the Notification No.10/2017-Integrated Tax (Rate), both dated 28.6.2017 being ultra vires to the IGST Act, 2017. As per the submissions of the writ-applicant, IGST was levied again on reverse charge basis under said Notifications on the Ocean Freight, for which IGST was already paid at the time of import under Customs law.

The Hon'ble High Court observed that the writ-applicant was importing goods on the CIF basis where the transportation of goods in a vessel was the obligation of the foreign exporter. The foreign exporter entered into contract with the foreign shipping line for availing the services of transportation of goods in a vessel. The obligation to pay consideration to foreign shipping line was also of the foreign exporter. The writ-applicant neither availed the services of transportation of goods in a vessel nor was he liable to pay the consideration of such service. Moreover, in a case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer was not the recipient of the service of transportation of the goods.

In the present case, the entire transaction takes place outside the taxable territory, i.e. outside India. The mere fact that the transportation of goods terminated in India, will not make such supply of transportation of goods as taking place in India. The abovementioned notifications levying tax on supply of service of transportation of goods by a person in a non-taxable territory to a person in a non-taxable territory from a place outside India up to the customs

station of clearance in India and making the importer liable to pay GST, are ultra vires the provisions of the IGST Act.

The Hon'ble High Court held that no IGST would be levied on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. Hence, levy and collection of IGST on ocean freight under the said notifications is not permissible in law. The department has filed SLP against the order of Gujarat HC before the Apex Court.

12. Search not justified as officers stayed in assessee's premises for 8 days & restricted movement of family members

[Paresh Nathalal Chauhan v. State of Gujarat [2020] 113 taxmann.com 462 (Gujarat)]

Search was conducted at the residential premises of the assessee which went on from 11.10.2019 to 18.10.2019. The search party camped in the residential premises of the assessee for 8 days, during which the family members of the assessee were confined to the searched premises and were not permitted to leave the premises without the permission of the authorized officer. The assessee filed an application before the High Court of Gujarat challenging the validity and nature of the search proceedings conducted at his premises.

The Hon'ble High Court observed that as per the panchnama, the family members of the assessee were under house arrest for 8 days. There is no provision under the GST Act which empower the authorized officer to confine family members in this manner and to interrogate them day and night. In the given case, the authorization was for search and seizure of goods liable for confiscation, documents, books or things. Continuous stay of the officers for so many days was not for search of the premises but to search the assessee to obtain information of the place where the documents could have been secreted by him, was totally unauthorized as it was not backed by any statutory provision. Hence, the concerned officer converted it into a search for a person and investigation, which was not backed by any statutory provision.

Thus, apart from the illegality of the continuation of the search proceedings, the conduct of the search officers in confining the family members of the assessee to the house and interrogating them again and again was completely blatant abuse of powers.

In view of the above, the Hon'ble High Court held the search and seizure conducted at the premises of the assessee was illegal and not justified.

13. No recovery proceeding to be initiated for interest amount under GST without any adjudication proceedings: HC

[Mahadeo Construction Co. v. Union of India [2020] 116 taxmann.com 262 (Jharkhand)]

The assessee was served with a letter issued by Superintendent of Goods and Services Tax and Central Excise directing the assessee to pay interest amounting to Rs.19,59,721 due to delay in filing of return in Form GSTR-3B for the months of February and March, 2018. The revenue authorities further initiated recovery proceedings of interest amount by issuing notice to the banker of assessee. The writ application was filed to seek relief in this regard.

The Hon'ble High Court observed that as per Section 73(1) of the Central Goods and Services Tax Act ('CGST Act'), if tax had not been paid or had been short paid, a notice was required to be served by the Proper Officer on the assessee. The said notice would not only require him to show cause as to why tax should not be recovered from it, but should also specify the interest payable under Section 50 will also be recovered along with penalty. Thus, if there was a short payment of tax or non-payment of tax, a notice was required to be issued even for recovery of interest under Section 50 of the CGST Act.

The interest liability under Section 50 is required to be calculated and intimated to assessee. If the assessee disputes the calculation of interest or the leviability of interest, then only the Assessing Officer can initiate proceedings either under Section 73 or 74 of the CGST Act for adjudication of interest liability.

Moreover, Section 79 of the CGST Act empower the authorities to initiate garnishee proceedings for recovery of tax wherein any amount payable by a person to the Government under any of the provisions of the Act and Rules made is not paid. Even though the liability of interest is automatic, but the same is required to be adjudicated when assessee dispute the computation or leviability of interest, by initiation of adjudication proceedings. Until such adjudication was completed by the Proper Officer, the amount of interest could not be termed as an amount payable under GST. Therefore, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act could be initiated for recovery of the interest amount.

The Honourable High Court set aside the letter demanding interest as well as notice initiating recovery proceedings.

14. Dept. has no right to point out any deficiency in refund application after 15 days: Delhi HC

[Jian International v. Commissioner of Delhi Goods and Services Tax [2020] 117 taxmann.com 968 (Delhi)]

The petitioner has filed GST refund application on 4-11-2019 which has not been processed till date. He filed writ petition seeking grant of refund amount along with interest.

The Hon'ble High Court observed that as per Rules 90(2) and (3) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') the department has to either point out discrepancy / deficiency in FORM RFD-03 or acknowledge the refund application in FORM RFD-02, within fifteen days from the date of filing of the refund application. In case deficiencies are found, then the same are communicated to the assessee, requiring the assessee to file a fresh refund application after rectifying those deficiencies. In the present case, the petitioner's refund application is pending for processing. Neither acknowledgment nor deficiency memo has been issued within timeline of 15 days. Hence, refund application would be presumed to be complete in all respects as per Rule 89 of CGST Rules.

The Court has provided that if it allows the department to issue deficiency memo now, then it would amount to processing of refund application beyond the statutory timelines. This would also be construed as rejection of the petitioner's initial refund application as it would require a fresh refund application to be filed by the petitioner after rectifying the alleged

deficiencies. Further, it would not only delay the petitioner's right to seek refund, but also impair its right to claim interest from the relevant date of filing the initial refund application.

The High Court held that the department has lost the right to point out any deficiency in the petitioner's refund application at this belated stage. The Court directed the department to pay the refund amount to the petitioner along with interest within two weeks.

15. Rule 90(3) which treats 'Rectified Refund Application' as fresh application, challenged before Delhi HC

[Insitel Services Pvt. Ltd v. Union of India [2020] 119 taxmann.com 371 (Delhi)]

The writ petition was filed challenging Rule 90(3) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') to the extent wherein rectification of deficiencies are treated as submission of fresh application for the purpose of computing limitation period for refund claim and grant of interest on delayed refund under the Central Goods and Services Tax Act, 2017 ('CGST Act').

The petitioner further submitted that refund application is automatically treated as rejected and the second refund application is treated as a fresh application and the interest amount is calculated only from the date of the second refund application or subsequent applications which are filed after receiving the deficiency memos. Thus, the applicants are deprived of their right to claim interest on refund from the date of the initial application. Hence, the refund procedure in Rule 90(3) of the CGST Rules is arbitrary, illegal and ultra vires.

Given the above submissions of the applicant, the Hon'ble High Court had issued notice to the govt. in this regard.

16. Kerala HC allowed asseseee to pay tax liability in EMI in view of financial difficulties due to COVID situation

[Pazhayidom Food Ventures (P.) Ltd. v. Superintendent Commercial Taxes [2020] 118 taxmann.com 139 (Kerala)]

The assessee had pending tax dues from November 2018 to March 2019. On account of COVID pandemic situation, assessee do not have enough funds for making a lump sum payment of the admitted tax liability for the said period.

It sought direction from the Hon'ble High Court to permit the petitioner to file the returns without paying the entire admitted tax, but ensuring that the payment of admitted tax, together with interest thereon and applicable late fees etc., is made on or before 31st March 2021.

The Hon'ble High Court observed that the assessee is not disputing his liability and also there is no demand against the assessee for the unpaid tax amount. Considering the above and in view of the financial difficulties faced by the assessee during the COVID pandemic situation, instalment facility to pay admitted tax liability has been allowed to the assessee. The authorities were also directed to accept the belated return filed by the petitioner for the period November 2018 to March 2019, without insisting on payment of the admitted tax declared.

The Hon'ble High Court also made it clear that if the assessee defaults in any single instalment, it will lose the benefit of this judgment and authorities can proceed with recovery proceedings for realisation of the unpaid tax, interest and other amounts.

17. Composition scheme opted vide new registration can't be denied on delay in processing of previous applications

[Loafers Corner Café v. Union of India [2020] 121 taxmann.com 354 (Kerala)]

In the given case the petitioner while under the original registration, filed an application for a fresh GST registration opting for composition scheme. New registration was allotted to the petitioner subsequently, but during the period between the date of application for the new registration and the grant of the same consequent to a cancellation of the earlier registration, the return filed by the petitioner under the composition scheme could not be uploaded into the system. The system recognised only the earlier registration which was not under the composition scheme.

The Hon'ble High Court observed that the petitioner had applied for a cancellation of its earlier registration on 22-5-2018 and had applied for a new registration on 19-6-2018. The cancellation application filed by the petitioner was approved by the authorities only on 18-5-2019. The mere fact that the authorities took time to process the said applications and passed orders approving the cancellation and granting the new registration, cannot deprive the petitioner of benefit of the composition scheme opted through its application for new registration during the interim period.

Given the above, the Hon'ble High Court directed the authorities to make the necessary changes in the GST portal which enables the petitioner to file the returns for the said interim period without charging the petitioner any late fee or other charges.

18. ST department empowered to carry audit & seek information w.r.t. ST under GST regime: Delhi HC

[Aargus Global Logistics (P.) Ltd. v. Union of India [2020] 116 taxmann.com 381 (Delhi)]

The assessee was providing freight forwarding services to its clients having offices across India. For the purpose of service tax, the assessee had a centralized registration with the service tax department at Delhi. The Competent Authority, post-GST regime issued two notices to the assessee for the purpose of carrying Service Tax verification, audit of records and requested the assessee to furnish the requisite information and documents. Assessee had filed a writ petition before the High Court of Delhi contending that the Service tax department cannot conduct audit post-GST regime.

On behalf of the assessee, it was submitted that Rule 5A under the erstwhile Service Tax Rules which deals with the powers of an officer to carry out audit was in conflict with the provisions of the Finance Act, 1994 and does not survive under the post-GST regime as it was repealed.

The Honourable High Court observed that the Rule 5A empowers officer authorised by the Commissioner who shall have access to taxpayer's premises registered under the erstwhile Service tax Act for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. Also, it obliges every taxpayer to furnish the information and documents for the same. Further, under GST law, it was provided that

the repeal of the Finance Act, 1994 does not affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears under the erstwhile Act.
The Honourable High Court held that the Service Tax department was empowered to carry audit and seek information under the GST regime. Thus, the assessee shall be obliged to provide all the records prepared by it in the normal course of its business.

19. Mere E-mail of SCN to taxpayer wouldn't suffice, uploading on website is mandatory: MP HC

[Akash Garg vs. State of Madhya Pradesh [2020] 121 taxmann.com 329 (Madhya Pradesh)]

The petitioner who was an individual registered under GST filed writ petition. It was submitted that while raising the demand of tax, the foundational show-cause notice was never communicated by the department. The department submitted that show-cause notice was communicated to the petitioner on his E-mail address and despite receiving the same the petitioner failed to file any response.

The Hon'ble High Court observed that as per the GST Provisions, 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/orders were communicated to assessee by E-mail and were not uploaded on website of the revenue. Therefore, it was held that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of the Central Goods and Service Tax Rules, 2017 ('CGST Rules') was not followed by the revenue. Hence, demand deserved to be struck down.

20. By-products kept by the supplier during milling of paddy can't be referred to as consideration; No GST: AP HC

[Shiridi Sainath Industries v. Deputy Commissioner of Services Tax (International Taxation) [2020] 122 taxmann.com 25 (Andhra Pradesh)]

The assessee, a Rice Miller, entered into an agreement with Andhra Pradesh Civil Supplies Corporation (Corporation) for milling of Paddy. The Corporation permitted assessee to retain broken rice, bran and husk obtained in course of milling of paddy. The assessee sold those broken rice, bran and husk and no GST was paid as he believed that it would be exempt from tax. The department passed Assessment Order levying GST on value of by-products i.e., broken rice, bran and husk treating them as part of consideration paid to assessee for milling of paddy under agreement with Corporation. It filed writ petition against the order.

The Hon'ble High Court of Andhra Pradesh found that by-products formed part of compensation but not consideration. The Corporation had permitted assessee to retain broken rice, bran and husk obtained in course of milling of paddy as compensation towards shortfall in yield which assessee had to replenish by incurring expenditure out of its own pocket. The department erroneously concluded that miller was allowed to retain by-products towards consideration. Hence, it was held that the order assessing tax was legally unsustainable.