

## **Tanish Steels Vs State Of Punjab-HC**

**GST** - Since no appellate authority had been constituted, the petition was filed against the order passed by the State Tax officer imposing penalty equal to 200% of tax - Upon notice of motion having been issued, a reply was filed on behalf of the State with a copy of notification dated 15.02.2018 informing that Additional Commissioner (Appeals) has been appointed to perform the functions as an Appellate authority u/s 107 of the Punjab GST Act, 2017 and rule 109A of the PGST Rules, 2017 - In view of the same, writ petitions are disposed of by relegating the petitioners to take recourse to the remedy of appeal before the Appellate Authority, in accordance with law - in view of the fact that the proceedings were pending before the High Court, it is clarified that in case the petitioners file appeals within 30 days from the date of receipt of certified copy of the present order, the same shall not be dismissed on the ground of limitation by the Appellate Authority: High Court [para 5 to 8] - Petitions disposed of: Punjab And Haryana High Court

## **Sunaina Industries Vs State of UP-HC**

**GST** - Section 129 of the UP GST Act, 2017 - Improper invoice in respect of some bilties - goods seized and directed to be released on furnishing security and indemnity bond - Penalty order also passed - said order has nothing to do with order of release and can be challenged in the appropriate forum independently - Petition disposed of by directing petitioner to deposit tax and penalty and furnish security/indemnity bond pursuant to compliance of which, goods and vehicle to be released immediately: High Court - Petition disposed of: ALLAHABAD HIGH COURT

## **STATE OF TAMIL NADU Vs SHARANA INDUSTRIES : MADRAS HIGH COURT (Dated: January 03, 2019)-HC**

**TNGST** - Writ - Sections 3(5) & 16(2)

Keywords - concessional rate of tax - levy of penalty - material handling equipments - traction batteries The Commercial tax Department preferred the present revision challenging the action of CESTAT in allowing the sale of traction batteries u/s 3(5) of the TNGST Act, even though the commodity did not fall under VIII schedule to the Act. In other words, the The Department was aggrieved by the order of CESTAT in holding that the commodity i.e. Traction batteries sold by the dealer against Form XVII for concessional rate of tax as contemplated under Section 3(5) of Tamil Nadu General Sales Tax Act, were used as part of the material handling equipments.

On Writ, the HC held that, Whether traction batteries are designed to suit electrically operated material handling equipments and they can be purchased by issuance of Form XVII declaration, thereby making them entitled for concession u/s 3(5) of TNGST Act - YES: HC

Whether once it is established that there is no escapement of turnover, then no penalty can be levied on premises of concessional rate of tax availed by the dealer to which he was entitled - YES: HC

++ the short issue, which falls for consideration, is whether traction batteries

specifically designed to suit electrically operated material handling equipments and vehicles like fork-lifts, power trolleys, electric vehicles can be considered as part of the electrically operated vehicles equipments. The counsel for assessee contended that since the traction batteries are specifically designed to suit the equipments, they were part of the machinery and can be purchased by issue of Form XVII declaration u/s 3(5) of TNGST Act. This Court however, does not agree for the simple reason that the product in question are traction batteries which are specifically designed to suit electrically operated material handling equipments and therefore, the Tribunal was right in holding that they can be purchased by issue of Form XVII declaration, thereby entitled for concession u/s 3(5) of the TNGST Act; ++ the next issue raised is with regard to levy of penalty u/s 16(2) of the TNGST Act. The Tribunal after taking into consideration that the revision of assessment was made u/s 16(1)(b) and noting that there was a dispute as to whether the claim of exemption by the assessee dealer was correct or not and what is the correct rate of tax, held that there was no escapement of turnover and therefore, vacated the levy of penalty. This Court is in agreement with the view taken by the Tribunal.

### **Shri Kunj Bihari Industries Llp Vs State Of Haryana-HC**

**GST** - Petitioner seeking a Writ of Mandamus for directing the respondents to issue CENVAT refund amounting to Rs.7,13,975/- due to the petitioner up to 30 th June 2017; further informing that the prescribed application had been successfully submitted electronically within the prescribed period on the GSTN portal - respondent department informing that no record of the TRAN-1 as claimed, is presently available on the online portal (ACES) which means that the TRAN-1 claim has not been filed and, therefore, there is no law by which the TRAN-1 amount can be sanctioned to the petitioner; that the Government of India vide notification 48/2018-CT has extended the time to file TRAN-1 claim up to 31 st March 2019 and the petitioner may do the needful.

**Held:** It is, therefore, clarified that it shall be open to the petitioner to apply for rectification of TRAN-1 to the nodal officer within 15 days - further clarified that in case the claim is made by the petitioner within the said period, the officer concerned shall take necessary action thereon before 31.03.2019 in accordance with law - present writ petition is, therefore, rendered infructuous and is disposed of as such: High Court [para 5, 6] - Petition disposed of: PUNJAB AND HARYANA HIGH COURT

### **Kerala Agencies Vs State Tax Officer-HC**

**GST** - Petitioner contends that although they had attempted to upload Form GST TRAN-1 within the stipulated time, they were unable to because of some system error - they, therefore, seek directions to enable them to take credit of the available input tax.

**Held:** Not only the petitioner but many other assesseees faced this technical glitch and approached the High Court and on earlier occasions in view of paragraph 5 of CBIC Circular 39/13/2018-GST dated 03.04.2018, they were permitted to apply to the second respondent viz. Nodal Officer for resolution of the issue - Petitioner may, therefore, apply to the nodal officer within two weeks and who will (within a week thereafter) look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1 without reference to the time-frame - if the uploading is not possible for reasons not attributable to the petitioner, the authority will also enable them to take credit of the input tax available at the time of migration - Petition disposed of: High Court [para 4 to 6]

- Petition disposed of: KERALA HIGH COURT

### **Husky Injection Molding Systems (India) Pvt Ltd Vs CST (Dated: February 05, 2019)-HC**

**GST** - Insofar as release of goods and vehicle, Single Judge had directed that, for remitting the amount, temporary registration will be permitted - however, appellant is not ready to make remittance of money as such, but undertakes to furnish Bank guarantee.

**Held:** On furnishing the Bank Guarantee for tax and penalty as provided under Rule 141 of the Central Goods and Services Tax Rules, 2017, and simple bond without sureties for the value of the goods, the goods and the vehicle shall be released expeditiously - Writ appeal disposed of: High Court

### **Pmr Enterprises Vs UoI (Dated: February 01, 2019) -HC**

**GST** - Petitioner asserts that though it attempted to upload FORM GST TRAN-1 within the stipulated time, it failed because of some system error, therefore, they seek directions to enable them to take credit of available input tax.

**Held:** Court on earlier occasions permitted the petitioners to apply to the additional sixth respondent for the issue resolution arising due to technical glitches on GST Portal - Paragraph 5 of Circular 39/13/2018 dated 03.04.2018 outlines the procedure the Nodal officers have to follow - Petitioner to apply to the Nodal Officer who will look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1, without reference to the time-frame - if the petitioner applies within two weeks, the Nodal Officer will consider it and take steps within a week thereafter - If the uploading of FORM GST TRAN-1 is not possible for reasons not attributable to the petitioner, the authority will also enable it to take credit of the input tax available at the time of its migration - Petition disposed of: High Court [para 4 to 6]

### **Lalitbhai Natvarlal Patel Vs Additional Director General DGGI (Dated: February 06, 2019) -HC**

**GST** - The bank accounts of the petitioners, were provisionally attached by issuing notice u/s 83 of the Gujarat GST Act, 2017 for recovery of duty demanded - The petitioner challenged such action on grounds that it was facing difficulty in managing its day to day affairs - The petitioner also offered some property held by him for attachment in lieu of lifting the attachment of bank accounts - The petitioner submitted affidavits to show that such property was owned by him and his family members.

**Held** - The Revenue is directed to release the attachment of bank accounts of the petitioner, by way of interim arrangement, subject to attachment of the property - Further, the owners of the property are directed to file an undertaking in respect of the property offered for release of the banks accounts within a period of one week - Lastly, to secure the interest of the Revenue, the petitioner is ordered to maintain an amount of Rs 50,00,000/- in its Current Account: HC

## **Malwa Golden Transolutions Llp Vs State Of Haryana (Dated: January 08, 2019) -HC**

**GST** - The instant petition has been filed for issuance of a writ in the nature of Certiorari for setting aside the notice passed by respondent No.4 on the ground that it is not legally sustainable in the eyes of law, which is in violation of provisions like Section 129 of Haryana Goods and Service Tax Act, 2017 - Petitioner submitted that he may be allowed to withdraw the present petition with liberty to file a detailed and comprehensive representation within a period of three days, however, time bound direction be issued to respondent to decide the same after affording an opportunity of hearing to the petitioner - The petition is disposed of with liberty to petitioner to file a detailed and comprehensive representation with respondent No.4 within a period of three days: HC

## **Bipson Surgical India Pvt Ltd Vs State of Gujarat (Dated: March 27, 2018) -Hc**

**GST/VAT** - Petitioners are engaged in the business of manufacture and distribution of Surgical Dressing items such as Bandages, Gauze etc. - respondent GMSCL is a procuring agency of Government of Gujarat which procures the drugs, surgical items etc. from different manufacturers and distributors for the supply of the same to the Government Hospitals throughout the State of Gujarat - GMSCL invited tenders and the petitioners were awarded contracts and asked to supply the items - as per the tender terms, the petitioners were asked to provide rates prepacking unit (without applicable VAT / CST) as well as provide percentage of VAT / CST, if applicable in different columns - according to the petitioners, VAT / CST were to be borne by the GMSCL which although were recovered by the petitioners but was indeed paid to the State Government or appropriate Authority on behalf of the GMSCL - pursuant to introduction of GST, petitioners informed GMSCL that GST was applicable at 12% to the products the petitioner was supplying and, therefore, to make appropriate changes or accommodate the new tax rates which were applicable to the products that were supplied by the petitioner to respondent - petitioners wrote a letter to the GMSCL asking for the payment that was due where the petitioner had also agreed to accept the payment as per 5% tax subject that in future the petitioner gets payment for rest 7% tax - pursuant to its meeting, GMSCL communicated that "since the Finance Department, Government of Gujarat did not agree to revise a rate due to GST effect, the Board decided to seek consent of firms for supply of the items as per rate contract" and that "if the firms do not agree, the GMSCL will float fresh tender and as per the agreement terms and conditions for the existing rate contract for such items" - Feeling aggrieved and dissatisfied with the impugned decision, petitioners have filed the present Special Civil Application under Article 226 of the Constitution of India - counsel for State submits that as per Clause 49 of the Tender Documents, the claim of price revision of finished goods under any pretext or reason including of revision of duty / excise / cost will not be allowed at any stage after the last date of submission of the tenders; that, therefore, there is no clause for variation in case of revision of any tax; that, therefore, the rate quoted by the petitioners were inclusive of VAT, excise duty etc. applicable at relevant time; that instead of VAT, CGST / GST at 12% has been introduced; that in absence of any specific clause for variation of the rate and/or price revision under any pretext or reason including the revision of duty / excise / cost, the State Government is right in not providing the price revision of rate contract.

**Held:** Merely because the VAT / excise duty has been abolished, which was there at the relevant time when the prices were quoted and the rate contracts were executed and

thereafter has been substituted by the GST, the petitioners cannot be permitted to change the rate contract / rates and cannot be permitted to have the price revision - Otherwise the same shall be contrary to the terms and conditions of the relevant tender documents / rate contracts - It is required to be noted that as such so far as the petitioners are concerned, they will have to pay to the Government the same price which was quoted by them and as per the rate contracts, which otherwise they agreed to charge - merely because now the VAT and excise duty have been deleted and instead the same is substituted by GST which may be at 12%, the petitioners cannot claim the price revision on the aforesaid ground - otherwise also the liability to pay VAT / excise duty etc. was upon the suppliers, therefore, the grant of any relief as prayed in the present petitions would tantamount to varying terms and conditions of the tender document / rate contracts which in exercise of powers under Article 226 of the Constitution of India shall not be permissible - In the present case the decision taken by the respondent GMSCL in not permitting the price revision is after due application of mind and even after considering the opinion of the Finance Department, State of Gujarat and a conscious decision has been taken by the Committee which is neither perverse nor arbitrary and/or contrary to the terms and conditions of the tender documents / rate contracts - the impugned decision since not suffering from any malafides and/or arbitrariness, the same is not required to be quashed and set aside in exercise of powers under Article 226 of the Constitution of India - Special Civil Applications fail and the same are dismissed: High Court [para 9.3, 9.4, 11, 12]

### **PK Construction Company Vs Commissioner Kerala State GST Department (Dated: January 16, 2019) -HC**

**GST** - Petitioner, an assessee under KVAT Act faced problems in migrating from the earlier regime to the GST regime and has, therefore, filed Writ petition seeking reliefs viz. allow them to submit form GST REG-26; direct respondents to revive provisional registration to enable them to conduct business - Petitioner now informs that they have been granted a new registration number; that for the previous period, after commencement of GST, returns have to be validated - Counsel for GSTN informed that the authority would look into the petitioner's claim for validation - in view thereof, Writ Petition closed as it does not survive for further consideration: High Court [para 4]

### **Mono Steel India Ltd Vs State Of Gujarat (Dated: January 17, 2019) -HC**

**GST** - Show cause notices were issued on 21st and 26th December, 2018 and immediately thereafter Bank accounts of the petitioner were provisionally attached by issuing notices u/s 83 of the Gujarat GST Act, 2017 for recovery of a sum of more than rupees three crores - Petitioner is before the High Court and submits a statement showing the details of the bank accounts indicating that the petitioner has a large amount of cash lying at its disposal in those accounts and seeks release of the attachment

**Held:** Perusal of the record of the case reveals that the petitioner is not a fly by night operator and has paid duty and tax to the tune of more than rupees one hundred crore in the previous year - it is, therefore, necessary for the respondent to explain the expediency and the rationale behind ordering attachment of all the bank accounts of the petitioner and virtually bringing the business of the petitioner to a grinding halt - Notice issued returnable on 23 rd January 2019 and in the meanwhile, by way of ad-interim relief, respondent directed to release the attachment over the bank accounts, subject to the petitioner maintaining an amount of Rs.4 crores in its account with Dena Bank: High Court [para 2, 3]

### **Singh Tyres Vs State of U P (Dated: April 2, 2018) -HC**

**GST** - Consignment was booked by the petitioner for transportation from Allahabad to Mirzapur - It is claimed that requisite documents were accompanied during the course of movements of the goods, however, the Assistant Commissioner (Incharge), Commercial Tax, Mobile Squad, Unit-1, Mirzapur, U.P. has intercepted the goods on 27.03.2018 and has issued a notice/detention memo under Section 129(1) of the Act - According to the petitioner, he was not aware about the requirement of E-Way Bill for the purposes of transportation of goods from one place to another place within the State of U.P. - claim of the petitioner is that he has downloaded the EWay Bill on 27.03.2018 from the official department portal and produced the same before the respondent, however, respondent no. 2 has illegally proceeded to pass impugned seizure order ignoring the relevant fact that he himself has directed the petitioner to appear and file his reply before him on 28.03.2018 at 11-00 a.m. whereas the impugned seizure order has been passed on 27.03.2018, hence the same is illegal and is liable to be quashed.

**Held:** Impugned seizure order cannot sustain in the eyes of law as the same has been passed ignoring the fact that the time and date has been given by the respondent no. 2 to the petitioner for appearance and for production of the relevant documents on 28.03.2018, whereas the order has been passed on a day before the date allowed by the respondent no. 2 - no time has been mentioned by the respondent no. 2 whereas while issuing notice/detention memo he has specifically mentioned the time and which clearly goes to show the ill intention on the part of the respondent no. 2. - In view of above, the seizure order dated 27.03.2018 passed by the respondent no. 2 as well as consequential notice issued under Section 129(3) of the Act are quashed - respondent no. 2 is hereby directed to release the goods and the vehicle forthwith - Petition allowed: High Court

### **Super India Global Logistics Ltd Vs State of U P (Dated: April 24, 2018) -HC**

**GST** - Goods were being moved from Gwalior (M.P.) to Zirkipur (Punjab) and while the vehicle was passing through State of U.P. (Agra), it was intercepted by the respondent - Physical verification of the consignment was carried out on the same date i.e. on 23.03.2018 and when no irregularity was detected, only on the basis of the non-availability of Transaction Declaration Form (T.D.F.), the goods were seized and penalty notice under Section 129(3) of the UPGST was issued - Petitioner contends that after amendment of C.G.S.T. Rules, 2017 on 30.08.2017, vide another

notification dated 29.12.2017 containing the E-way Bill system which was to come into force w.e.f. 01.02.2018, the notification dated 29.12.2017 requiring T.D.F. to accompany with the consignor was rescinded and, therefore, no T.D.F. was required.

**Held:** Issue being settled by a Division Bench of this Court in the case of Satyendra Goods Transport Corporation impugned seizure order dated 24.03.2018 passed by respondent under Section 129(1) of the Act, 2017 and consequential notice issued under Section 129 (3) of the said Act are rendered illegal and are not liable to be sustained and are hereby quashed - Seized goods and vehicle shall be released forthwith on production of a certified copy of this order - Petition allowed: High Court [para 6, 7]

### **Preethi Kitchen Appliances Pvt Ltd Vs State Tax Officer (Dated: January 04, 2019) -HC**

**GST** - Detention of goods on the ground that Part-B of the E-way bill was not updated - Petitioner submitting that without prejudice to the contention of the petitioner that they had filed Part-B properly, they will pay one time tax under the CGST Act and SGST Act for the purpose of releasing the goods and agitate the matter before appropriate authority by way of filing revision.

**Held:** Without expressing any view on the merits of the contentions raised by the petitioner as well as the respondents in the impugned detention proceedings, writ petition is disposed of subject to the petitioner paying the one-time tax liability within four days and on receipt of such payment, the detained goods are to be released forthwith - Petitioner granted liberty to agitate matter before appropriate authority: High Court [para 6]

### **Scott Edil Pharmacia Ltd Vs Assistant Commissioner, State Taxes And Excise (Dated: December 17, 2018) -HC**

**CGST** - Petitioner assails the order passed by Asstt. Commissioner whereby the petitioner-Company has been held guilty of suppressing Gross Turn Over of Rs. 95,90,00,000/- and consequently, it has been subjected to SGST and penalty to the tune of Rs. 23,01,60,000/ - Petitioner submits that the order is appealable before Commissioner(A) u/s 107 of the Act, however, since no such appellate forum has been notified for the State of Himachal Pradesh, they have been denied valuable right of appeal and left with no other option, the present petition has been filed.

**Held:** In view of the fact that the Statute contemplates the remedy of appeal, High Court is of the view that the aggrieved party cannot be left remediless merely because the State Government has not notified the Appellate Forum - Writ Petition is disposed of with a direction to the Additional Chief Secretary-cum-Financial Commissioner, State Taxes and Excise, to notify the Appellate Forum within one week - Petitioner may file an appeal within one week from the date of said notification - No coercive action to be taken against petitioner: High Court [para 4]

### **Advantage India Logistics Pvt Ltd Vs UoI (Dated: August 23, 2018)-HC**

**GST** - Officers appointed under the MPGST Act are authorized to be proper officers for the purpose of IGST - contention of the petitioner that in absence of any notification under Section 4 of the IGST Act, action of the respondent MP State government authorities is without jurisdiction has no force - by order dated 12.10.2017, the respondent was authorized as proper officer and was bestowed with powers such as inspection, search and seizure under Section 68 of the MPGST Act - final order dated 23.07.2018 passed by jurisdictional authorities directing the petitioner to pay an amount of Rs.4,20,266/- (minimum) as tax and penalty in terms of Section 129(3) of the MPGST Act is an appealable order u/s 109 of the Act Petition seeking quashing of the seizure memo/order is not entertainable, hence dismissed: High Court [para 11, 13, 14]

### **Goan Hotels And Realty Pvt Ltd Vs UoI (Dated: September 4, 2018) - HC**

**GST** - The assessee company contested levy of license fee by the State government on its casino - To support its arguments, the assessee put forward a decision in which the levy of service tax on fee paid to obtain liquor license was contested - The assessee claimed that despite difference in facts, the position in both cases is the same.

**Held** - The Revenue is given time to examine the assessee's arguments and file affidavit in reply - Matter to be heard on October 08: HC

### **KK Ramesh Vs UoI (Dated: January 03, 2018) -HC**

**GST** - the petitioner was aggrieved by what he perceived to be the improper implementation of GST - He claimed that his prayer seeking to increase flying squads at State, District & Zonal level to monitor the movement of goods & tracking of e-way bills, had not been answered properly.

**Held** - Considering the decision of this court in W.P(MD) No.16112 of 2017 dated 12.12.2017, wherein the Court had directed the petitioner to submit his response to the Notification dated 30.08.2006 - Such findings take care of the Revenue's interests and do not warrant any further directions: HC (Para 4, 11)

### **Renji Lal Damodaran Vs State Tax Officer (Dated: August 6, 2018) - HC**

**GST** - Certain goods belonging to the assessee were detained, pursuant to inspection - Notice was issued u/s 129 of the Kerala GST Act & Rule 140 of the CGST Rules - When the assessee first approached the High Court, the Single Judge passed an order, against which the assessee filed the present writ appeal.

**Held** - The assessee agreed to furnish a bank guarantee as directed by the Single Judge - Hence no interference is needed in this regard - Further, considering the mandate of Rule 140(1) of the CGST Rules, the detained goods be released upon furnishing of bank guarantee for the tax and penalty which is payable - Further, the a bond be furnished for



the value of the goods, as per provisions of Rule 140(1): HC (Para 1,2,4)

### **Earthline Services Pvt Ltd Vs State of Kerala (Dated: August 07, 2018) -HC**

**GST** - Petitioner is a dealer under Kerala Value Added Tax Act, 2003 and has been issued with a notice dated 02.06.2014 u/s 25(1) of KVAT Act Petitioner seeking a writ of mandamus or any other appropriate writ, order or direction declaring section 174(1)(i)/174(2) of the Kerala State Goods and Services Tax Act, 2017 as being unconstitutional and for striking down the same.

**Held:** Once a *lis* can be disposed of, and a grievance can be redressed, on the statutory adjudication, the other issues, especially involving constitutional validity, need not be addressed - canon of constitutional avoidance is well established - Writ petition allowed on the issue of limitation in view of this High Court decision in Court in M/s. Cholayil Pvt. Ltd v. The Assistant Commissioner (Assessment) Judgment dated 5th July 2018 Petition allowed: High Court [para 3]

### **Speed Marine Vs Assistant State Tax Officer (Dated: June 11, 2018) - HC**

**GST** - the petitioner company seeks the release of goods detained u/s 129 of the CGST Act and Kerala GST Act.

**Held** - an identical matter was disposed off by this court in W.A.No.1802 of 2017 where under similar circumstances, the adjudicating authority was directed to expeditiously complete adjudication u/s 129 of the CGST & Kerala GST Act - Besides, the seized goods be released subjected to the petitioner's compliance with the provisions of Rule 140(1) of the Kerala GST Rules 2017: HC

### **Sainik Mining & Allied Services Ltd Vs UoI (Dated: May 14, 2018) - HC**

**GST** - the assessee company is engaged in providing coal mining, logistics and other allied services to Coal India Ltd - Upon transition to GST, the assessee was required to file declaration under Form GST TRAN-1 under Rule 117 of the Chhattisgarh Goods & Services Tax Rules, 2017 to avail tax credit - To avail such credit, the assessee filled in the requisite details much before the deadline - However on clicking the submission button for filing TRAN - 1 an error message would flash, due to which the form TRAN-1 could not be uploaded - Despite pointing out the same to the authorities, such error was not fixed - Hence the assessee sought a direction to the authorities that the assessee's application be accepted manually and input tax credit be granted.

**Held** - A circular had been issued by the CBIC on April 3, 2018 for redressing grievances of tax payers due to technical glitches on GST portal - In this regard an IT Grievance Redressal Committee was set up - Relevant portions of the circular lay down procedure for resolving issue of stuck TRAN-1 forms as well as details of the nodal officer concerned - Hence this circular provides the remedy sought for by the assessee in the present writ - Besides, the State Govt also issued an order appointing the nodal officers - Thereby, the assessee is directed to approach nodal officer concerned & file representations for redressal of grievances: HC (Para 2,6,7)

### **St Josephs Tea Company Ltd Vs Chief Commissioner, Central Gst And**

### **Central Excise(Dated: March 28, 2018) -HC**

**GST** - Petitioner who was a registered dealer under Kerala VAT migrated to GST regime and although they applied for registration under the GST statutes, they have not yet been granted registration - Petitioner, therefore, seeks appropriate directions in this regard - In the light of the interim order dated 19.02.2018, petitioner was granted registration w.e.f 09.03.2018 - now the subsisting grievance of the petitioner concerns their inability to comply with the requirements of the statute for the period 01.07.2017 to 09.03.2018.

**Held:** Writ petition is disposed of by directing respondents 1 and 2 to make appropriate changes in the portal so as to enable the petitioner to comply with the statutory requirements for the period prior to 09.03.2018 also, within ten days - Directed that no action, whatsoever shall be taken against the petitioner for non-compliance of the statutory provisions for the period prior to 09.03.2018 until appropriate changes are made in the portal, and a reasonable time thereafter, so as to enable the petitioner to comply with the statutory requirements: High Court [para 5]

### **Rajeevan V N Vs Central Tax Officer-1 (Dated: February 21, 2018) - HC**

**GST** - Application for registration under CGST Act & Kerala SGST Act rejected by competent authority for reason that petitioner did not submit the explanation sought as regards discrepancies in the documents submitted - when the matter was taken up for hearing, respondent's counsel submitted that if the petitioner submits a fresh application with requisite documents, the competent authority would consider the same.

**Held:** Petition disposed of by taking on record submission made by respondent - If petitioner prefers a fresh application, same be considered and appropriate decision be taken thereon within two weeks: High Court [para 1, 2]

### **Powermech Diesels Vs State Tax Officer (Dated: February 9, 2018) - HC**

**GST** - Petitioner seeks release of the goods detained by the respondent u/s 129 of the CGST/Kerala SGST Act. Held: An identical matter has been disposed of by a Division Bench of this Court, directing expeditious completion of the adjudication of the matter and permitting release of the goods detained pending adjudication, in terms of Rule 140(1) of the Kerala Goods and Services Tax Rules, 2017 - Writ Petition disposed of directing competent authority to complete adjudication within a week and if the petitioner complies with rule 140(1) of Kerala GST Rules, 2017 to release the detained goods forthwith: High Court [para 2]

### **Gasha Steels Pvt Ltd Vs Assistant State Tax Officer (Dated: January 9, 2018) -HC**

**GST** - Petitioner seeks release of the goods detained by the respondent u/s 129 of the CGST/Kerala SGST Act. Held: An identical matter has been disposed of by a Division Bench of this Court, directing expeditious completion of the adjudication of the matter and permitting release of the goods detained pending adjudication, in terms of Rule 140(1) of the Kerala Goods and Services Tax Rules, 2017 - Writ Petition disposed of directing competent authority to complete adjudication within a week and if the petitioner complies with rule 140(1) of Kerala GST Rules, 2017 to release the detained

goods forthwith: High Court [para 2]

**KITEX LTD Vs Assistant Sales Tax Officer (Dated: January 23, 2018) -HC**

**GST** - Petitioner seeks release of the goods detained by the first respondent u/s 129 of the CGST/SGST Act. Held: An identical matter has been disposed of by a Division Bench of this Court, directing expeditious completion of the adjudication of the matter and permitting release of the goods detained pending adjudication, in terms of Rule 140(1) of the Kerala Goods and Services Tax Rules, 2017 - Writ Petition disposed of directing competent authority to complete adjudication within a week and if the petitioner complies with rule 140(1) of Kerala GST Rules, 2017 to release the detained goods forthwith: High Court [para 2]

**Nirmal Constructions Vs State of Madhya Pradesh (Dated:September 6, 2017) -HC**

**GST** - Challenge by the petitioner is to a communication by the State Government, informing its decision dated 05.08.2017 that for future contracts offers should be invited by excluding the amount of GST, and thereby cancelling the tender in which the petitioner participated.

**Held:** Letter of acceptance of the contract has not been communicated to the petitioner, therefore, it is not a case of concluded contract - In the absence of concluded contract, the petitioner cannot claim right to seek grant of contract only on the basis of the offer submitted by the petitioner at one stage - Consequent upon introduction of GST, tax regime has undergone change, therefore, State Government's decision not to act upon the tenders invited with effect from 1.7.2017 to 5.8.2017 cannot be said to be illegal or arbitrary - no merit in the petition, hence dismissed: High Court [para 2, 3]

**Jai Laxmi Venkatesh Granites Pvt Ltd Vs Assistant Commissioner of Commercial Taxes (SGST) (Dated: August 07, 2018)-HC**

**GST** - the petitioner company is engaged in the manufacture & resale of Granite - It is registered under VAT and Central Sales Tax - When the petitioner attempted to migrate to GST, it received a communication to the effect that the functionality enabling migration through Form GST REG-26 had been closed - Resultantly, it would have to obtain fresh registration under GST - The petitioner invoked the writ jurisdiction of the High Court, which directed that the petitioner be treated as an unregistered dealer & granted interim relief from any action - The matter was then adjourned.

**Held** - After introduction of GST & during the process of migration into CGST, it appeared that some mistake or short fall of information had crept in - Also the petitioner made no efforts to rectify the same during on-line migration -

Nonetheless, the petitioner is directed to approach the Nodal Officer concerned - Such lapse on the petitioner's part be considered by the Nodal officer - Interim protection granted by High Court to be in effect till Nodal Officer passes an order: HC (Para 2,6)

### **Lamit Tubes & Mouldings LLP Vs UoI (Dated: August 03, 2018) -HC**

**GST** - Petitioner attempted to upload the Form GST TRAN-1 within the stipulated time but it failed because of some system error - petitioner, therefore, seeks direction for taking credit of the available Input Tax.

**Held** : Not only the petitioner but also many other people faced this technical glitch and approached this Court - on earlier occasions, the Court had permitted the petitioner to apply to the Nodal Officer concerned to have the issue resolved - petitioner, too, may apply to the Nodal Officer who will look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1, without reference to the time-frame - petitioner to apply within two weeks and Nodal Officer to take steps within a week thereafter - If the uploading of FORM GST TRAN-1 is not possible for reasons not attributable to the petitioner, the authority will also enable it to take credit of the input tax available at the time of its migration - Petition disposed of: High Court [para 4 to 6]

### **Erbis Engineering Company Ltd Vs CC (Dated: August 02, 2018) -HC**

**IGST** - the petitioner imported some goods and filed bills of entry for them - It was aggrieved by the assessment wherein the Department classified the goods under a heading different from the one under which the goods had been classified by the petitioner - The Department also claimed that while the bills of entry were assessed under the same heading favored by the petitioner, a demand for IGST had been raised under Sl No 453 of Schedule III to Notfn No 01/2017.

**Held** - the classification dispute cannot be adjudicated in a writ petition & so the petitioner must seek appropriate remedy under the Customs Act - Nonetheless, considering the Department's instruction that while the classification favored by the petitioner had been adopted, the demand raised for IGST is untenable as the petitioner merits a chance to contest such decision - Hence the Department must issue an SCN to the petitioner & follow it up with grant of personal hearing - Considering the high-value nature of the imported goods, the entire process be expedited: HC (Para 2,3,4,5)

### **Jai Laxmi Venkatesh Granites Pvt Ltd Vs Assistant Commissioner of Commercial Taxes (SGST) (Dated: August 07, 2018) -HC**

**GST** - the petitioner company is engaged in the manufacture & resale of Granite - It is

registered under VAT and Central Sales Tax - When the petitioner attempted to migrate to GST, it received a communication to the effect that the functionality enabling migration through Form GST REG-26 had been closed - Resultantly, it would have to obtain fresh registration under GST - The petitioner invoked the writ jurisdiction of the High Court, which directed that the petitioner be treated as an unregistered dealer & granted interim relief from any action - The matter was then adjourned.

**Held** - After introduction of GST & during the process of migration into CGST, it appeared that some mistake or short fall of information had crept in - Also the petitioner made no efforts to rectify the same during on-line migration - Nonetheless, the petitioner is directed to approach the Nodal Officer concerned - Such lapse on the petitioner's part be considered by the Nodal officer - Interim protection granted by High Court to be in effect till Nodal Officer passes an order: HC (Para 2,6)

### **LRN Auto Agencies Pvt Ltd Vs Assistant Commissioner (Dated: August 01, 2018) -HC**

**GST** - the petitioner, a dealer, was unable to upload Form GST TRAN-1 within the stipulated time frame, on account of some technical error - Consequently, the petitioner was unable to avail credit of input tax available to it upon migration to GST - Hence the present writ seeking appropriate directions.

**Held** - the GST commissionerate concerned directed to appoint the Nodal Officer for the State of Tamil Nadu, if not already appointed - The petitioner directed to approach the Nodal Officer & make representations - The Nodal Officer would in consultation with the GSTN, take appropriate measures to redress such grievances: HC (Para 2,4)

### **Vector Surgical And Disposables Vs UoI (Dated: July 26, 2018) -HC**

**GST** - the petitioner, a dealer was unable to upload Form GST TRAN-1 within the stipulated time frame, on account of some technical error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ, seeking appropriate directions.

**Held** - the petitioner is directed to approach the jurisdictional Nodal Officer & make representation - The Nodal Officer is directed to look into the matter and enable uploading of Form GST TRAN-1 - Also should the petitioner be found unable to upload the Form GST TRAN-1 due to no fault of its own, then the Nodal Officer is directed to enable the petitioner to avail credit of input tax available on migration to GST: HC (Para 1,5,6)

### **Ting Tong International Pvt Ltd Vs UoI (Dated: July 30, 2018) -HC**

**GST** - the petitioner, a dealer was unable to upload Form GST TRAN-1 within the stipulated time frame, on account of some technical error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ, seeking appropriate directions.

**Held** - the petitioner is directed to approach the jurisdictional Nodal Officer & make representation - The Nodal Officer is directed to look into the matter and enable uploading of Form GST TRAN-1 - Also should the petitioner be found unable to upload the Form GST TRAN-1 due to no fault of its own, then the Nodal Officer is directed to enable the petitioner to avail credit of input tax available on migration to GST: HC

### **Leo Distributors Vs UoI (Dated: July 23, 2018) -HC**

**GST** - the petitioner, a dealer was unable to upload Form GST TRAN-1 within the stipulated time frame, on account of some technical error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ, seeking appropriate directions.

**Held** - the petitioner is directed to approach the jurisdictional Nodal Officer & make representation - The Nodal Officer is directed to look into the matter and enable uploading of Form GST TRAN-1 - Also should the petitioner be found unable to upload the Form GST TRAN-1 due to no fault of its own, then the Nodal Officer is directed to enable the petitioner to avail credit of input tax available on migration to GST: HC (Para 1,5,6)

### **Dhamtari Krishi Kendra Vs UoI (Dated: May 14, 2018) -HC**

**GST** - The petitioner, a dealer, was unable to upload the Form GST TRAN-1 within the stipulated time frame, on account of some system error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ seeking appropriate directions.

**Held** - The petitioner is directed to approach the jurisdictional Nodal Officer and make representations - The Nodal Officer would look into the matter and facilitate uploading of Form GST TRAN-1 - Also, if the petitioner is found to be unable to upload Form GST TRAN-1 for no fault of its own, then the Nodal Officer may also enable the petitioner to take credit of input tax available on migration to GST: HC (Para 1,2,3,7)

### **Calibre Industries Vs Pr Commissioner, GST & Central Excise (Dated: July 24, 2018) -HC**

**GST** - The petitioner, a dealer, was unable to upload the Form GST TRAN-1 within the stipulated time frame, on account of some system error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ seeking appropriate directions.

**Held** - The jurisdictional GST Commissionerate is directed to appoint a Nodal Officer if not appointed already - The petitioner is directed to approach the jurisdictional Nodal Officer and make representations - The Nodal Officer would look into the matter and facilitate uploading of Form GST TRAN-1 - Also, if the petitioner is found to be unable to upload Form GST TRAN-1 for no fault of its own, then the Nodal Officer may also enable the petitioner to take credit of input tax available on migration to GST: HC (Para 2,3,12)

### **Smartuff Glass Ltd Vs UoI (Dated: July 24, 2018) -HC**

**GST** - The petitioner, a dealer, was unable to upload the Form GST TRAN-1 within the stipulated time frame, on account of some system error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ seeking appropriate directions.

**Held** - The petitioner is directed to approach the jurisdictional Nodal Officer and make representations - The Nodal Officer would look into the matter and facilitate uploading of Form GST TRAN-1 - Also, if the petitioner is found to be unable to upload Form GST TRAN-1 for no fault of its own, then the Nodal Officer may also enable the petitioner to

take credit of input tax available on migration to GST: HC (Para 1,5,6)

### **CEE PEE Marble and Granite Vadad Vs GST Council (Dated: July 23, 2018) -HC**

**GST** - the petitioner, a dealer was unable to file Form GST TRAN-1 within the stipulated time frame on account of a system error - Consequently, it was unable to take credit of input tax available to it upon migration to GST - Hence the present writ seeking appropriate directions.

**Held** - the petitioner is directed to approach the jurisdictional Nodal Officer and make representation therein - The Nodal Officer would facilitate the uploading of Form GST TRAN-1 - Also if the petitioner is found to have been unable to upload the Form GST TRAN-1 due to no fault of its own, then the Nodal Officer would also facilitate taking credit of input tax available to the petitioner on migration to GST: HC (Para 1,7,8)

### **Super Plast Poly Products India Pvt Ltd Vs State of Kerala (Dated: July 05, 2018) -HC**

**GST** - the petitioner company purchased a diesel generator for its business - However, it failed to reflect such item in its returns for the relevant period - The petitioner claimed to have attempted to revise the returns, but received no response from the Department - Hence it was compelled to file Form GST TRAN-1 without incorporating details of the generator and consequently was unable to avail input tax credit on the generator.

**Held** - this court in *The Commercial Tax Officer v. C. R. Varghese* had held that the Department must accept a revised return when a dealer wants to file one - Also there is no prohibition against a dealer seeking to revise a return after the time specified as long as no penal proceedings are pending - It was also held that the AO has the authority to examine the dealer's claims beyond the period & decide the question in accordance with well-established principles of law & ensure that the revision of returns is not done to cover up or get over a penal provision or avoid the penal consequences of detection - Following such findings, the Department is directed to permit the petitioner to revise the returns - The petitioner may include purchase of generator in the returns: HC (Para 1,2,7,9)

### **Diamond Food Products Vs Assistant State Tax Officer (Dated: July 27, 2018) -HC**

**GST** - the petitioner firm purchased some machinery at Chennai - The vehicle transporting the machines was intercepted en route - Though the vehicle driver produced copy of e-way bill, he did not have original or duplicate invoice - The Department ordered inspection of the goods & the documents and later detained the goods - Hence the present writ.

**Held** - while the petitioner had the equally efficacious remedy of appeal u/s 107 of the CGST Act, it nevertheless agreed to furnish bank guarantee as mandated under Rule 140 of the CGST Rules to seek release of the goods - The Department too is open to releasing the goods upon furnishing of bank guarantee - Hence the petitioner's goods be released upon providing bank guarantee: HC (Para 1,3,4,5)

### **Cubex Tubings Ltd Vs ACST (Dated: July 17, 2018) -HC**

**GST** - the assessee company is engaged in manufacturing Copper & Copper alloy products -

A consignment of such products loaded on a vehicle was seized by the Department on course from the assessee's office to its factory - The assessee claimed that the goods were duty paid and that while the necessary bills & documents had been generated, the transporter chose to ignore them and cleared the goods for delivery - The assessee seeks release of the goods on grounds that non-delivery of the same would hamper the exports to be made by the consignee and result in huge losses for it - Hence the assessee seeks release of the goods at least, if not of the vehicle.

**Held** - the assessee has not challenged the seizure of the goods or the detention of the vehicle - Besides, an SCN has been served to the assessee & there is proper procedure u/s 129(3) & (4) to obtain release of the goods - Hence there is no need for interference by the writ court in such circumstances as the assessee is not left high & dry without any remedy - Moreover, the conduct of the assessee shows it to be unwilling to comply with conditions imposed for release of the goods - It cannot expect the writ court to interfere & direct unconditional release of goods - Thus in light of an equally efficacious remedy being available to the assessee, no interference is warranted - No short-cuts can be resorted to: HC (Para 1,2,3,5)

### **Evershine Wood Packaging Pvt Ltd Vs GST Council (Dated: July 17, 2018) - HC**

**GST** - the petitioner company was unable to upload Form GST TRAN - 1 within the stipulated time frame owing to technical glitches - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ, seeking appropriate directions in this regard.

**Held** - The CBIC directed appointment of Nodal Officers to address such grievances faced on account of technical glitches - Hence the commissionerate concerned is directed to appoint Nodal Officers in the State of Tamil Nadu, if not appointed already - Thereafter, the petitioner may approach the jurisdictional Nodal Officer & make representation - The Nodal Officer will take an appropriate decision in this regard within three weeks from making application: HC (Para 2,3,12)

### **Pothys Vs Principal Chief Commissioner Goods And Services Tax Act (Dated: July 18, 2018) -HC**

**GST** - the petitioner company was unable to upload Form GST TRAN-1 within the stipulated time frame, on account of some technical error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ seeking appropriate directions.

**Held** - The CBIC directed appointment of Nodal Officers to address such grievances faced on account of technical glitches - Hence the commissionerate concerned is directed to appoint Nodal Officers in the State of Tamil Nadu, if not appointed already - Thereafter, the petitioner may approach the jurisdictional Nodal Officer & make representation - The Nodal Officer will take an appropriate decision in this regard within three weeks from making application: HC (Para 2,3,12)

### **Berger Paints India Ltd Vs State Tax Officer (Dated: July 16, 2018) - HC**



**GST** - the petitioner company is engaged in manufacturing & dealing in paints - The petitioner owned some paint mixing machinery which was seized by the Department - The petitioner provided bank guarantee & security bond to secure release of the machinery as well as the vehicle transporting it - While the petitioner was contemplating to avail appellate remedy, the Department threatened to invoke bank guarantee - Hence the present writ was filed to challenge invoking of bank guarantee.

**Held** - Section 107 of the CGST Act r/w Section 108 of the GST Rules allows three months' time to avail appellate remedy - Hence it would be inequitable if the Department invokes the bank guarantees before the petitioner exhausts appellate remedy & such remedy would become illusory - Hence the Department is restrained from invoking bank guarantee within such three month period: HC (Para 1,2,5,6)

### **C B Furniture and Interious Vs GST Council (Dated: July 11, 2018) - HC**

**GST** - the petitioner is a dealer who was unable to upload Form GST TRAN-1 within the stipulated time frame on account of some technical error - Consequently the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ is filed seeking appropriate directions.

**Held** - The petitioner is directed to approach and make representation before the jurisdictional Nodal Officer, who would look into the matter and enable the uploading of Form GST TRAN-1 - Where it is found that the petitioner was unable to upload Form GST TRAN-1 for no fault of its own, then the Nodal Officer will also enable the petitioner to take credit on input tax available on migration to GST: HC (Para 1,5,6)

### **Selfshine Polymers India Pvt Ltd Vs State of Kerala (Dated: July 10, 2018) - HC**

**GST** - the petitioner is a dealer who was unable to upload Form GST TRAN-1 within the stipulated time frame on account of some technical error - Consequently the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ is filed seeking appropriate directions.

**Held** - The petitioner is directed to approach and make representation before the jurisdictional Nodal Officer, who would look into the matter and enable the uploading of Form GST TRAN-1 - Where it is found that the petitioner was unable to upload Form GST TRAN-1 for no fault of its own, then the Nodal Officer will also enable the petitioner to take credit on input tax available on migration to GST: HC (Para 1,5,6)

### **Jindal Dychem Industries (P) Ltd Vs UoI (Dated: April 16, 2018) -HC**

**GST** - the petitioner was aggrieved by the denial of exemption from payment of Customs duty for goods imported for fulfilling export obligations - The petitioner had been issued advance authorisations under the extant FTP 2015-20 - In this regard, it claimed that existing exemption under Customs notifications could not be denied merely due to introduction of GST - The petitioner claimed that levy of IGST was not subject of the amended provisions of the Customs Act.

**Held** - the imports which are the subject matter in the present writ had been made after introduction of GST - The petitioner was beneficiary of an advance license issued on July 17, 2017 & at that point of time the exemption notifications were not in existence - The

exemption from IGST was not in force at that point of time & the Customs notifications were amended on October 13, 2017 - In such circumstances, as the exemption in fact existed during the period of dispute, the Department must verify whether the petitioner fulfilled the export obligations pursuant to advance license - If in the affirmative, no further action is warranted - If in the negative, then necessary assessment be made - The proceedings be completed within four months: HC

### **Narendra Plastic Pvt Ltd Vs UoI (Dated: July 16, 2018) -HC**

**GST** - the petitioners herein were unable to clear certain goods without payment of IGST, inspite of relief measures announced by the Government for exporters - The relief sought by the claimants is identical to the relief claimed in the case of Jindal Dyechem Industries (P) Ltd. vs. Union of India & Ors.

**Held** - considering relevant findings of this court in Jindal Dyechem Industries (P) Ltd. , the petitioners herein are to be entitled to similar relief - Hence the present petitions are disposed of to provide similar relief as provided by the Court in Jindal Dyechem Industries (P) Ltd. vs. Union of India & Ors. : HC

### **Consolidated Premium Retailers Vs Principal Commissioner, GST (Dated: July 17, 2018) -HC**

**GST** - the petitioner is a dealer who was unable to upload Form GST TRAN-1 within the stipulated time frame, on account of some system error - Consequently, the petitioner was unable to take credit of input tax available to it upon migration to GST - Hence the present writ seeking appropriate directions in this regard.

**Held** - to alleviate difficulties faced by assesseees on account of technical glitches, the CBIC had set up a Grievance Redressal Mechanism vide Circular No. 39/13/2018- GST dated 03.4.2018 - As per such mechanism, Nodal Officers have been appointed to redress such grievances - The respective commissionerates are directed to set up Nodal Officers in the State of Tamil Nadu if not appointed already - Hence the petitioner is directed to approach & make representations before the jurisdictional Nodal Officer who would take appropriate decisions within three weeks of date of application: HC (Para 2,11,12)

### **Schwing Stetter India Pvt Ltd Vs CGST & CE (Dated: July 16, 2018) - HC**

**GST** - Inability to upload GST TRAN-1 - Paragraph 5 of the Circular No.39/13/2018-GST dated 03.04.2018 is not confined to non-TRAN-1 issues as there is no such specific distinction brought about in paragraph 5 of the circular - petitioners directed to submit their applications to their respective Assessing Officers who in turn are directed to forward the application to the Nodal Officers within a period of one week - Nodal Officer, in consultation with the GSTN to take note of the grievances expressed by the petitioners/ assesseees and forward the same to the grievance committee, who in turn would take an appropriate decision in the matter within a period of three weeks from the date on which the applications are received - Petitions disposed of: High Court [para 9, 11]

### **Sevenses Exporters Vs UoI (Dated: July 5, 2018) -HC**

**GST** - the petitioner is a dealer, who was unable to upload the Form GST TRAN-1 within

the stipulated time frame on account of some technical error - Consequently, the petitioner was unable to take credit of input tax available at the time of migration to GST - Hence the present writ was filed seeking directions.

**Held** - the petitioner may approach the Nodal Officer concerned & file representations therein - The Nodal Officer would look into the issue & facilitate filing of GST TRAN - 1 - Where it is found that such form was unable to be uploaded due to reasons not attributable to the petitioner, the Nodal Officer would facilitate taking credit of input tax available to petitioner upon migration to GST: HC (Para 1,5,6)

**Seyadu Beedi Company Vs Assistant Tax Officer (Intelligence) (Dated: July 13, 2018) -HC**

**GST** - the petitioner is a dealer - Certain goods belonging to the petitioner were seized - Hence the present writ was filed, as the petitioner claimed to have no alternative remedy as the appellate authority took no decisions under the Act.

**Held** - the government very recently appointed an appellate authority - Due to the recent nature of the decision, the petitioner was apparently unaware of such development - Hence, with the appellate authority having been appointed, the petitioner now has an efficacious alternate remedy - Nonetheless, no coercive steps be taken against the petitioner during the pendency of proceedings before the appellate authority: HC (Para 1,2,4,5)

**KBM Agencies Vs Secretary Taxes, Goods and Service Tax Department (Dated: July 17, 2018) -HC**

**GST** - the petitioner is a registered dealer, who was unable to upload its returns onto the GST portal, within the stipulated time frame - Such returns could not be uploaded due to some system errors - Hence it seeks appropriate directions in this regard.

**Held** - The petitioner is directed to approach the Nodal Officer concerned and file representations therein - The Nodal officer would look into the issue & facilitate the petitioner to file its returns - Should the petitioner be found unable to upload the returns for reasons not attributable to itself, then the Nodal Officer would also enable the petitioner to take credit of input tax available on migration to GST: HC (Para 1,5,6)

**Bright Auto Agencies Vs GST Council (Dated: July 11, 2018) -HC**

**GST** - the petitioner is a dealer who was unable to upload Form GST TRAN - 1 within the stipulated time frame due to some system error - Consequently, the petitioner was unable to avail input tax credit - Hence the present writ seeking directions.

**Held** - the petitioner is directed to approach the Nodal Officer concerned and make representation therein - The Nodal Officer would examine the matter & facilitate the petitioner's uploading Form GST TRAN-1 - Also should the petitioner be found unable to upload Form GST TRAN -1 for no fault of its own, then authority would also enable the petitioner to take credit of the input tax available on migration to GST: HC (Para 1,5,6)

**Samrudhi Sanitary Wares Vs State Tax Officer (Dated: July 16, 2018) -HC**

**GST** - the petitioner is a dealer who was unable to upload Form GST TRAN - 1 within

the stipulated time frame due to some system error - Consequently, the petitioner was unable to avail input tax credit - Hence the present writ seeking directions.

**Held** - the petitioner is directed to approach the Nodal Officer concerned and make representation therein - The Nodal Officer would examine the matter & facilitate the petitioner's uploading Form GST TRAN-1 - Also should the petitioner be found unable to upload Form GST TRAN -1 for no fault of its own, then authority would also enable the petitioner to take credit of the input tax available on migration to GST: HC (Para 1,5,6)

### **MG Shahani And Company Bombay Pvt Ltd Vs Commissioner Of State GST (Dated: July 11, 2018) -HC**

**GST** - the petitioner is a dealer who was unable to upload Form GST TRAN - 1 within the stipulated time frame due to some system error - Consequently, the petitioner was unable to avail input tax credit - Hence the present writ seeking directions.

**Held** - the petitioner is directed to approach the Nodal Officer concerned and make representation therein - The Nodal Officer would examine the matter & facilitate the petitioner's uploading Form GST TRAN-1 - Also should the petitioner be found unable to upload Form GST TRAN -1 for no fault of its own, then authority would also enable the petitioner to take credit of the input tax available on migration to GST: HC (Para 1,5,6)

### **TVS Motor Company Ltd Vs Assistant Commissioner CGST & Central Excise (Dated: July 9, 2018) -HC**

**CGST** - The petitioner has filed the writ petition challenging the order dated 30.5.2018, which according to the respondents is only a SCN - The petitioner's case is that the impugned order is not a SCN, but a demand, which has been made on them without considering the objections filed by petitioner and that it is not in the nature of a SCN, as a final decision has been taken and communicated to them - It is further submitted that the impugned order denying a legitimate transitional credit eligible to petitioner in accordance with Section 140 of CGST Act, 2017 is illegal and arbitrary and has been passed in violation of principles of natural justice - Upon perusal of impugned order, it clearly shows that it is not in the nature of a SCN, but a demand by itself whereby the petitioner's claim for transitional credit has been rejected and that they have been directed to reverse the credit along with interest within 15 days, failing which, penal action would be initiated for recovery of arrears under Section 79 of the said Act - These are sufficient grounds to hold that the impugned order is in violation of principles of natural justice - On this ground alone, the petitioner is entitled to succeed: HC

### **Summit Online Trade Solutions Pvt Ltd Vs UoI (Dated: June 6, 2018) -HC**

**GST** - Central Goods and Services Act, (CGST Act) 2017 / Integrated Goods and Services Act, (IGST Act) 2017 / Goa Goods and Services Act, 2017 (GGST Act, 2017)

- Three writ petitions seeking to challenge, inter alia, impugned notifications of various States including State of Goa to the extent it levies differential rate of tax on the supply of the lottery tickets are pending before this Court for adjudication - present applications filed by the State of Goa seeking deletion of the State of Goa as a party Respondent in the said three writ petitions - it is the applicant's case that as far as challenge to the notification issued by the State of Goa is concerned and charging of the Tax thereunder, the cause of action, if any, has arisen in Goa and thus, the appropriate Court where the

notification and the consequential actions if at all can be challenged is the High Court of Bombay at Goa.

**HELD:** It is seen that the petitioners in the said three writ petitions are aggrieved by not only impugned notification issued by State of Goa under the GGST Act, 2017 but also by the act of the Centre of issuing the impugned notifications under the CGST Act, 2017 as well as the IGST Act, 2017 which seeks to levy Goods and Services Tax on lotteries organized, promoted and conducted by the State of Sikkim - perusal of the prayers, as prayed for, in the said three writ petitions also makes it evident that at least a part of the cause of action has arisen within the jurisdiction of this Court - a part of the cause of action for the present writ petition having arisen within the jurisdiction of this Court coupled with the fact that the said writ petitions WP(C) No. 36/2017 and WP(C) No.38/2017 having been filed prior in time before this Court to the writ petition filed by Serenity Trades Private Limited in WP(C) No.759/2017 in the High Court of Bombay at Goa and WP(C) No.59/2017 is being heard together with the said two writ petitions, this Court is of the view that the aforesaid applications filed in the aforesaid writ petitions for deletion of State of Goa from the array of Respondents in the said writ petitions are liable to be dismissed - all the I.A (s) stands dismissed -ordered accordingly : HIGH COURT [para 19, 20, 24, 25]

### **V Ramakrishnan Vs UoI (Dated: July 11, 2018) -HC**

**GST** - the petitioner is a registered contractor with the Railways - He sought that directions be issued to the relevant railway authorities to implement certain instructions issued by the Railway Board, in respect of works contract services provided on work orders entered into prior to introduction of GST and work completed after implementation of GST.

**Held** - As the petitioner did not first approach the relevant authorities & file representations before them in this regard, the petitioner cannot jump such process and directly approach the writ court - Also the issue pointed out is a larger issue and which is not pertaining to a single contractor - Also, the Pr. Commr. of GST & Central Excise claimed to not be a proper or necessary party in the present case - However, such claim is untenable as the Railway administration may need to consult the Commr. so as to understand the impact of GST on individual contracts - Hence petitioner is directed to approach the relevant railway authority & file representation within two weeks - Such authority is also directed to dispose of the representation on merits within two weeks: HC (Para 2,4-7)

### **Gati Kintetsu Express Pvt Ltd Vs CCT (Dated: July 5, 2018) -HC**

**GST** - the petitioner company is engaged in multi modal transportation of shipments, supply chain management & other allied services - During the period of dispute, a vehicle belonging to the petitioner was checked u/s 68 of the MP GST Act, which provides for inspection of goods in movement - On enquiry, the vehicle driver produced the bill & challan, but regarding the e-way bill it was found that the part-B of the e-way bill was not updated - The same is a requirement u/r 138(5) of the MP GST Rules, which mandates Part A & Part B to be mentioned in an e-way bill covering goods whose value exceeds Rs 50000/- - Part B of the e-way bill also contains details of conveyance - Hence the Department alleged contravention of Rule 138 & Section 68 of the Act - Proceedings u/s 129 were initiated, leading to penalty being imposed u/s 122 for transporting taxable goods without cover of documents - In defence, the petitioner claimed that it was unable to update part B of the e-way bill due to technical errors.

**Held** - the distance between the source & destination of the goods was more than 1200-1300 kilometres - It was mandatory for the petitioner to file Part B of the e- way bill, specifying all details such as vehicle number before the goods are loaded in the vehicle - Hence the petitioner admittedly violated provisions and Rules of the MP GST Act - Hence the penalty is correctly imposed and the same must be paid by the petitioner: HC (Para 2-10,23)

### **Assistant State Tax Officer Vs Indus Towers Ltd (Dated: July 13, 2018) - HC**

**GST** - In interpreting a provision, High Court would and should be averse to speculation on facts, nonetheless, considering the ramifications of its decision, in a fledgling statute, it is constrained to do so - When a delivery challan is issued under Rule 55, it is a mandate under sub-rule (3) of Rule 55 that there should be a declaration as specified in Rule 138 of Kerala Goods and Services Tax Rules, 2017 - fact that there was no such declaration uploaded in the site as an intimation to the Department of the transport of such goods raises a reasonable presumption of attempt to evade tax - If the conditions under the Act and Rules are not complied with, definitely Section 129 operates and confiscation would be attracted - respondents are entitled to an adjudication, but they would have to prove that, in fact, there was a declaration made under Rule 138 before the transport commenced

- If they do prove that aspect, they would be absolved of the liability; otherwise, they would definitely be required to satisfy the tax and penalty as available under Section 129 of CGST Act, 2017/Kerala SGST Act, 2017 - judgment of the Single Judge vacated and the Writ appeals by the department are allowed - vehicle and the goods having been already released unconditionally, further notice shall be issued and the adjudication under sub-section (3) completed; upon which if penalty is imposed, definitely the respondents would have to satisfy the same - Writ Appeals allowed: High Court [para 20, 21, 22, 25]

### **Shinrai Automobiles Pvt Ltd Vs GST Council (Dated: July 04, 2018) - HC**

**GST** - the petitioner is a dealer & attempted to upload Form GST TRAN-1 within the stipulated time frame - However, the petitioner failed to do so on account of a system error - Consequently, the petitioner is unable to avail input tax credit - Hence the present writ petition seeking appropriate directions.

**Held** - the Govt issued Circular No.39/13/2018-GST, dated April 03, 2018 appointing Nodal officers to redress IT-related grievances faced - Hence the petitioner is directed to approach the Nodal officer concerned & file representation in this regard - The Nodal officer is directed to take appropriate steps in this regard - Also should the petitioner be found unable to upload the Form GST TRAN - 1 for no fault of its own, then the petitioner be enabled to avail input tax credit: HC (Para 1,3,5,6)

### **Vijay Kumar Nagpal Vs UoI (Dated: July 12, 2018) -HC**

**GST** - the petitioner claims that pursuant to introduction of GST, the State Government of Madhya Pradesh issued a Notfn dated June 24, 2017 under which all notifications regarding setting up & erection of checkpoints were rescinded - The Central Govt also stated that 22 states had abolished check posts & one such state was MP - Hence in light of such Notfn the petitioner claimed that all check posts were to be removed & that no vehicle could be restricted or obstructed seeking payment of tax - Hence the present writ.

**Held** - Notice issued to respondents - Four weeks' time granted to file replies - In the interim period, appropriate directions be issued to remove check posts which should have been abolished under the Notfn dated June 24, 2017 - Compliance with the same be reported within two weeks: HC

**Naga Distributors Vs UoI (Dated: June 28, 2018) -HC**

**GST** - the petitioner is a dealer who attempted to upload Form GST TRAN - 1 within the time frame stipulated, but was unable to do so due to system error - Consequently, the petitioner was also unable to avail input tax credit - The petitioner seeks directions enabling it to avail input tax credit.

**Held** - The petitioner is directed to approach the Nodal Officer concerned & make representations therein - The Nodal Officer may look into & facilitate uploading of Form GST TRAN -1 - If uploading of Form GST TRAN-1 is not possible for reasons not attributable to the petitioner, the authority will also enable it to avail input tax credit: HC (Para 1,5,6)

**Sanjay Kumar Bhuwalka Vs UoI (Dated: July 9, 2018) -HC**

**GST** - The petitioners were arrested for alleged involvement in generating & selling fake tax invoices to various entities without supply of any goods - They allegedly facilitated irregular availment & utilization of input tax credit by such entities - Investigations revealed that five fake companies were being run by a group of persons, including the petitioners herein - Summons were issued u/s 70 of the CGST Act, 2017 r/w Section 174(2) - It was further revealed that various companies were controlled by them had passed on fake input GST credit to the tune of Rs 27 crores and Rs 12 crores respectively to the recipient entities - Thereafter the Additional Director General had opined that the petitioners committed the offences stipulated u/s 132 sub-section (1)(a), (b) & (c) of the Act - Also that the petitioners evaded payment of tax in excess of Rs 500 lakhs & which is an offence punishable with imprisonment for a term which may be extended to five years and with fine u/s 69 of the CGST Act - Hence the petitioners were arrested - The petitioners herein are aggrieved by orders passed by the Addl CJM, turning down their application for bail.

**Held** - It is settled law that grant of bail is a rule & rejection of bail is an exception - From the date of arrest, the investigation has to be concluded within 60 days as per Section 167(2) of the CrPC - The economic offence having deep rooted conspiracy and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country - Grant of bail is subject to consideration of several factors such as the nature of evidence, severity of the punishment, character of the accused, reasonable apprehension of witness tampering & reasonable apprehension of the State - However, considering the evidence collected so far and also the compounding nature of the offence, the petitioners be released on bail - The same is subject to furnishing of bond of Rs 50,00,000/- each & condition to deposit of Rs 39 crores to the Government Exchequer: HC (Para 1-8,32,33)

**Fashion Marble and Granite Company Pvt Ltd Vs Assistant State Tax Officer (Dated: July 06, 2018) -HC**

**GST** - the petitioner is a dealer in Marble & Granite - It supplied a consignment to another dealer - However, the goods were intercepted & detained - SCN was served u/s 129(3) of

the CGST Act which was followed by raising of duty demands with imposition of penalty - The petitioner paid the penalty in the GST portal u/s 49 of the Act - When it sought release of the goods, the Department insisted that the payment ought to have been made in cash or by demand draft - Hence the present writ.

**Held** - the Department's insistence that the petitioner should pay the amount either in cash or through demand draft is unsustainable - The payment of penalty to the GST portal is eminently sustainable - Hence the Department is directed to release the goods upon receipt of proof of payment: HC (Para 1,2,14)

### **Indus Integrated Information Mgmt Ltd Vs PR CGST & CS (Dated: December 12, 2017) -HC**

**GST** - Writ petition filed challenging the final order passed by respondent No. 1 determining the Service Tax finally payable by petitioner along with interest and penalty - Petitioner submits that as per provisions of Section 4(B)(b) of Finance Act, 1994, Authority responsible for determining tax should complete the adjudication within one year from the date of Demand Notice - It is argued that the respondent No. 2 is the only officer who heard the petitioner and, therefore, the Demand having been decided by a different respondent No. 1, cannot be sustained - GST Law was introduced in July, 2017 and under the deeming provisions of Section 3 of the 2017 Act, the respondent No. 1 in his earlier avatar as the respondent No. 2 conducted the hearing - However, since with the implementation of the GST Act, 2017 the designation of respondent No. 2 was converted to that of the respondent No. 1, in exercise of deeming provisions of Section 3 of the 2017 Act signed the final order - Accordingly, there is no infraction of principles of natural justice or limitation qua the petitioner - Respondents submits on the purposive interpretation of the legal provisions in the light of the deeming provisions under Section 3 that it never was the intention of Legislature to frustrate a pending/continuing adjudication - Arguments advanced by petitioner are based on hyper technicalities which are not of a nature so as to derail the adjudication process - This Court is satisfied that the statutory provisions relied upon by respondents to take care of the contingencies sought to be exploited by the petitioner for filibustering the adjudication: HC

### **All India Liquid Bulk Importers & Exporters Association Vs UoI (Dated: July 2, 2018) -HC**

**GST** - Petitioner relies upon Circular No.39/13/2018-GST to submit that they are victim of an IT glitch and as IT glitches or technical issues pertaining to GST portal are involved, the present Circular sets up a IT-Grievance Redressal Mechanism to address the grievance of the tax payers relating thereto - The petitioner would, therefore, withdraw this writ petition and approach this IT-Grievance Redressal Mechanism and request it to take a decision in terms therewith, but in accordance with law - Writ petition allowed to be withdrawn: HC

### **Vinod G Vs UoI (Dated: June 14, 2018) -HC**

**GST** - the petitioner claimed to be unable to upload Form GST TRAN - 1 within the time stipulated for the same due to system error - Consequently, the petitioner was unable to avail input tax credit.

**Held** - Petitioner directed to approach the Nodal Officer concerned & make representations - The authority is directed to adjudicate it within a week - If petitioner found unable to avail



input tax credit for reasons not attributable to the petitioner, then appropriate measures be taken to enable availment of credit: HC

### **G & C Infra Innovations Vs UoI (Dated: June 22, 2018) -HC**

**GST** - the petitioner claimed to be unable to generate Form GST TRAN 2 - This is attributable to a mistake committed while uploading Form GST TRAN 1 - The petitioner claimed to be unable to avail input tax credit since there is no provision to revise Form GST TRAN 1, without which Form GST TRAN 2 could not be generated.

**Held** - the petitioner is directed to approach the Nodal Officer concerned & file representation - The authority is directed to take requisite action to enable availment of credit: HC

### **Assistant State Tax Officer Vs Alfa Aluminium (Dated: June 22, 2018) -HC**

**GST** - the petitioners were transporting some goods to their business premises after process of powder coating - The goods were accompanied by purchase invoice & another invoice for the service of powder coating - The goods were detained in transit for not uploading the e-way bill - The Department claimed that only on uploading the e-way bill would it be informed of the movement of goods & in absence of the same, an evasion would be suspected - When the petitioners contested the detention before the Single Judge, it was held that the petitioners were covered by a High Court precedent & so directed furnishing of bond by both petitioners.

**Held** - There are factual differences between the precedent and the present circumstances - In the precedent case, the petitioner therein was covered under a delivery challan under Rule 55 of the Kerala GST Rules & whose genuineness was undoubted - Following such precedent, the Single Judge assumed that there could not be any tax evasion - However in the present case, the dealer intended to re-sell the goods, due to which suspicion of evasion cannot be brushed aside - Thereby, the furnishing of bond by the petitioners is not sustainable - Hence the goods be released on furnishing of simple bond for the value of goods & furnishing of bank guarantee equivalent to the tax & penalty amount payable - No opinion expressed on merits: HC (Para 2,3,4)

### **Whisper Generators Sales and Services Pvt Ltd Vs CBEC (Dated: June 19, 2018) -HC**

**GST** - the petitioner, a dealer, claimed to be unable to upload Form GST TRAN -1 & consequently was unable to avail input tax credit available to it on migration to GST - The petitioner further claims that its attempts to upload the Form GST TRAN -1 were frustrated by a system error - Hence appropriate directions were sought.

**Held** - The petitioner is directed to approach the Nodal Officer concerned & place its grievance before said officer - The officer directed to take appropriate decision within a week's time from receipt of petitioner's application for redressal - Where petitioner found unable to upload Form GST TRAN - 1 for reasons beyond its control, then appropriate measures be taken to enable it to avail input tax credit: HC

### **Prime Gold International Ltd Vs Asstt.CGST & CE (Dated: June 20, 2018) -**

## **HC**

**GST** - the petitioner company was served notice raising duty demand - It claimed to have filed a representation to the commissioner concerned, seeking permission to pay the tax arrears with interest & penalty in 24 Equated Monthly Instalments (EMIs) - The petitioner claimed to be experiencing severe financial crisis & so sought reasonable time to clear the arrears - It further claimed that one of its units had been shut down.

**Held** - Considering that one unit operated by the petitioner company has been shut down & that the petitioner paid part of the duty demand raised, the petitioner is directed to submit a fresh copy of the representation filed earlier, before the commissioner concerned - The petitioner's claim to have paid part of the duty be verified - Till then, no coercive action be taken to recover tax arrears - The petitioner on its part is directed to continue to make regular payments: HC (Para 2,3,7)

## **E V Radha Krishna Kurup Vs UoI (Dated: June 14, 2018) -HC**

**GST** - the petitioner is a dealer & claims to be unable to upload Form GST TRAN - 1 and take credit of input tax available to him at the time of migration to GST - The petitioner attributed the same to a system error - Hence the petitioner sought appropriate directions in this regard.

**Held** - Petitioner directed to approach the Nodal Officer concerned for redressal of grievances - Nodal Officer to take a decision within a week's time - Should the petitioner be found unable to upload Form GST TRAN 1 for reasons not attributable to him, then the petitioner be enabled to avail input tax credit: HC

## **Janki Pesticides Vs UoI (Dated: June 18, 2018) -HC**

**GST** - the petitioner company seeks direction to the respondents to re-open the GST portal for uploading, revising & modifying the Form GST TRAN-1.

**Held** - CBIC Circular dated April 3, 2018 provides for the appointment of a nodal officer for resolving technical issues pertaining to Form GST TRAN-1 & Form GSTR-3B - Besides, the State government has already appointed nodal officers - Hence the petitioner is directed to approach the Nodal officer concerned for resolution of the problem: HC (Para 1,4)

## **National Chemical and Dyes Company Vs UoI (Dated: February 20, 2018) -HC**

**GST** - the petitioner company filed the present writ seeking a direction to the State Govt to extend the time period for filing form GST TRAN 1 - It claimed that its application was not entertained on the last date for filing the same - The petitioner further claimed that the electronic system did not respond and due to which it was unable to avail credit.

**Held** - The respondents are directed to re-open the portal within two weeks - If not, the petitioner's application be accepted manually - Respondents directed to ensure that petitioner is allowed to pay taxes on regular electronic system maintained for use of the credit likely to be considered for the petitioner: HC

## **Hemalatha Ranka Vs UoI (Dated: June 14, 2018) -HC**

**GST** - The petitioner company filed & uploaded Form GST TRAN - 1 for availing input tax

credit - The petitioner mistakenly did not furnish particulars in the appropriate places in the form, owing to which it was unable to claim input tax credit - It also approached the nodal authority - The present writ is filed seeking appropriate directions.

**Held** - the nodal officer is directed to take a decision on the representation filed before it by the assessee within six weeks - Should the petitioner be found unable to avail input tax credit due to mistakes in form then appropriate action be taken to enable availment of the same: HC

### **Speed Marine Vs Assistant State Tax Officer (Dated: June 11, 2018) - HC**

**GST** - the petitioner company seeks the release of goods detained u/s 129 of the CGST Act and Kerala GST Act.

**Held** - an identical matter was disposed off by this court in W.A.No.1802 of 2017 where under similar circumstances, the adjudicating authority was directed to expeditiously complete adjudication u/s 129 of the CGST & Kerala GST Act -

Besides, the seized goods be released subjected to the petitioner's compliance with the provisions of Rule 140(1) of the Kerala GST Rules 2017: HC

### **Multiplex Cinevision Pvt Ltd Vs State Of UP (Dated: May 8, 2018) -HC**

**GST** - the petitioner company is engaged in construction of entertainment facilities such as multiplex theatres - Under the U.P. Entertainments and Betting Tax Act, 1979, a scheme was formulated permitting multiplex owners to collect & retain entertainment tax - Under such scheme, the petitioner was permitted to retain such entertainment tax so as to recover cost of construction - Upon implementation of GST, the U.P. Entertainments and Betting Tax Act was repealed, with a saving clause that it would not effect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, provided that the tax exemption granted under the repealed Act by any notification had not been rescinded or revoked by a fresh notification on or after the enforcement of GST - Hence the petitioner claimed that since its right to collect entertainment tax had not been repealed, it was still entitled to collect the same.

**Held** - the respondents are given one month's time to file counter-affidavit - Following the same, the petitioner is given two week's time to file rejoinder - Matter listed for disposal in July 2018: HC

### **Modern Traders Vs State of UP (Dated: May 9, 2018) -HC**

**GST** - s.129 of the UPGST Act, 2017 - Non-accompaniment of E-way bill - As e-way bill was produced on the same day of the interception of goods along with documents indicating payment of IGST but before seizure order is passed, no justification for passing orders of seizure of goods/vehicle and tax demand/penalty - order quashed, Respondent directed to immediately release goods/vehicle - Petition allowed: High Court

### **Sales Tax Bar Association Vs UoI (Dated: May 15, 2018) -HC**

**GST** - the petitioner, an association, was aggrieved by several glitches in the GSTN portal - Regarding the first issue was said to have been resolved, the problem still persisted & the manner in which the matter was resolved was not disclosed - The other issue pertains to the non-credit of electronic cash ledger - Moreover the petitioner claimed at the portal did not

permit rectification of a return already filed, although the Central and State GST Acts permit rectification of mistakes.

**Held** - the petitioner's submission that reply under a grievance mechanism must indicate the manner in which the grievance is resolved, holds weight - Matter listed for hearing on August 3 2018: HC

### **B K Biju Vs Assistant Commissioner (Dated: May 23, 2018) -HC**

**GST** - Petitioner seeks release of detained goods.

**Held:**In an identical matter, the Division Bench by its order directed expeditious completion of adjudication and permitted release of goods detained, pending adjudication, in terms of s.140(1) of the Kerala GST Rules, 2017 - Accordingly, competent authority directed to complete adjudication within one week and release of goods detained, forthwith, if petitioner complies with rule 140(1) ibid: High Court.

### **Bharti Airtel Ltd Vs UoI (Dated: June 1, 2018) -HC**

**GST** - Petitioner submits that GSTR-3B and the related mechanism contemplates its provisional use and does not indicate any timely reconciliation and which had lead to serious economic consequences whereby the petitioner is stated to have paid excess duty to the extent of Rs. 700 crores approx. and is unable to either adjust its input credit available or apply for a refund - Petitioner highlighted Section 54 of the Act to say that the vacuum created on account of the suspension of the two forms GSTR-2 and GSTR-3 and the related absence of any clarification, has lead to this serious impasse - Counsel for the Revenue submits that he would take appropriate instructions and make submissions in the Court on the next date of hearing - Matter listed on 24.07.2018: High Court

### **Maneesh Singh Vs State Of UP (Dated: April 11, 2018) -HC**

**GST** - the petitioner herein was served a notice from the municipal corporation concerned, raising duty demand for advertisement tax - Hence the present writ.

**Held** - Considering the provisions of Section 173 of the UPGST Act, 2017, the provisions of Section 172(2), 192 & 193 of the UP Municipal Corporation Act, 1959 have been omitted - In such case, the municipal corporation concerned has no authority to levy advertisement tax - The activity in question will only attract levy of GST - Hence the SCN issued is bad in law & merits being quashed: HC

### **Manjunathaa Rock Drills Vs Assistant State Tax Officer (Dated: May 24, 2018) -HC**

**IGST** - the first petitioner purchased some goods from Tamil Nadu & transported them to the second petitioner located in Kerala - The goods were detained in transit, u/s 129 of the Kerala GST Act, 2017 - SCN was issued raising demand for IGST with penalty - The petitioners were aggrieved by the supposed inaction of the authorities in completing adjudication u/s 129 of the Act with regard to the detained goods.

**Held** - The relevant officer is directed to consider the petitioner's objections to such detention - Entire adjudication process to be completed within two week's time: HC

### **Torque Pharmaceuticals Pvt Ltd Vs State of UP (Dated: April 10, 2018) -HC**

**GST** - the assessee company is engaged in manufacturing medicines & mineral water - It transferred certain stock against the stock transfer invoices after paying the IGST @ 18% - The goods were being transferred to its unit in Himachal Pradesh - The e-Way bill was downloaded & details were mentioned - Similarly, stock transfers were made from its branch in Punjab after payment of IGST & under cover of e-Way bills - Thus, the assessee claimed to have generated E-Way Bill prescribed under the UPGST Rules for all the transactions, by mentioning all the relevant details - It also sought to mention the numbers and details of two vehicles used in such transactions, but since the portal was not accepting two vehicle numbers for one transaction, it had to mention the subsequent vehicle number by hand - During transit, the goods were seized & detained for this reason, with notice being issued u/s 191(3) of the UPGST Act.

**Held** - Apparently due to resistance by transport unions the vehicles belonging to the State of Himachal Pradesh were not permitted to transport the goods beyond Chandigarh - Thus, vehicles had to be changed to take the goods onwards - In such case, the e-way bill had to accommodate the details of two vehicles - Since the portal did not accept details of both vehicles, the details of the second vehicle had been entered by hand - In such circumstances, the assessee had no option but to take such recourse - Any short-fall in tax can be recovered from the assessee - Hence the goods & the vehicle be released: HC

### **Alukka Gold Palace Vs State Tax Officer (Dated: April 6, 2018) -HC**

**GST** - Petitioner committing mistake in providing PAN number of another firm for the purpose of registration under Kerala VAT - consequently, request made for registration under GST statutes was delayed and was granted only w.e.f 12.08.2017 - Petitioner submitting that on account of the delay they are unable to comply with the statutory requirement under GST for the period from 01.07.2017 to 12.08.2017 and seek appropriate directions.

**Held:** To err is human - it is obligatory for respondents to make appropriate provisions to tackle issues of the instant nature - having regard to the orders passed in similar writ petitions, petition disposed by directing the fourth respondent to provide registration within two months to the petitioner under the GST statutes with effect from 01.07.2017 - no proceedings whatsoever shall be initiated against the petitioner for non-compliance of the statutory provisions: High Court

### **Kairali Granites Vs Assistant State Tax Officer (Dated: May 15, 2018) - HC**

**GST** - a consignment of marble, granite slabs & tiles was detained - Later, detention notice was issued to the assessee u/s 129(3) of the CGST Act, 2017 - The assessee claimed that the defect in the notice was purely technical - That the vehicle details were not updated in the e-Way bills - The assessee claimed that such defect did not warrant detention of goods, particularly without there being any evasion of tax.

**Held** - Goods detained under a detention notice issued under CGST or SGST, cannot be released without furnishing security equivalent to the duty demand raised - Hence assessee directed to deposit bank guarantee, upon payment of which, the goods & vehicle would be released - Department to then adjudicate upon imposition of penalty: HC (Para 1,2)

### **State Tax Officer (INT) Vs Kerala Gujarat Cargo Express (Dated: May 15, 2018) -HC**

**GST** - Alleged evasion of SGST and CGST - Single Judge ordered release of the vehicle and goods by executing a simple bond - State has challenged the order contending that it is passed overlooking Rule 140 of the SGST Rules.

**Held:** On a reading of Rule 140, Division Bench of High Court is of the view that the impugned order has to be modified - In the absence of any challenge against the rules, the goods and vehicle can be released only in accordance with Rule 140 - Therefore, interim order modified directing to release the goods and vehicle either on furnishing the bank guarantee or depositing the amount demanded - Writ Appeal disposed: High Court

### **Leena P Nair Vs GST Council (Dated: April 11, 2018) -HC**

**GST** - Petitioners state that all of them have though attempted to upload FORM GST TRAN-1 within the time limit stipulated, they could not complete the process of uploading the form due to IT related glitches - petitioners seek appropriate directions.

**Held:** In the light of the submission made by the counsel for the GST Network, the writ petitions are disposed of directing the GST Network to make appropriate facilities/provisions to enable the petitioners to complete the filing of FORM GST TRAN-1 as directed in circular No.39/13/2018-GST dated 03.04.2018: High Court

### **Shree Raipur Cement Plant Vs State Of Chhattisgarh (Dated: May 18, 2018) -HC**

**GST** - the assessee company is engaged in mining Limestone, further used to manufacture Cement & for which High Speed Diesel (HSD) is used - The assessee is permitted to purchase goods during inter-state trade, at rates specified u/s 8(1) of the CST Act 1956 - Prior to introduction of GST, the Department would issue C- Forms to the assessee for the goods covered u/s 2(d) of the CST Act 1956 - Such C- Form would be used for purposes of Section 8 of the CST Act - The assessee claimed that the after the transition to GST, the C- Form was not being issued - Attempts to obtain C-Form showed an error message on the website stating that the invoice date should be prior to July 1, 2017 - Hence the present writ - The assessee claims that its registration certificate is w.r.t. HSD covered u/s 2 of the CST Act - It also claimed that HSD is exempted from the purview of GST & till now the GST Council made no recommendation to bring HSD under GST - Hence assessee claimed that denial of C-Form was illegal & that the assessee was otherwise entitled to receive the same u/s 8(3)(b) of the CST Act.

**Held** - In the present case, the assessee's registration certificate under the CST Act continues to be valid for purposes of inter-State sale & purchase of HSD, even after migration to GST - The definition of goods u/s 2(d) of the CST Act had been amended to include HSD, prior to the introduction of GST - Besides, the GST Council made no representation to bring HSD under the ambit of GST - Thus the assessee's registration certificate under the CST Act is still valid for goods mentioned u/s 2(d) of the CST Act, which includes HSD - Hence the assessee is entitled to C-Form for inter-state purchase of HSD against the C-Form - The Department is directed to issue C-Form in this regard & also rectify the error on the website to entertain the assessee's application: HC (Para 2,3,32-35,39)

### **Vardh Paper Products Pvt Ltd Vs CCT/GST (Dated: May 4, 2018) -HC**

**GST** - Petitioner has prayed for a Writ of Certiorari for quashing the seizure, u/s 129(1)

of the UP GST Act, 2017, of the goods transported in vehicle from Delhi to Siliguri.

**Held:** Court has no reason, prima facie, to disbelieve that the Assistant Commissioner had sufficient reasons at the time of inception to pass the impugned orders - Without giving any definite opinion on the subject, Court declines to interfere with the impugned order - Writ Petition dismissed, since misconceived: High Court

### **Sainik Mining & Allied Services Ltd Vs UoI (Dated: May 14, 2018) -HC**

**GST** - the assessee company is engaged in providing coal mining, logistics and other allied services to Coal India Ltd - Upon transition to GST, the assessee was required to file declaration under Form GST TRAN-1 under Rule 117 of the Chhattisgarh Goods & Services Tax Rules, 2017 to avail tax credit - To avail such credit, the assessee filled in the requisite details much before the deadline - However on clicking the submission button for filing TRAN - 1 an error message would flash, due to which the form TRAN-1 could not be uploaded - Despite pointing out the same to the authorities, such error was not fixed - Hence the assessee sought a direction to the authorities that the assessee's application be accepted manually and input tax credit be granted.

**Held** - A circular had been issued by the CBIC on April 3, 2018 for redressing grievances of tax payers due to technical glitches on GST portal - In this regard an IT Grievance Redressal Committee was set up - Relevant portions of the circular lay down procedure for resolving issue of stuck TRAN-1 forms as well as details of the nodal officer concerned - Hence this circular provides the remedy sought for by the assessee in the present writ - Besides, the State Govt also issued an order appointing the nodal officers - Thereby, the assessee is directed to approach nodal officer concerned & file representations for redressal of grievances: HC (Para 2,6,7)

### **Om Disposals Vs State Of UP (Dated: April 30, 2018) -HC**

**GST** - the assessee company, engaged in manufacturing disposable paper cups & plates, is registered under GST - It ordered machine for making paper cups from vendor based in Delhi The vendor issued advance receipt of about Rs 7 lakhs - After a delay, the vendor dispatched the machine without informing the assessee & issued invoice - The vehicle ferrying the machine was intercepted on grounds that machine were being ferried without e-Way bill - When the assessee came to know of the interception, it immediately generated e-Way bill & submitted supporting documents - However, the machine was confiscated and duty demand was raised, with penalty equivalent to the sale amount being imposed - The assessee's appeals before the appellate authority & Tribunal were dismissed - Hence the assessee filed the present petition challenging the Notfn. issued by the Govt of UP which brings into force the E-way Bill 01 - Such bill was prescribed for importing goods over Rs 50000 from outside UP - The assessee seeks the quashing of such enabling notfn as well as the release of the machine & scrapping of the penalty.

**Held** - considering the submissions of both sides as well as the precedents relied upon by them, this court is faced with two judgments given by the Coordinate Benches of this Court with diametrically opposite conclusions - Besides, while the first judgment apparently omitted to consider relevant provisions of law, the second judgement overlooked the earlier judgment which could have constituted binding precedent - In such circumstances, the doctrine of per incuriam applies to both decisions - Thereby, it would not be correct to adjudicate such issue - The question as to whether the State Government is empowered

under Rule 138 of U.P. GST Rules to issue a notification prescribing carrying of any forms or documents along with a consignment during inter-State movement is referred to the Larger Bench headed by the Chief Justice - Nonetheless, the machine & the vehicle be released on furnishing of bond: High Court (Para 1-10,28-34)

### **Surendra Steel Supply Company Vs State of UP (Dated: April 16, 2018) -HC**

**GST** - Goods were being transported from Haryana where the petitioner's company is situated to Kanpur, under invoice No.5. - Petition filed challenging the interception of vehicle and seizure made by the authorities for want of E-Way Bill.

**Held:** Court had asked respondent Assistant Commissioner to explain as to under which authority of law he intercepted the vehicle and passed the seizure order despite the fact that E-Way Bill was generated and produced - effect and operation of seizure order was held in abeyance and respondents are directed to release the seized goods and vehicle forthwith - Matter heard - Counsel for state produced a copy of the order dated 14.04.2018 passed by Assistant Commissioner withdrawing the seizure notice u/s 129(1) of UPGST and penalty notice u/s 129(3) - same is taken on record - As no cause of action survives, petition is rendered infructuous, hence dismissed: High Court

### **Teesta Distributors Vs State Of Kerala (Dated: April 13, 2018) -HC**

**GST** - Lottery subject falls exclusively in domain of Parliament - State has no power to constitute one more authority to enter satisfaction as to violations of Lotteries (Regulation) Act - Rule 56(20A)(iii)(d) of Kerala GST Rules, 2017 struck down - police cannot act merely based on the information given by Tax officials - by executive action or by legislative action, sale of other State lotteries cannot be interfered by the State except in accordance with the Lotteries (Regulation) Act - State Government or its officials are not the authority to decide that lottery conducted by other State is not in compliance with the Lotteries (Regulation) Act - question whether IGST would apply as the transaction in question is inter-State transaction will have to be left open - non compliance of maintaining records as referred in sub rule 19(g) & (i) of Rule 56 of the Kerala State GST Rules cannot be a reason to prevent the petitioners from engaging sale of lotteries in the State - petitioners also cannot be prevented from engaging in the sale of lottery for not furnishing details regarding unsold ticket particulars within 48 hours - petitioners are having every right to withhold such information as percentage of commission has no nexus to the levy of tax to be collected from the petitioners - No action can be initiated for non furnishing of such details regarding percentage of commission received: High Court [para 16, 21, 22, 24, 25, 26, 31, 32]

### **Proactive Plast Pvt Ltd Vs State Of UP (Dated: February 1, 2018) -HC**

**GST** - Petitioner is aggrieved by the seizure of his goods vide impugned order dated 20.01.2018 passed under Section 129(1) of the UP GST Act, 2017 - Petitioner submits that admittedly the seized goods were in transit from outside the State & therefore, Rule 138 of the Rules framed under the U.P.G.S.T. by a notification dated 21.07.2017 making E-Way bill mandatory would apply only in respect of goods in transit within the State of U.P. and not for goods brought from outside the State.

**Held:** Even if the seizure is treated to be under Section 129(1) of the Central G.S.T., as there was no provision of E-Way bill on the relevant date under the Central G.S.T and, therefore, prima facie the seizure appears to be illegal - Counsel for Revenue may seek instructions



and file counter affidavit within two weeks and matter be listed for admission/final disposal thereafter - since the goods seized are said to be perishable nature, the same are directed to be released along with vehicle subject to the petitioner furnishing indemnity bond and security (other than cash and bank guarantee) in respect of the proposed tax and penalty on the value of the goods shown in the documents accompanying the same: High Court

**Anappuram Steels Pvt Ltd Vs Assistant State Tax Officer (Dated: February 21, 2018) -HC**

**GST** - Petitioner seeking release of goods detained by Assistant State Tax Officer u/s 129 of Act.

**Held:** An identical matter has been disposed of by a Division Bench, directing expeditious completion of the adjudication of the matter and permitting release of the goods detained pending adjudication, in terms of Rule 140(1) of the Kerala GSTR, 2017 - Petition is disposed of by directing competent authority to complete adjudication within a week - also directed that if the petitioner complies with rule 140(1) (supra), the goods detained shall be released forthwith: High Court [para 2]

**Corestrength Traders India Pvt Ltd Vs Assistant State Tax Officer (Dated: January 30, 2018) -HC**

**GST** - Petitioner seeks release of the goods detained by the respondent u/s 129 of the CGST/Kerala SGST Act. **Held:** An identical matter has been disposed of by a Division Bench of this Court, directing expeditious completion of the adjudication of the matter and permitting release of the goods detained pending adjudication, in terms of Rule 140(1) of the Kerala Goods and Services Tax Rules, 2017 - Writ Petition disposed of directing competent authority to complete adjudication within a week and if the petitioner complies with rule 140(1) of Kerala GST Rules, 2017 to release the detained goods forthwith: High Court [para 2]

**KITEX LTD Vs Assistant Sales Tax Officer (Dated: January 23, 2018) - HC**

**GST** - Petitioner seeks release of the goods detained by the first respondent u/s 129 of the CGST/SGST Act. **Held:** An identical matter has been disposed of by a Division Bench of this Court, directing expeditious completion of the adjudication of the matter and permitting release of the goods detained pending adjudication, in terms of Rule 140(1) of the Kerala Goods and Services Tax Rules, 2017 - Writ Petition disposed of directing competent authority to complete adjudication within a week and if the petitioner complies with rule 140(1) of Kerala GST Rules, 2017 to release the detained goods forthwith: High Court [para 2]

**Age Industries (P) Ltd Vs Asst State Tax Officer (Dated: January 18, 2018) - HC**

**GST** - Petitioner engaged in manufacture and sale of surgical gloves and registered under CGST as well as Kerala SGST Act -One consignment of surgical gloves sent for quality appraisal on job work basis against delivery challans detained by respondent on the ground that petitioner should have uploaded a declaration in accordance with Rule 138(2) of the State SGST Rules before transporting the goods; that goods transported by the petitioner

are intended to be supplied to an unregistered firm and that, therefore, tax evasion is suspected - detention challenged under Writ Petition - Government Pleader attempted to support the impugned detention on the reason that the delivery chalan that accompanied the goods was not the one prepared in accordance with the provisions contained in the State SGST Rules - however, he did not attempt to support the impugned detention on the alleged ground that the person to whom such goods are supplied is unregistered is irrelevant in the context of the statutes.

**Held:** Respondent cannot be heard to support the detention on a reason not mentioned in the said notice - It is all the more so, as this Court is not examining the question as to whether the delivery chalan in question is one issued in accordance with the State SGST Rules - Writ petition is allowed, the impugned detention is held to be illegal and the respondent is directed to release the consignment to the petitioner forthwith: High Court [para 5, 6]

**GST** - It is made clear that this judgment will not preclude the respondent from initiating proceedings against the petitioner for imposition of penalty contemplated under the SGST Act for non-compliance of the provisions contained in the State SGST Rules, if such imposition is provided under law: High Court [para 6]

### **Shankar Mohan Vs Intelligence Inspector (Dated: December 18, 2017) - HC**

**GST** - Section 129 of the CGST Act & Kerala State GST - Petitioner seeks release of detained goods. **Held:** Identical matter disposed of by Division Bench directing expeditious completion of adjudication and permitting release of the goods pending adjudication in terms of rule 140(1) of Kerala GST Rules, 2017 - Adjudication to be completed within one week and if petitioner complies with rule 140(1) supra, goods detained shall be released forthwith: High Court [para 2]

**GST** - The assessee company is engaged in manufacturing & supplying TMT bars and paid GST on the same - During the period of dispute, the Revenue visited the assessee's factory & compared stock of raw material & finished goods with recorded quantity of the same - It noted there to be some excess stock - Investigation at the end of the transporters revealed that the assessee supplied & received goods without payment of tax - The assessee claimed to have been subjected to duress & pressure by the Revenue to deposit tax payable & that the assessee was also compelled to give post-dated cheques towards payment - Later the Revenue passed an order of attachment against the stock found to be in excess - Later, several bank accounts operated by the assessee & its executives were attached - The assessee claimed that its plea to lift the attachment went unheard - It also claimed that the attachment of the bank accounts had crippled the day-to-day activities of the assessee & was impeding upon its ability to pay taxes - Hence the present writ.

**Held** - As per mandate of Section 83(1) of the GGST Act, the Commr. must record written reasons before attaching any property or bank accounts or taking any such drastic action - Besides, the Commr. must record satisfaction that such action was justified so as to protect the Revenue's interests - In the present case, the Commr. recorded no such satisfaction - Hence no opinion could be formed to validate the provisional attachment of property - Hence the attachment order is unsustainable - Besides, the sum already

deposited by the assessee need not be construed as admission of dues on its part - Before exercising powers u/s 83 of the GGST Act, the Revenue must balance the interest of the Revenue with those of the assessee, so as to ensure that while the Revenue's interests are safeguarded, the functioning of the assessee does not get crippled - Drastic action u/s 83 of the Act is justified if the assessee is a fly-by-night operator or habitual offender, which is not the case here - Powers under this provision must be exercised after due application of mind - Hence the attachment of the bank accounts is directed to be lifted: HC (Para 2,2.1,3,7,8,9)

### **Satyendra Goods Transport Corp Vs State of U P (Dated: April 13, 2018) -HC**

U.P. Goods and Services Tax Act, 2017 [U.P.G.S.T. Act 2017] - Petitioner seeking quashing of orders of seizure under section 129(1) as well as imposition of tax and penalty under section 129(3) of the U.P.G.S.T. Act 2017:

**Held:** The fact of the matter is that on the date of incident, i.e. 17.12.2017, neither there was any E-way Bill System nor any notification by the Central Government under rule 138 of the C.G.S.T. Rules 2017 requiring the carrying of a T.D.F. Form or any other such document in the course of inter-State supply/movement of goods, as such, the very basis for passing the impugned orders and taking action against the petitioner as impugned herein is apparently erroneous and illegal - in view of the above it cannot be said that there was any intent to evade tax - cross- empowerment under section 4 of I.G.S.T. Act 2017 and section 6 of C.G.S.T. Act 2017 does not mean that the State Government can issue a notification under rule 138 of U.P.G.S.T. Rules made under U.P.G.S.T. Act 2017 to prescribe documents to be carried in an inter-state supply of goods and services regarding which only the Central Government has the power under section 20(xv) of I.G.S.T. Act 2017 read with section 68 of C.G.S.T. Act 2017 and rule 138 of C.G.S.T. Rules 2017 - the impugned actions/directions are accordingly quashed - the preliminary objection raised by the respondent on the ground of availability of a statutory remedy of appeal before the Addl. Commissioner, Grade II (Appeal) under section 107 of the U.P.G.S.T. Act 2017 is also rejected - consequences shall follow accordingly as per law - the seized goods shall be released forthwith - writ petition stands allowed in the aforesaid terms : HIGH COURT

### **Bengali Lal And Sons Vs State Of UP (Dated: November 8, 2017) -HC**

**GST** - Petitioner, a partnership firm, had applied for registration under GST on 27.6.2017 but mistakenly provided the PAN number of one of the partners of the firm - petitioner again applied for registration on 14.8.2017, but the registration could not be activated as two applications were filed - Petitioner has prayed that its application for registration made on 27.6.2017 be corrected and he may be allowed to give the PAN number of the firm, so that the same be activated.

**Held:** In case the petitioner surrenders the registration dated 14.8.2017, his earlier registration dated 27.6.2017 be corrected and activated and correct I.D. and password be issued in accordance with law - Petition disposed of: High Court

### **Metal Handicrafts Vs State Of UP (Dated: April 12, 2018) -HC**

**GST** - Petitioner, registered under the U.P.VAT Act, made an application for migration to GST under the signature of one of its Directors, namely Shri Dheeraj Jain, and in support the PAN card was appended - in the registration, the legal name of the petitioner has

wrongly been mentioned as Dheeraj Jain - despite repeated requests, reminders and personal meeting, the error was not rectified, hence petition filed.

**Held:** No reason why the authorities are not opening the portal to enable the petitioner to correct the particulars which are wrongly reported in the registration - Respondents commanded to carry out necessary correction in the form of the petitioner in respect of legal name, constitution of the business, the registration details, user ID and password to match with the PAN No.AACCL0519Q of the petitioner's company and, if necessary, to open the portal for carrying out the correction - necessary steps be taken within 10 days: High Court

### **Pioneer Polyleathers Ltd Vs Assistant State Tax Officer (Dated: November 16, 2018) -HC**

**GST** - Goods belonging to the Petitioner, a registered dealer, were detained u/s 129(3) and tax demanded of Rs.5,28,834/- - petitioner paid the amount through the portal and obtained payment receipt but the State Tax officer refused to release the goods and he insists that the tax and penalty ought to have been paid through cash or demand draft - Therefore, the present petition is filed - counsel for Revenue submitted that the amount must be apportioned between the Centre and state as the liability is under the head IGST; that it is not within the State's purview to effect the apportionment and that if the Court could have before it the GST Network, the problem would be solved - Counsel for GST Network submitted that they are only an infrastructure provider and have no statutory role to play in apportionment of taxes between Centre and State.

**Held:** Government both at the Centre and in the State, have ushered in the GST Tax regime to ensure that everything is made online with minimum manual interventions - Yet strangely, the authorities still insist that the payment should be by physical means i.e. either in cash or through Demand Draft - Such insistence seems to be archaic and out of tune with the very spirit of the GST regime - In apportionment, there may be delays and difficulties, but the taxpayer cannot be made to suffer, on that count - applying the ratio of the judgment in Fashion Marbles and Granites Pvt. Ltd, the Assistant State Tax Officer is directed to release the goods and the vehicle forthwith - Petition disposed of: High Court [para 5, 6]

### **Bosch Ltd Vs Assistant State Tax Officer (Dated: November 07, 2018) -HC**

**GST** - Petitioner, a registered dealer, had supplied material to Kollam - consignment note, however, did not contain the details of the vehicle used for transport, therefore, vehicle and goods detained u/s 129(1) of the SGST Act - Petitioner before High Court.

**Held:** Division Bench has dealt with an identical issue in the case of Renji Lal Damodaran - applying the ratio of the said judgment, respondent authorities directed to release the petitioner's goods and vehicle on its furnishing bank guarantee for tax and penalty found due and a bond for the value of goods in the form as prescribed u/r 140(1) of the CGST Rules - Writ petition disposed of: High Court [para 3, 4]

### **Mondelez India Foods Pvt Ltd Vs Assistant State Tax Officer (Dated: November 02, 2018) -HC**

**GST** - Petitioner had sent goods to its six distributors in Palakkad district - however, the

vehicle and goods were detained because, by then, the e-way bills expired - petitioner before High Court.

**Held:** Division Bench has dealt with an identical issue in the case of Renji Lal Damodaran applying the ratio of the said judgment, respondent authorities directed to release the petitioner's goods and vehicle on its furnishing bank guarantee for tax and penalty found due and a bond for the value of goods in the form as prescribed u/r 140(1) of the CGST Rules - Writ petition disposed of: High Court [para 3, 4]

### **Kashi Bartan Bhandar Vs State Of UP (Dated: October 31, 2018) -HC**

**GST** - Petitioner has challenged the order by which its registration as a dealer has been cancelled under the UP GST Act, 2017 - Petitioner submits that the same is in gross violation of the principles of natural justice inasmuch the SCN alleged to be issued on 18.01.2018 has not been served upon the petitioner; that only on prima facie satisfaction that the petitioner is not carrying any business without coming to any final conclusion, the registration had been cancelled - Counsel for the Revenue submits that the SCN was sent to the petitioner at its email address and also sent by a messenger and affixed at a conspicuous place of business of the petitioner; that since no one was found at the place of business when the messenger had gone there, it was presumed that the business is lying closed.

**Held:** Notice under the GST Act is required to be served in accordance with the provisions of Section 169 of the Act - It is only if the mode of service as provided in the earlier parts of Section 169 are not practicable that the authorities can resort to service of notice by affixation - Court does not find that the Assistant Commissioner had come to any conclusion that all previous modes as prescribed under Section 169 are not practicable for the service of notice and, therefore, has directly resorted to service by affixation - accordingly, service, if any, by affixation cannot be regarded as a proper service - Assistant Commissioner could not have passed the order on the basis of prima-facie opinion until and unless he was of a definite opinion that the petitioner has closed down the business - Notwithstanding the remedy of appeal, Court does not propose to relegate the petitioner to it for the simple reason that the petition was entertained and the parties have completed the pleadings to enable the Court to hear the matter on merits - Moreover, it is a case of clear violation of principles of natural justice and it is well accepted norm of exercising extraordinary jurisdiction that alternate remedy would not be a bar where the order is ex-facie, illegal and has been passed violating the principles of natural justice - Impugned order quashed and Writ Petition allowed - liberty granted to the respondent to pass a fresh order in accordance with law: High Court

### **Khushiya Industries Pvt Ltd Vs State of Gujarat (Dated: October 26, 2018) - HC**

**GST** - Petitioners are challenging the provisional orders of attachment passed in the matter of factory premises, stock and bank accounts on the allegation that petitioner is engaged in large scale bogus billing activities and thus defrauding revenue - respondents have roughly assessed the possible tax and penalty liability under the Gujarat GST Act and CGST Act, 2017 as close to Rs.45 crores - petitioner submits that the goods attached are perishable in nature; that the allegations are untrue and, therefore, some reasonable conditions be laid down for suspension of attachment.

**Held:** Court has to balance the interest of both sides - Prima facie , the department contends that the petitioner has indulged into revenue defalcation - by freezing petitioner's bank accounts and attaching properties, petitioner is temporarily rendered penalized; they cannot operate business, cannot move stock and cannot make payments - High Court permits the petitioner to carry on the legitimate business by suspending provisional attachments subject to fulfillment of conditions viz. maintaining a stock of the goods of a minimum of Rs. 5 crores; giving unconditional bank guarantee to the department to the tune of Rs. 5 crores etc. - Petitions disposed of: High Court [para 4, 6]

### **Modern Insecticides Ltd Vs State Of Punjab (Dated: October 22, 2018) -HC**

**Punjab GST** - Penalty has been levied on petitioners under Section 129 of Punjab GST, 2017 and Haryana Goods and Services Tax Act, 2017 - The goods detained are still in custody of Departments concerned - As a pre-condition of filing appeal, 10% of disputed tax amount has also been deposited - In terms of Section 107(7) of the Act, recovery of balance amount is deemed to be stayed - Section 129(1)(c) of the Act provides that goods can be released on furnishing of security as prescribed - Section 129(2) provides for application of Section 67(6) of the Act, which in turn has been referred to in Rule 140 prescribing the bond and the bank guarantee to be furnished - The legal issues sought to be raised by petitioners need examination in detail by GST Council - Thus, the respondents are directed to release the goods on furnishing of security other than bank guarantee or cash - As there is no dispute regarding identity of goods, the release shall not be treated as provisional: HC

### **Teesta Distributors Vs UoI (Dated: October 10, 2018) -HC**

**GST** - The petitioner claims to sell lottery tickets in the State of West Bengal - The present petition was filed seeking exemption on lotteries, by virtue of Sr No 6 of Schedule III r/w Section 72 of the CGST Act 2017 as well as Sr No 6 of Schedule III r/w Section 72 of the SGST Act.

**Held** - The definition of goods under Article 366(12) of the Constitution is an inclusive definition & has a wide sweep including all materials, commodities & articles - The definition is not limited to tangible materials, commodities & articles- An intangible product such as software would come within the scope of 'goods' under Article 366(12) - The Apex Court in H. Anraj v. Government of Tamil Nadu held that lottery tickets were 'goods' as per the Tamil Nadu General Sales Tax Act 1954 & the Bengal Finance (Sales Tax) Act 1941, to the extent they comprised the entitlement to participate in the draw - It also held that trade of lottery tickets conferred two rights upon the purchaser, namely right to participate in the draw & right to claim prize if successful - Also considering the decision of the Apex Court in Sunrise Associates v. Government of NCT of Delhi it is seen that a lottery is an 'actionable claim' and constitutes goods or moveable property - Also, it has not been substantiated that the State Govt promulgating the WBGST Act was not competent to pass the law or that it violates any fundamental right or other Constitutionally-guaranteed right - Definition of 'goods' under Article 366(12) permits State Govts to classify lottery & 'goods' & tax it - Schedule III u/s 7 of CGST Act deals with activities which neither classify as supply of goods nor supply of service - Entry 6 in the Schedule excludes actionable claims other than lottery, betting & gambling from the scope of CGST Act - As lotteries generally classify as 'goods' & have been kept outside purview of 'actionable claims' which do not attract GST, lotteries consequently are taxable under CGST Act - Concurrently, they are also taxable

under the WBGST Act - The petitioner also challenged the rates imposed by the GST Council - This is an issue which a writ court cannot easily examine - It may be noted that the rates of tax had been fixed by the GST Council after extensive deliberation involving representatives from the States - Hence it is within the domain of the Council to adjudicate rates of tax - Hence the differential levy of tax is permissible - Thus no relief can be granted in the present case: HC (Para 1, 23-36)

### **Advantage India Logistics Pvt Ltd Vs UoI (Dated: August 23, 2018) - HC**

**GST** - Officers appointed under the MPGST Act are authorized to be proper officers for the purpose of IGST - contention of the petitioner that in absence of any notification under Section 4 of the IGST Act, action of the respondent MP State government authorities is without jurisdiction has no force - by order dated 12.10.2017, the respondent was authorized as proper officer and was bestowed with powers such as inspection, search and seizure under Section 68 of the MPGST Act - final order dated 23.07.2018 passed by jurisdictional authorities directing the petitioner to pay an amount of Rs.4,20,266/- (minimum) as tax and penalty in terms of Section 129(3) of the MPGST Act is an appealable order u/s 109 of the Act - Petition seeking quashing of the seizure memo/order is not entertainable, hence dismissed: High Court [para 11, 13, 14]

### **V Vasanthakumar Vs UoI (Dated: August 6, 2018) -HC**

**GST** - The petitioner is challenging the provisions of Section 109 & 110 of the CGST Act & the TNGST Act - Such provisions constitute the Appellate Tribunal and also lay down the qualifications, conditions of appointment & service conditions of the members - The petitioner alleged that such provisions contravened the doctrine of separation of powers and ran contrary to the independence of the judiciary - The petitioner was particularly aggrieved by the fact that the Technical members in the Tribunals outnumbered the Judicial members - The petitioner claimed that members of quasi-judicial bodies must have judicial expertise & legal training - The petitioner also claimed that Technical Members only played supporting roles and could not assume judicial functions - The petitioner also claimed that the eligibility to be a Judicial Member excluded advocates - He claimed that such provision was highly unfair as advocates by training were inculcated with the requisite qualities to discharge functions of Judicial members.

**Held** - It prima facie appears that the constitution of the Appellate Tribunal runs contrary to the decision in Union of India vs. R.Gandhi - Hence notice be issued to the parties - As the vires of Sections 109 & 110 of the CGST & TNGST Act have been challenged, notice be also issued to the Attorney General of India: HC (Para 1,2,3,7,8,12,13,14)

### **Earthline Services Pvt Ltd Vs State of Kerala (Dated: August 07, 2018) -HC**

**GST** - Petitioner is a dealer under Kerala Value Added Tax Act, 2003 and has been issued with a notice dated 02.06.2014 u/s 25(1) of KVAT Act - Petitioner seeking a writ of mandamus or any other appropriate writ, order or direction declaring section 174(1)(i)/174(2) of the Kerala State Goods and Services Tax Act, 2017 as being

unconstitutional and for striking down the same.

**Held:** Once a *lis* can be disposed of, and a grievance can be redressed, on the statutory adjudication, the other issues, especially involving constitutional validity, need not be addressed - canon of constitutional avoidance is well established - Writ petition allowed on the issue of limitation in view of this High Court decision in Court in M/s. Cholayil Pvt. Ltd v. The Assistant Commissioner (Assessment) Judgment dated 5th July 2018 Petition allowed: High Court [para 3]

### **Gati Kintetsu Express Pvt Ltd Vs CCT (Dated: September 19, 2018)- SC**

**GST** - The assessee company is engaged in multi model transportation of shipments, supply chain management & other allied services - During the period of dispute, a vehicle belonging to the petitioner was inspected u/s 68 of the MP GST Act, which provides for inspection of goods in movement - On enquiry, the vehicle driver produced the bill & challan, but regarding the e-way bill it was found that the part-B of the e-way bill was not updated - The Department alleged contravention of Rule 138 & Section 68 of the Act - Penalty was imposed u/s 122 for transporting taxable goods without cover of documents - In defence, the assessee claimed that it was unable to update part B of the e-way bill due to technical errors - The High Court held that as the distance to be traversed exceeded 1300 KMs, the assessee was obliged to file Part B of the e-way bill, specifying all details such as vehicle number before the goods are loaded in the vehicle - Hence the penalty was upheld.

**Held** - As the assessee paid the tax and other dues demanded, the vehicle and the goods seized should be released - Such findings are separate from the further order to be passed in the assessee's SLP: SC

### **Gati Kintetsu Express Pvt Ltd Vs CCT (Dated: August 3, 2018)-SC**

**GST** - The assessee is engaged in transportation of shipments, supply chain management & other allied services - A vehicle belonging to the assessee was intercepted u/s 68 of the MP GST Act - While the vehicle driver produced the challan, the E-way bill was incomplete in the sense that Part-B of the e-way bill had not been updated - Rule 138(5) of the MP GST Rules mandates that an E-way bill covering goods valued above Rs 50000/- must have both Part A and Part B updated- Hence proceedings u/s 129 were initiated & penalty was imposed u/s 122 for transporting taxable goods without cover of documents - Later the High Court upheld such penalty on grounds that the distance between the source & destination of the goods exceeded 1200-1300 KM - Also held that updating Part B of E-way bill is mandatory as it contains details of the vehicle.

**Held** - Notice issued - To be served upon standing counsel for the State of Madhya Pradesh: Supreme Court

### **Vardh Paper Products Pvt Ltd Vs CCT/GST (Dated: May 21, 2018)- SC**

UP GST Act, 2017 - High Court had observed that it had no reason, prima facie, to disbelieve that the Assistant Commissioner had sufficient reasons at the time of inception to pass the impugned orders of seizure and accordingly, dismissed the Writ Petition as misconceived - Appeal to Supreme Court.



Held: Court is not inclined to interfere with the impugned order - however, it is open to petitioner to assail the final order passed in the proceedings u/s 130 of the Act, 2017 - Special Leave Petition dismissed: Supreme Court

### **Kerala State Level Screening Committee On Anti-Profiteering Vs Asian Paints Ltd (Dated: December 27, 2018)-Anti-Profiteering**

**GST** - Anti-profiteering - The Kerala State Screening Committee found the respondent to have profited from supply of 'Paint (AP Apex Classic WT 10 LT (HSN Code 3209)' - It was charged with not having passed on their benefit of reduction in rate of duty upon implementation of GST - Later, the DGAP noted that the products earlier attracted VAT @ 14.50% & Central Excise duty @ 12.50% on 70% of the MRP - It was further noted that the total rate was cut from 28.60% to 28% upon implementation of GST - It was also noted that the base price of the product had been marginally increased by about 0.24% - Hence the DGAP held that the charge of profiteering was not sustainable.

**Held** - It is seen that post-GST, there has been an increase in the base price by about Rs 4.50/-, which is on account of the reduction in the discount - This is not tantamount to profiteering, as such discount was being offered from the respondent's profit margin - This does not form part of the base price - Thus the respondent cannot be charged with having contravened the provisions of Section 171 of the CGST Act: NAA

### **Kerala State Level Screening Committee On Anti-Profiteering Vs Janson (Dated: December 27, 2018)-Anti-Profiteering**

**GST**- Anti-profiteering- The respondent was charged with profiteering from the supply of 'Handloom Design-King Supreme Lungi (HSN Code 54078460)' - It was alleged that the respondent did not pass on the benefit of the reduction in the tax rates - The DGAP later examined the respondent's invoices and concluded that there was no reduction in the rate of tax on the product before and after the enactment of GST - It rejected the Kerala State Screening Committee's findings of the product actually attract nil rate of duty in pre-GST period, while the invoices mentioned 2% rate of tax.

**Held** - From the facts & circumstances of the case, it is seen that there was no reduction in the rate of tax on the product in question - Hence the anti- profiteering provisions u/s 171 of the CGST Act cannot be invoked in this case - The charges against the respondent are unsustainable: NAA

### **Kerala State Level Screening Committee On Anti-Profiteering Vs Ahuja Radios (Dated: December 27, 2018) -Anti-Profiteering**

**GST - Anti-profiteering** - the respondent has been charged with profiteering from the supply of 'PA Ceiling Speaker BS-6038T' & 'PA Wall Speaker WS-661T' - It is alleged that it did not pass on the benefit of the reduced rate of GST - Later, the DGAP later examined the relevant invoices & found there to be no increase in the per unit price (excluding GST) in respect of both products, during pre-GST & post- GST rate revision - It was also noted that the tax rate of both products had been slashed from 28% to 18% - Hence the DGAP found that the charge of profiteering was unsustainable.

**Held** - It is seen that while there was a reduction in the rate of tax vide Notfn No 41/2017-CT(R) dated 14.11.2017, the base prices (excluding GST) of both products remained the same - Hence no contravention of the provisions of Section 171 of the CGST Act 2017 is established - Thus the charge of profiteering is correctly found to be unsustainable: NAA

### **Kerala State Level Screening Committee On Anti-Profiteering Vs Lorenzo Vitriified Tiles Pvt Ltd (Dated: December 27, 2018) -Anti- Profiteering**

**GST - Anti-profiteering** - The Kerala State Screening Committee charged the respondent with profiteering from the supply of 'Mirror Series tiles' - It was alleged that it did not pass on the benefit of GST rate reduction upon implementation of GST - Later, the DGAP noted that in the pre-GST period, the product attracted CST @ 2% & Excise duty @ 12.5% on 55% of the MRP - Upon implementation of GST, the rate was fixed at 28% and then reduced to 18% - It noted that without any invoice issued post-GST when the rate was cut to 18%, it was not possible to compare the pre-rate revision and the post-rate revision selling prices - Considering the invoices, the DGAP observed that there was no reduction in the rate, which had been raised from 14.44% to 28% & that the per unit price excluding tax, had not been increased - It found nothing to show that benefit of rate reduction was not passed on - Hence the DGAP found no contravention of Section 171 of the CGST Act 2017.

**Held** - From the material on record, it is seen that there was no reduction in the rate of tax of this product post-GST - There is also no rise in the per unit base price (excluding GST) - Hence charge of profiteering is not established: NAA

### **Kerala State Screening Committee on Anti-Profiteering Vs Impact Clothing Company (Dated: December 24, 2018) -Anti-Profiteering**

**GST - Anti Profiteering** - The Kerala State Screening Committee referred the matter, charging the respondent with profiteering from supply of ready-made garments, namely half-sleeve & full-sleeve shirts of different price ranges - It is alleged that the respondent did not pass on the benefit of reduction in rate of duty-Later, the DGAP noted that the goods earlier attracted CST @ 2% in pre-GST era, but later attracted 5% GST - It also noted that pre & post GST base prices remained the same - Hence the DGAP concluded that no profiteering could be established.

**Held** - There was no reduction in the tax rate on such products upon implementation of GST - Hence the anti-profiteering provision u/s 171(1) of the CGST Act are not attracted - Besides, the per unit base price (excluding tax) of such products did not increase - Hence allegations of profiteering are unsustainable - The application is devoid of merits: NAA

### **State Level Screening Committee on Anti-Profiteering Kerala Vs Panasonic India Pvt Ltd (Dated: December 24, 2018) -Anti- Profiteering**

**GST - Anti-profiteering** - The Kerala State Screening Committee referred the matter, charging the respondent with profiteering from supply of 'Panasonic LED TH43E200DX#45580' - It was alleged that the respondent did not pass on the benefit of reduction in rate of GST - Later, the DGAP noted that in the pre-GST era, the product attracted VAT @ 14.5% and Excise duty @ 12.5% on 65% of the abated MRP of the product, as per Notfn No 49/2008-CE(NT) - Upon implementation of GST, the tax rate was 28% - The DGAP noted that the pre-GST tax rate was 26.79% while post-GST rate was 28% - Thus it observed that there was no reduction in tax rate - Hence no profiteering was established & so the provisions of Section 171 of the CGST Act were not contravened.

**Held** - From the facts of the case, it is seen that there was no reduction in rate of tax in the post-GST era - Hence the allegation of profiteering is not sustainable as per provisions of Section 171 of the CGST Act: NAA

### **State Level Screening Committee on Anti-Profiteering Kerala Vs Peps Industries Pvt Ltd (Dated: December 24, 2018) -Anti- Profiteering**

**GST - Anti-profiteering** - The Kerala State Screening Committee charged the respondent with profiteering from supply of 'Peps Spring Koil Bornell Normal Maroon 75x60x6 Mattress (HSN Code 94042910)' - It was alleged that the respondent did not pass on benefit arising from reduction in rate of tax upon implementation of GST - Later, the DGAP noted that the product in question attracted 2% CST & Excise duty @ 12.5%, whereas the post-GST tax rate was 28% - Hence it concluded there to be no reduction in tax rate, by virtue of which the provisions of Section 171 of the CGST Act were not contravened.

**Held** - It is clear from the facts that there was no reduction in the rate of taxes applicable on the product in question, upon implementation of GST - Hence the charge of profiteering is not sustainable: NAA

### **State Level Screening Committee on Anti-Profiteering Kerala Vs Asian Granito India Ltd (Dated: December 24, 2018) -Anti- Profiteering**

**GST - Anti-Profiteering** - The assessee was charged with allegedly profiteering from supply of 'Granure Hard Nero-10 MM & Grenure Hard Crema-10 MM Tiles' (HSN

Code 69072100) - It was alleged that the respondent did not pass on benefit of reduction in rate of tax arising from Notfn No 41/2017-CT(R) - The Kerala State Screening Committee referred the present matter, relying on two invoices issued by the respondent - Later, the DGAP observed that the respondent did not increase the per unit base price (excluding GST) of both products after reducing GST rate - However, the DGAP noted that though GST rate was cut from 28% to 18%, the absence of any upward change in the per unit base price (excluding GST) meant that the allegation of profiteering was unsustainable.

**Held** - Considering the invoices, it is clear that the base prices of both products remained the same - It is also seen that sale price of both products was slashed when the GST rate on both items was revised from 28% to 18% - As the base prices are unchanged & the selling prices have been reduced, it is apparent that the respondent passed on the benefit of tax rate reduction - Hence anti-profiteering provisions u/s 171(1) of CGST Act are not attracted: NAA

### **State Level Screening Committee on Anti-Profiteering Kerala Vs Zeba Distributors (Dated: December 17, 2018) -Anti-Profiteering**

**GST - Anti-Profiteering** - Kerala State Screening Committee had vide minutes of its meeting referred the present case to the Standing Committee alleging profiteering by the respondent on the supply of "Eastern Meat Masala" by not passing the benefit of reduction in the rate of tax at the time of implementation of GST w.e.f 01.07.2017 - DGAP in its report stated that in the pre-GST era, the applicable VAT was @5% and there was no CEX duty; that in the post GST era, the rate of tax was also @5% - DGAP intimated that there was no reduction in the rate of tax as under both the regimes, the rate was 5%; that the respondent did not increase the per unit base price (excluding tax) which was retained at Rs.238/-; that the respondent had not increased the per unit price and no allegation of profiteering is established.

**Held:** It is apparent that there was no reduction in the rate of tax on the above product w.e.f 01.07.2017, hence the anti-profiteering provisions contained in section 171 are not attracted - as there is no increase in per unit base price (excluding tax) of the product "Eastern Meat Masala", the allegation of profiteering is not sustainable - application is dismissed: NAA

### **Kerala State Screening Committee On Anti-Profiteering Vs Sudarsans (Dated: February 04, 2019) -Anti-Profiteering**

**GST** - Applicant has alleged profiteering by the respondent on the supply of Shorts (Jockey Brief US 56M ASSTD) by not passing on the benefit or reduction in the rate of tax at the time of implementation of GST w.e.f 01.07.2017 - Two invoices, one dated 08.05.2017 and another dated 21.10.2017 relied upon.

**Held:** DGAP has stated in its report that the subject goods HSN Code 6203 4200 was exempted from Central Excise duty vide notification 30/2004-CE and attracted VAT @5%; that after implementation of GST, the tax rate on the said goods was fixed @5%; that since the rate of tax on the product remained the same in the pre-GST and the post-GST era, the base price (excluding tax) too remaining the same, provisions of s.171 of the Act have not been contravened and the allegation of profiteering is not established - Authority holds that since there was no reduction in the rate of tax on the product w.e.f 01.07.2017, the anti- profiteering provisions contained in s. 171(1) of the CGST Act, 2017 are not attracted - no merit in the application, hence dismissed: NAA

### **Kerala State Screening Committee On Anti-Profiteering Vs S J Spices Ltd (Dated: January 31, 2019) -Anti-Profiteering**

**GST** - It is alleged that the respondent had profited on the supply of 'Black Pepper (HSN 0904 1140) by not passing on the benefit of reduction in the rate of tax at the time of implementation of GST w.e.f 01.07.2017; two invoices, one dated 21.06.2017 and another dated 05.07.2017 relied upon.

**Held:** DGAP has reported that while the invoice dated 21.06.2017 was issued by respondent S J Spices, the post GST invoice was issued by M/s Kerala Spices; that a comparison of the two invoices is not possible; that in the pre-GST era, 'Black Pepper' attracted VAT @5% and there was no Central Excise duty; that after implementation of GST, the tax rate was fixed @5%; that the rate of tax on the product remained the same in pre and post-GST era, therefore, provisions of Section 171 of the CGST Act have not been contravened and the allegation of profiteering is not established - Authority holds that since there was no reduction in the rate of tax on the product w.e.f 01.07.2017, there is no contravention of the anti-profiteering provisions contained in s. 171(1) of the CGST Act, 2017 - application is not sustainable, hence dismissed: NAA

### **Kerala State Screening Committee On Anti-Profiteering Vs Pulimootill Silks (Dated: February 04, 2019) -Anti-Profiteering**

**GST**-Allegation is that the respondent had allegedly profited on the supply of 'Little Star Dhoti 406' (HSN 5208 1110) by not passing on the benefit of reduction in rate of tax at the time of implementation of GST w.e.f. 01.07.2017; two invoices, one dated 20.06.2017 and other dated 12.11.2017 relied upon.

**Held:** DGAP in its report has stated that the goods 'Little Star Dhoti 406' (HSN 5208 1110) was exempted from Central Excise duty vide notification 30/2004-CE and attracted VAT @5%; that after implementation of GST, the tax rate on the said goods was fixed @5%; that since the rate of tax on the product remained the same in the pre-GST and the post-GST era, the base price (excluding tax) too remaining the same,

provisions of s.171 of the Act have not been contravened and the allegation of profiteering is not established - Authority holds that since there was no reduction in the rate of tax on the product w.e.f 01.07.2017, the anti- profiteering provisions contained in s. 171(1) of the CGST Act, 2017 are not attracted - no merit in the application, hence dismissed: NAA

### **Kerala State Screening Committee On Anti-Profiteering Vs Maruti Suzuki India Ltd -Anti-Profiteering**

**GST** - Kerala State Screening Committee on Anti-Profiteering vide its minutes had alleged profiteering by the respondent Maruti Suzuki India Ltd., Gurugram in respect of supply of four models of Motor Car namely, "*Wagon R VXI AMT, Swift VXI, Alto 800 LXI & Wagon R VXI [Heading 8703]*" by not passing on the reduction in the rate of tax at the time of implementation of GST w.e.f 01.07.2017.

**Held:** From the report of the DGAP and the documents placed on record, it is observed that the rate of tax was 15.63% in the pre-GST era which was increased to 29% in the post-GST era - secondly, from the invoices, it is evident that before discount, the base prices of all the products had remained the same and which facts have not been disputed by the applicant, hence the provisions of s.171 of the CGST Act, 2017 are not attracted - Respondent has not contravened the provisions of s.171 of the Act - Application dismissed since without merits: NAPA