

THE MONTHLY MAGAZINE FROM CASC

GST UPDATES



RECENT JUDGMENTS



VOLUME-3

ISSUE-12

DECEMBER-2024



CASC BULLETIN

INDEX

Subject	Author	Page No.
Recent Judgments in VAT / CST / GST	CA. V.V. Sampathkumar	11
Case Laws - GST	CA. Vijay Anand	24
Summary of AAR/AAAR	CA. Aman Goyal	56

Date	Topic	Speaker
12.12.2024 (Thursday)	Vivad Se Vishwas Scheme 2024	CA. Suraj Nahar
28.12.2024 (Saturday)	CASC 46th Annual Day Celebrations	Speaker, Venue and Other Details will be circulated separately. Meeting followed by Dinner

The meetings will be held at CASC at 6.30 p.m. and will be preceded by fellowship over High Tea at 6.00 p.m

**CASC Annual Members are requested to renew their
subscription for 2024 - 2025**

Celebrating the Spirit of Growth and Reflection:

As 2024 draws to a close, we find ourselves reflecting on a year filled with significant milestones, dynamic changes, and the ever-evolving role of the Chartered Accountant in shaping global economies.

Highlights of the Year:

This year marked pivotal changes in regulatory frameworks, the widespread adoption of technology in audits, and the increasing emphasis on sustainability reporting. From adapting to updated accounting standards

to leveraging AI-driven tools for compliance, our profession has demonstrated resilience and innovation. As Chartered Accountants, we are not just gatekeepers of financial probity but also strategic advisors who thrive on collective knowledge. Our CASC news Bulletin has always underscored the importance of community learning through experts opinions, and case studies shared by the members of our vibrant Study Circle.

Looking Ahead to 2025:

The year ahead promises new challenges, particularly in the areas of digital currency

regulations, ESG compliance, and cross-border taxations. Our commitment as a professional fraternity will be to stay ahead of these trends, ensuring that we not only comply with new requirements but also lead in setting benchmarks for ethical and innovative practices.

PAN 2.0 : A Digital Transformation in Tax Identification:

The Government of India has introduced the ambitious PAN 2.0 project, approved with a budget of ¹ 1,435 crores. This initiative aims to revolutionize the management of Permanent Account Numbers (PAN) by unifying all PAN-related

services into a single, user-friendly digital portal. New PAN cards will feature dynamic QR codes, replacing static ones. This will facilitate instant verification of details such as name, photograph, and signature, ensuring enhanced data security and easier background checks for employers and financial institutions. This new platform is set to roll out in 2025.

A Milestone for GST Dispute Resolution:

On November 26, 2024, the Ministry of Finance issued a pivotal notification formalizing the jurisdictional and operational framework of the

Goods and Services Tax Appellate Tribunal (GSTAT). This development is a crucial step in addressing the growing backlog of GST-related disputes and marks significant progress in India's tax administration system. This notification streamlines district-wise jurisdiction for each bench, eliminating overlaps and confusions. Notable changes include realignment of districts in states such as Uttar Pradesh, Gujarat, and Maharashtra for optimal coverage. The structure of benches now includes a majority of judicial members to comply with earlier High Court rulings about maintaining the independence of the judiciary in GSTAT's operations.

While the notification is a welcome move, effective implementation remains a challenge. Stakeholders await clarity on procedural guidelines for filing appeals and integrating GSTAT processes with the GST portal. Additionally, timely recruitment of qualified members for all benches will be critical to its success.

A Note of Gratitude:

Being the last issue of this Calendar year 2024, we extend our heartfelt Thanks to all contributors, members, and readers of the Study Circle. Your unwavering support and enthusiasm drive the success of

this bulletin. May this festive season bring joy, reflection, and renewed vigor to embrace the coming year.

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value

additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or to any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org

For and behalf of the Editorial Board

Bhuvaneshwari.R.V.

CA. BHUVANESWARI R.V

**GLIMPSES FROM THE MONTHLY MEETING HELD ON
14.11.2024 BY CA.GANESH PRABHU BALAKUMAR ON
"KEY ISSUES IN FILING FORMS GSTR-9 & 9C"**



**GLIMPSES FROM THE MONTHLY MEETING HELD ON
28.11.2024 BY CA.P.ARUMUGARAJ ON
"PEER REVIEW - COMPLIANCE & REPORTING"**



PRESENT MEMBERS OF THE MANAGEMENT COMMITTEE
OF THE CHARTERED ACCOUNTANTS STUDY CIRCLE
IN ALPHABETICAL ORDER

S.No.	Name	Email ID	Mobile No.
1	CA. Akshunn Daga G	caakshunndaga@gmail.com	8695234818
2	CA. Balaji V	balaji.venkat@gmail.com	9003067900
3	CA. Bhuvanewari R V	ca.bhuvanewari@gmail.com	9894314621
4	CA. C. Madasamy	cmsamyca@yahoo.co.in	9841113526
5	CA. Manikandan S	smanik85@yahoo.com	9884756461
6	CA. Praveen T Venkatesulu	rtrpraveen89@gmail.com	9884525023
7	CA. C.S. Ramesh Babu	fca.ramesh@gmail.com	9840134257
8	CA. Thulasidaran V	vthulasi97@gmail.com	9884029712
9	CA. Uttamchand Jain	uttamchallani@gmail.com	9840123097

EDITORIAL BOARD

CA. Balaji V

Editor

CA. Bhuvanewari R.V

Member

CA. Praveen T.V

Member

DISCLAIMER

The contents of this Monthly Bulletin are solely for informational purpose. It neither constitutes professional advice nor a formal recommendation. While due care has been taken in assimilating the write-ups of all the authors. Neither the respective authors nor the Chartered Accountants Study Circle accepts any liabilities for any loss or damage of any kind. No part of this Monthly Bulletin should be distributed or copied (except for personal, non-commercial use) without express written permission of Chartered Accountants Study Circle.

COPYRIGHT NOTICE

All information and material printed in this Bulletin are subject to copyrights of Chartered Accountants Study Circle and its contributors. Any reproduction, retransmission, republication, or other use of all or part of this document is expressly prohibited, unless prior permission has been granted by Chartered Accountants Study Circle. All other rights reserved.

ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

READER'S ATTENTION

You may please send your Feedback / Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to admin@casconline.org

For Further Details contact :

"The Chartered Accountants Study Circle"

"Prince Arcade", 2-L, Rear Block, 2nd Floor, 22-A, Cathedral Road,
Chennai - 600 086. Phone 91-44-28114283

Log on to our Website : www.casconline.org

For updates on monthly meetings and professional news.

Please email your suggestions / feedback to admin@casconline.org

RECENT JUDGEMENTS IN VAT / CST / GST

Natural Justice: Though the Petitioner filed its reply to the Show Cause Notice, seeking personal hearing, the Respondent failed to provide the same and passed the impugned assessment order. This Court is of the view that the impugned order was passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner. Stating so, the order impugned herein is set aside and the matter is remanded back to the Respondents with conditions.

M/s.CG Power and Industrial



CA. V.V. SAMPATHKUMAR

Solutions Limited Vs. The State Tax Officer, Pondy Bazaar Assessment Circle, Chennai-28. W.P.No.27986 of 2024 Dated: 26.09.2024

Assessment based on power Consumption: Petitioner is engaged in the manufacturing, wholesale and retail business of milk and milk products and registered under the TNGST Act; that petitioner's place of business

was inspected by the Intelligent Officials Wing on 02.08.2023, and a report was filed, pursuant to which, the respondent issued Show cause notice dated 02.03.2024, notifying 10 defects. The petitioner, on receipt of such show cause notice, filed reply, answering to each defects along with supporting documents. The respondent, based on the said reply passed Assessment Orders dated 25.06.2024, under Section 74 of the TNGST Act, whereby, the proposals to recover tax with regard to 7 defects were dropped, and in respect of two defects,

pertaining to which, tax liability was accepted by the petitioner and tax was paid, penalty alone was imposed, however, so far as one defect is concerned, viz., defect No.8, the respondent confirmed the proposed tax on the alleged outward suppression of taxable turnover along with interest and equal amount of penalty. with respect to Defect No.8 has been confirmed solely on the ground that there is a decrease in taxable turnover for the periods from 2020-21 and 2021-22 when compared to the turnover for the period 2019-20 while consumption of

power remains more or less the same. The learned counsel submitted that owing to Covid-19, there was close down, resulting in the goods being stagnated in the godowns, and that since the petitioner is carrying out the manufacturing process as a Job Worker, the final products manufactured for the third party has to be stored in the deep freezer facility installed in the petitioner-s business premises till the final products are supplied to the principal suppliers, viz., Co-operatives Societies, i.e. for 200 MT under (-20 degree Celsius) which contributed to the excess

consumption of electricity, and despite the fact that the said aspect was answered in the form of reply, stating that EB units consumed are not directly linked with the sales of the petitioner. The Court stated that the respondent ought to have taken into consideration of the aforesaid vital aspect before passing the impugned orders, with regard to Defect No.8, in the absence of any contrary evidence available to substantiate the alleged suppression of sale, as rightly pointed out by the learned counsel for the petitioner. Hence, the Hon'ble Court set aside the impugned

orders, insofar as it relates to Defect No.8 alone is concerned with directions. **M/s. S.P.Mani and Mohan Diary (India) Pvt. Ltd., Vs. The Assistant Commissioner (ST) (FAC) (Inspection), Pudur B Village, Erode-2 W.P.Nos.28744 & 28749 of 2024 DATED : 27.09.2024**

Confiscation: In the present case, the godown, where the goods were kept by the petitioner, was not at all registered, due to which, the said godown was closed and the goods were also confiscated by the respondent. A notice was issued by the respondent, for which the

reply was also filed by the petitioner. As contended by the learned Additional Government Pleader appearing for the respondent, since the goods were confiscated, the release of goods will only be considered upon adjudication by the respondent. When such being the case, this Court is not inclined to interfere with the issues pertaining to the revocation of closure of godown and release of goods, etc. Stating so, this Court dismissed the present writ petition.

M/s.Rasul Enterprises Vs.1.The Joint Commissioner

**(ST), = Intelligence II,
Chennai-6. 2.Commercial Tax
Officer, Group III
Intelligence II, Chennai-6.
W.P.No.26426 of 2024 Dated:
12.09.2024**

**Delay and filing of Writ
petition:**

Impugned assessment order was passed. The petitioner had not filed any appeal challenging the same for nearly a period of 18 months. In such case, it is clear that the petitioner has approached this Court, vide the present petitions, only due to the issuance of aforesaid recovery notice. When such being the case, this Court does not find any merits in the

present petitions. Stating so, these writ petitions are dismissed. The petitioner is granted liberty to file an appeal against the impugned assessment order dated 14.12.2022, subject to the payment of a sum of Rs.5,000/-, in each petitions by the petitioner. The Court directed that the said amount shall be paid by way of Demand Drafts in the name of “The Principal, Government Yoga and Naturopathy Medical College” within a period of 2 weeks from the date of receipt of copy of this order. Upon receipt of said Demand Drafts, “The Principal, Government

Yoga and Naturopathy Medical College” is directed to deposit the same in the bank account, if already opened and maintained with the Indian Bank, Madras High Court Branch, Chennai. If no bank account is opened in the said branch, the Principal of Government Yoga and Naturopathy Medical College, Chennai is directed to open an SB Account in the Indian Bank, Madras High Court Branch, Chennai, immediately upon receipt of this order and furnish the details of the said bank account to the Registry. Upon production of the copies of the Demand Drafts by the

petitioner, the respondent shall entertain the appeals filed by the petitioner, without insisting upon limitation aspect, and decide the same on their own merits and in accordance with law.

M/s.Sri Shakti Tex, Vs.1.The Supdt of GST & CE, Mettur II Range, Omalur 636 502. 2.The Assistant Commissioner, Salem II Division, Salem -1. W.P.Nos.27647 & 27654 of 2024 Dated: 24.09.2024

Reply not considered: The second respondent passed the impugned order, as if, no reply was filed by the petitioner. Thus, it is clear that the

impugned order is not only an outcome of non-application of mind but also suffers from violation of principles of natural justice, as the petitioner has not been afforded with an opportunity of personal hearing before passing the such order. Hence, the Hon'ble Court set aside the impugned order and the consequential proceedings as well. The matter is remanded to the respondent for fresh consideration

M/s. J. J. Lall Private Limited
Vs. 1. The Assistant Commissioner (ST) and
2. The State Tax Officer/ Commercial Tax Officer,

Moore Market Assessment Circle, Chennai - 600 003.
W.P.No.28554 of 2024
DATED: 25.09.2024

Error : There was an error in filing GST 3B Returns that the Petitioner had inadvertently claimed Input Tax in "RCM" Column instead of "All other ITC Column" and the said aspect was stated by the Petitioner in its reply dated 05.09.2023, but the 1st Respondent had not considered the reply filed by the Petitioner had passed the impugned orders and that apart a sum of Rs.2,99,000/- have been recovered for the tax liability of Rs.2,33,000/-.

Therefore, this Hon'ble Court set aside the impugned orders dated 27.12.2023 and 12.03.2024 with other directions. **M/s.Revathi Industrial Enterprises Vs 1. The Deputy State Tax Officer, KORATTUR: A M B A T T U R : KANCHEEPURAM,Chennai-35 2.The Bank Manager, BANK OF INDIA, Mannurpet, Chennai-50. W.P.No.27239 of 2024 Dated: 23.09.2024**

Deceased person : The deceased, viz., Mr.Ramasamy Singaravelan was an assessee on the files of the respondent under the provisions of

TNGST Act, 2017 and the said person died as early as on 07.05.2022, however, the respondent, who is ignorant of the said fact has been continuously issuing notices in the name of the said deceased person and also passed assessment orders and not stopping with that, also proceeded to initiate recovery proceedings. The petitioner came to know about the impugned proceedings only when the same was intimated by the respondent through phone call and on receipt of the recovery notice. Thus, it is crystal clear the impugned orders are ex parte orders, and

suffers from violation of principles of natural justice and de hors the same, the notices issued to an assessee, who is no more and assessment orders passed based on such notices are void ab initio and liable to be set aside. Hence, the Court is inclined to set aside the impugned orders with directions.

Ramasamy Singaravelan (deceased) Vs. The Deputy State Tax Officer, Sathyamangalam, Erode W.P.Nos.28496 & 28499 of 2024 DATED: 25.09.2024

Mismatch: The respondent issued a notice in Form GST DRC-01 dated 24.11.2023

stating that there is mismatch between GSTR 3B and GSTR 2A and the respondent has levied a tax of Rs.12,56,782/- under IGST and an interest of Rs.10,38,136/- and penalty of Rs.1,25,678/. As the petitioner has no knowledge and access to the portal, he could not file his reply to the show cause notice. The respondent has confirmed the proposal by stating that to the Show Cause notice the petitioner has not filed any reply and levied tax as per the proceedings dated 25.04.2024. The impugned Order passed by the respondent is arbitrary and illegal. The respondent has

failed to consider that the supplier has correctly reported the turnover in the return during 2018-19. During 2018-19 GSTR 2A was not auto populated and it was not available in the common portal. Now the petitioner has got the GSTR 2A and an IGST ITC of Rs.16,24,716/- has been correctly reflected which is over and above the ITC of Rs.15,14,640/- claimed by the petitioner. Considering the facts and circumstances of the case coupled with the submissions made by the learned counsel on either side, the order impugned herein is set aside and the matter is remanded to the respondent

for fresh consideration on condition that the petitioner shall pay a 10% of the disputed tax liability to the respondent within a period of four weeks from the date of receipt of a copy of this order with other conditions.

M/s.TechBio Solutions Vs. The Assistant Commissioner [ST], Saidapet Assessment Circle, Chennai - 600 006. W.P.No.28862 of 2024 Dated: 30.09.2024

Principles of natural justice: Petitioner raised very many grounds assailing the order impugned herein, the main contention is that before passing the orders impugned

herein, the petitioner was not provided reasonable opportunity to submit their oral and written submissions and to file documents to substantiate their claims. Thus, according to the petitioner's learned counsel, the orders impugned herein are arbitrary, illegal and in violation of the principles of natural justice. The learned counsel further submitted that the petitioner was unable to file their reply for the reason that the accountant, who had an access to portal as well who knows the password, failed to bring them about the notices issued by the department. Ld Government Advocate

submitted that after analysing the facts and circumstances of the case, the respondent authorities have passed the orders impugned herein. Considering the facts and circumstances of the case coupled with the submissions made by the learned counsel on either side would demonstrate that there is clear violation of principles of natural justice on the part of the respondent authorities in passing the orders impugned herein and a sum of Rs.7,91,516/- has been debited from the bank account of the petitioner, the orders impugned herein are set aside and the matter is remanded to

the first respondent for fresh consideration with conditions.

M/s.Ever Bright Industries Vs.1.The Assistant Commissioner [ST], Moore Market, North II, Chennai North, Moore Market Assessment Circle, Chennai - 3. 2.The Deputy State Tax Officer, Moore Market Assessment Circle, Chennai - 3. W.P.No.27912 of 2024 Dated: 30.09.2024

VAT Refund: Pursuant to the revision order, the petitioner had requested for the refund of excess tax amount. In this regard, he had also submitted a request letter dated 08.12.2023. However, the same was not considered by

the respondent till date. The Hon'ble Court directed the respondent to consider the request letter filed by the petitioner dated 08.12.2023 and process the refund in accordance with Section 42(5) of the Tamil Nadu Value Added Tax Act, 2006, within a period of 4 weeks from the date of receipt of a copy of this order.

M/s.Witzenmann India Private Limited Vs Assistant Commissioner (ST), Pammal Assessment Circle, Chennai - 35. W.P.No.26380 of 2024 Dated:12.09.2024

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at vvsampat@yahoo.com)

CASC CHENNAI, MEMBERSHIP FEE

Corporate Membership

	Rs.
Corporate Annual Membership	3,000.00
Corporate Life Membership (20 Years)	20,000.00

Individual Membership

Annual Membership	750.00
Life Membership	7,500.00

CASC - HALL RENT

HALL RENT FOR 2 HOURS	1,000.00
HALL RENT FOR 2-4 HOURS	1,500.00
HALL RENT FOR FULL DAY	2,500.00
LCD RENT FOR 2 HOURS	600.00
LCD RENT FOR 2-4 HOURS	800.00
LCD RENT FOR FULL DAY	1,200.00

CASC BULLETIN - ADVERTISEMENT TARIFF - PER MONTH

Full Page Back Cover	2,500.00
Full Page Inside Cover	2,000.00
Half Page Back Cover	1,500.00
Half Page Inside Cover	1,250.00
Full Page Inside	1,200.00
Half Page Inside	750.00
Strip Advertisement Inside	500.00

Minimum 6 months advertisement is required.

If advertisement is 12 months or above, special discount of 15% is available

The above amounts are Exclusive of Government Levies like GST. Applicable taxes will be added

Your demand draft / cheque at par should be drawn in the name of
"The Chartered Accountants Study Circle" payable at Chennai.
Kindly contact admin@casconline.org for the Clarifications and or queries.

CASE LAWS - GST

1. GST - ADVANCE RULING -SERVICE RECEIVER IS ELIGIBLE TO MAKE APPLICATION SEEKING ADVANCE RULING ON THE LIABILITY AS A SERVICE RECEIVER

In Power Grid Corporation of India Ltd. v. State of Rajasthan 2024 (89) GSTL 21/ (2024) 21 Centax 57 (Raj.), the petitioner is engaged in the transmission of electricity and is engaging



CA. VIJAY ANAND

contractors who transports goods and raises invoice for transportation. An application for advance ruling was filed as to whether the transportation of goods is exempt under Serial No.18 of Notification No.12/2007-Central Tax (Rate) (for short 'Exemption Notification')

which was negated as the applicant was not the supplier. On a writ petition, the high court observed as under:

1. Section 2(98) defines “reverse charge” as liability of recipient to pay tax instead of the supplier, for categories of supply of goods or services or both notified under Sub-Section (3) or Sub-Section (4) of Section 9 of CGST Act or under Sub-Section(3) or Sub-Section (4) of Section 5 of the Integrated Goods & Services Tax Act.
2. Supplier as per Section 2 (105) is a person supplying goods or services or both and shall include an agent acting on behalf of supplier, in relation to goods or services or both supplied.
3. Section 2(107) defines ‘taxable person’ as a person registered or liable to be registered under Section 22 or section 24.
4. Supplier having turnover exceeding twenty lakhs is obligated under section 22 to get registration in State or Union Territory where from supply of goods or

services or both is made, except for special category States.

5. Notwithstanding anything contained in Section 22, registration is compulsory for the categories of persons mentioned in section 24 of the CGST Act. Under Clause (iii) of section 24, person liable to pay tax under reverse charge has to get registration.

6. The petitioner, if not exempted by the notification, is liable to pay tax on reverse charge basis. In other words, the

liability to pay tax is of petitioner, inspite of being the recipient. The definition of 'advance ruling' relied upon to oust the petitioner from making application, needs to be analyzed in the backdrop that the petitioner being liable to pay tax on reverse charge basis shall be covered under the definition of taxable person.

7. A registered person or a person desirous of obtaining registration under the Act falls within ambit of the 'applicant' in

-
- Section 95. It is compulsory for the petitioner to get registered, under Section 24 of CGST Act, being liable to pay tax on reverse charge basis.
8. The interpretation of definition of 'Advanced Ruling' by the AAR has a fallacy.
 9. Section 95 starts with "in this chapter, unless the context otherwise requires" thereby leaving leverage for an interpretation to be given to the defined word in context it is being used.
 10. Under Section 9(3), the Government on recommendation of the Council notifies the categories of goods or services or both, for payment of tax on reverse charge basis wherein all provisions of the Act shall apply to the recipient of the goods or services or both, deeming to be the person liable to pay tax.
 11. The recipient liable to pay tax on reverse charge basis is given a deeming fiction of supplier for the purpose of payment of tax. The fiction under Section 9(3) of the CGST

Act has to be given full play, by bringing the dealer liable to pay tax on reverse charge basis within the ambit of Chapter XVII for seeking Advance Ruling.

12. The appeal against the Advance Ruling is provided under Section 100 of the CGST Act. The concerned Officer, the Jurisdictional Officer or the applicant can prefer an appeal against the ruling given under Section 98(4). No appeal is provided against rejection of the application under

Section 98(2) of the CGST Act.

13. The application of the petitioner was ousted at threshold under Section 98(2), as not maintainable. Section is unambiguous that appeal can be filed only against the orders pronounced under Section 98(4) of the CGST Act.

In view of the above, the high court set aside the impugned order and remitted the matter back to AAR for deciding the application afresh under Section 98(4) of the CGST Act.

2. GST - DENIAL OF ITC CLAIMED ON ACCOUNT OF ALLEGEDLY INELIGIBLE COMMODITIES AND AVAILING FROM CANCELLED DEALERS AS ALSO ON ALLEGED FAKE INVOICES WITHOUT CALLING FOR THOSE DOCUMENTS IN THE SCN - NOT SUSTAINABLE

In TVL Slitina Metal Sales LLP v. AC(ST)(FAC), Ganapathy Circle, Coimbatore 2024(89) GSTL 25/(2024) 21 Centax

194 (Mad.), the petitioner received show cause notice in respect of two issues viz. (a) the claim of ITC in respect of allegedly ineligible commodities as per sub-section (5) of Section 17 and (b) the claim of ITC for supplies from cancelled dealers, who had not remitted tax dues which was replied. The petitioner replied to such show cause notice on 12.01.2024. Along with such reply, the petitioner attached the invoice and e-way bills relating to the supplies from M/s.VK Impex as also the

proof of filing of returns by the said supplier.

The demands were confirmed with no findings on the first issue and non establishment of movement of goods by producing lorry receipts, weightment slips and payments made to the supplier which weren't called for in the SCN. On a writ petition, the high court observed as under:

1. On perusal of the show cause notice, it is evident that two tax proposals are dealt with therein. The first relates to availment
2. As regards the first issue, the petitioner stated that materials classified under HSN Code 7204 were procured and that such

of Input Tax Credit in respect of allegedly ineligible commodities in terms of Section 17(5) of applicable GST statutes. As regards the second issue, the petitioner was called upon to show cause as to why ITC should not be recovered in view of the supplier concerned not paying tax on such supplies. The petitioner responded to both these issues.

materials do not fall within the scope of Section 17(5) since they were used in furtherance of business. The petitioner enclosed relevant invoices and e-way bills.

3. With regard to the second issue, the petitioner pointed out that a supplier, whose registration certificate was cancelled cannot generate e-way bills. The petitioner enclosed relevant invoices, e-way bills and the supplier's returns as proof of payment of tax by such supplier.

4. In the impugned order, there are no findings in respect of the first issue. As regards the second issue, the tax proposal was confirmed on the ground that the petitioner did not establish movement of goods by producing lorry receipts, weighment slips and payments made to the supplier. None of these documents were called for in the show cause notice which proceeded on a completely different basis. Therefore, the impugned order cannot be sustained.

Hence, the, impugned order was set aside and the matter was remanded for re-consideration with the petitioner being permitted to submit an additional reply by enclosing all relevant documents with regard to movement of goods and the adjudicating authority be allowed to pass an order afresh, after the receipt of such reply and giving a reasonable opportunity to the petitioner, including a personal hearing.

3. GST -REVERSAL OF ITC - CREDIT NOTE ISSUED BY SUPPLIER - DEMAND CONFIRMED

**W I T H O U T
CONSIDERING THE
SUBMISSIONS MADE
BY THE ASSESSEE -
MATTER REMANDED**

In Tvl.Shivam Steels v. AC(ST)(FAC) Hosur (South)-III Assessment Circle 2024(89) GSTL 40/ (2024) 20 Centax 363 (Mad.), the adjudicating authority confirmed the demand for reversal of ITC, being the credit note issued by the supplier, without considering the assessee's submissions. On a writ petition the high court observed as under:-

-
1. The assessing officer concluded that the taxable person is providing a service to the supplier while taking the benefit of a discount by facilitating an increase in the volume of sales of such supplier. This conclusion is ex facie erroneous and contrary to the fundamental tenets of GST law. Therefore, this conclusion warrants interference and this issue requires reconsideration.
 2. The contention of learned Additional Government Pleader remains to be considered. The exercise of jurisdiction under Article 226 is discretionary and subject to self imposed fetters. One such fetter is when an efficacious alternative remedy is available. It should be borne in mind that the existence of an alternative remedy is a material consideration but not a bar to the exercise of jurisdiction.
 3. In the case at hand, on the basis that the other issues require reappraisal of evidence, the petitioner has approached the appellate authority in respect thereof.

4. As regards this issue, since it is a pure legal issue, the petitioner has chosen to approach this Court. The conclusion is *ex facie* erroneous on this issue, and the appellate authority under applicable GST statutes does not have the power to remand.

5. Therefore, notwithstanding the fact that the petitioner had approached the appellate authority in respect of other issues, jurisdiction is exercised on the issue.

Hence, the writ petition was allowed and the impugned order was set aside and the matter was remanded for reconsideration back to the original authority, after providing a reasonable opportunity to the petitioner, including a personal hearing, the assessing officer is directed to issue a fresh order within three months from the date of receipt of a copy of this order.

4. GST - SCN ISSUED IN THE NAME OF DECEASED ASSESSEE - NOT SUSTAINABLE

In Unnikrishnan R v. UOI, 2024(89) GSTL 56/ (2024) 21 Centax 47 (Mad.), the petitioner is the son of deceased dealer Mr.Radhakrishnan Pillai who was running a business concern under the name and style of 'M/s.Chothi Enterprises' at Anakarai, Kulapuram, Kanyakumari District and died on 11.10.2017 under mysterious circumstances. Thereafter, a Show Cause Notice under Section 73(1) on 29.09.2023 in the name of the deceased dealer Mr.Radhakrishnan Pillai.

And the same was confirmed vide order dated 29.12.2023. On a writ petition, the high court observed as under:

1. There is no dispute that the dealer Mr.Radhakrishnan Pillai has died on 11.10.2017 and that the petitioner is one of his legal heirs/legal representatives along with his mother R.Sujatha aged about 62 years, his sister Sreelekshmi aged about 33 years and his grand-mother Nalinakshi Amma aged about 84 years.

2. The order that has been passed against the dead person is nonest in law. If the petitioner is carrying on the business of the deceased person, then, the remedy is available to the Department to proceed against the petitioner under Section 93 of the TNGST Act, 2017. It appears to be that the petitioner is not carrying on the business of the deceased person.

3. Be that as it may, since the impugned order has been passed against the dead person, the impugned

order is quashed by directing the respondents to issue a common notice to the petitioner representing the interest of the other legal heirs/ legal representatives of the deceased dealer Mr.Radhakrishnan Pillai, within a period of 30 days from the date of receipt of a copy of this order and thereafter proceed in the manner known to law, in case the petitioner is carrying on the business of the deceased dealer Mr.Radhakrishnan Pillai.

Hence, the petition was accordingly disposed of.

5. GST - SCN ISSUED ON TAXATION MANAGER OF A PERSON WHO WAS ALSO HOLDING POA TO REPRESENT OVERSEAS SHIPMENT AGENCY FOR AFFENCS ALLEGEDLY DONE BY THE OVERSEAS SHIPPING AGENCY- NOT SUSTAINABLE

In *Shantanu Sanjay Hundekari v. UOI*, 2024(89) GSTL 62/(2024) 17 Centax 18 (Bom.), the petitioner is a citizen of India, who is an employee of M/s. Maersk Line India

Pvt. Ltd. (for short “MLIPL”) having its principal place of business at Mumbai. He was employed as a Taxation Manager with MLIPL with effect from 12 December, 2013. MLIPL was appointed as Steamer agent of Maersk A/S (for short “Maersk”), a company incorporated under the laws of Denmark, which is *inter alia* engaged in the shipping business involving containerized transportation of goods, through vessels across the globe.

The petitioner in his capacity as a Taxation Manager rendered assistance to Maersk in its compliances with taxation laws including the GST. The petitioner also holds power of attorney to represent Maersk before the Tax Authorities. It is contended that the petitioner was not in-charge of the day-today business of Maersk. The petitioner acting on behalf of Maersk also volunteered, to assist the investigations being conducted by the tax authorities, in responding

to the summons that were issued to Maersk, to present its evidence and to furnish list of witnesses whose statements could be recorded.

A writ petition was filed challenging the demand cum show cause notice issued by the Joint Director, Director General of Goods and Service Tax Intelligence whereby the petitioners along with other noticees were called upon to show cause as to why penalty equivalent to the tax alleged to be evaded by

M/s. Maersk (amounting to Rs.3731,00,38,326/-, be not imposed upon the petitioners applying the provisions of section 122(1A) and Section 137.

On a writ petition, the high court observed as under:

1. The allegation against the petitioner is in his capacity as a Senior Tax Operations Manager cum Authorised Person of Maersk. He is called upon to show cause as to why penalty equivalent to the tax evaded by Maersk amounting to
2. In such context, it is alleged that the petitioner has committed offences, of the nature as described under the provisions of

Rs.3731,00,38,326/- be not imposed upon him u/s 122(1A) on the allegation that as Maersk had committed offences u/s 122(1)(i) and as to why, the petitioner should not be proceeded against “for indulging” into offences of the nature as prescribed u/s 137 read with Section 20 of the IGST Act, 2017, for willful suppression of the facts resulting in evasion of GST by Mearsk.

Sections 122(1)(i) which led to the evasion of the GST by Maersk, for the reason that the invoices raised by Maersk on its supplies were not in accordance with the provisions of Section 31 read with Rule 47 read with Section 13 read with Section 20 of the IGST Act and the rules made thereunder.

3. It is also alleged that the ITC availed and subsequently utilized on the strength of the invoices raised belatedly by Maersk were

inadmissible in terms of the provisions of Section 13, Section 16(2), Section 16(4), Section 17(5)(1) and Section 31 and the rules made thereunder, read with Section 20 of the IGST Act.

4. It is also alleged that the invoices raised by Maersk in respect of the supplies of services of Ocean freight rendered to its clients culminated into short payment of tax @13% (18%-5%). It is hence alleged that as the invoices raised for such supplies were incorrect

and the ITC availed and subsequently utilized was inadmissible, which was indicative of the fact that the petitioner (and other employees) aided and abetted in commission of the offences which rendered them liable to a penalty equivalent to the tax evaded by Maersk amounting to Rs.3731,00,38,326 / (Rs. 1561,03,97,298 + Rs.1561,03,97,298 + Rs.608,92,43,730/-) under the provisions of Section 122(1A) of the CGST Act, 2017 and the like

provisions of the State GST laws as applicable.

5. It is further alleged that the benefit of the said evasion of GST was retained by the noticees (which includes the petitioner). It is also alleged that at the time of evasion of tax by Maersk, the petitioner and the other employees were in charge of, and were responsible to Maersk for the conduct of the business of Maersk. Thus, the petitioner and other employees were very well aware about the willful

omission and commission in the act of suppression of material facts which ultimately resulted in evasion of tax, in addition to suppression of their value of outward tax payable in respect of supplies of support services among distinct persons, and in respect of supplies of services of Ocean freight and the wrong availment and subsequent utilisation of ITC, on the strength of the invoices raised by Maersk on supplies of support services among distinct persons during the period

from October-2021 to April-2022, from the tax department resulting in tax (GST) evasion by Maersk.

6. It is hence alleged that the petitioner and such other employees had rendered themselves liable to proceedings under Section 137(1) and Section 137(2) and the like provisions of the State laws. From such contents of the show cause notice, it is quite clear that entire basis for issuance of the show cause notice to the petitioner is on the

ground, as to what was being alleged, in regard to the evasion of the GST by Maersk and allegedly payable by Maersk.

7. In this context, the question before the Court is whether the invocation of the provisions of Section 122(1-A) as also Section 137(1) and 137(2) would stand attracted in their applicability to the petitioner, so as to confer jurisdiction to issue the impugned show cause notice against the petitioner, who is merely an employee of MLIPL
8. A plain reading of section 122 clearly implies that it provides for levy of penalty for certain offences” by taxable person who would render himself liable for a penalty for acts provided in clauses (i) to (xxi) of subsection (1). Insofar as subsection (1-A) of Section 122 is concerned, it provides that any person (who would necessarily

and a power of attorney of Maersk. Such issue according to the petitioner, goes to the root of the show cause notice.

be a taxable person), retains the benefit of the transactions covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1), and at whose instance, such transaction is conducted, “shall be liable to a penalty of an amount equal to the tax evaded or input tax credit availed of or passed on.

9. This necessarily implies that sub-section (1-A) applies to a taxable person, as it specifically speaks about the applicability of the provisions of clauses (i),

(ii), (vii) or clause (ix) of sub-section (1), with a further emphasis added by the words as underscored by us which clearly depicts the intention of the legislature that a person who would fall within the purview of sub-section(1-A) of Section 122 is necessarily a taxable person as defined under section 2(107) read with the provisions of section 2(94) of the CGST Act and a person who retains the benefits of transactions covered under clauses (i), (ii), (vii)

or clause (ix) of sub-section (1) of Section 122.

10. Further, Section 122(1-A) also cannot be attracted qua the person, in a situation when any person does not retain the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and/or it is applicable at whose instance such transactions are conducted, could be the only person, who shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit, wrongly availed of

or passed on as the person as the relevant provisions would show that such person can only be a taxable person as defined under Section 2(107) read with section 2(94), who would be in a legal position, to retain the benefit of tax on the transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1), and at whose instance, such transaction is conducted.

11. In the absence of the above basic elements being present, any show

cause notice of the nature as issued, would be rendered illegal, for want of jurisdiction as also would stand vitiated by patent non application of mind.

12. If this is the plain meaning and consequence of the provisions of section 122 (1A), then necessarily the provision would manifest that person like the petitioner, who is a mere employee of MLIPL which is although a group company of Maersk, cannot fall within the purview of the said

provision, as the petitioner cannot be a 'taxable' or a 'registered person' within the meaning and purview of the CGST Act so as to retain such benefits as the provision ordains.

13. Hence, there was no question of invoking section 122(1-A) against the petitioner. Thus, the designated officer invoking the said provision against the petitioner is an act wholly without jurisdiction, so as to issue the show cause notice. A provision,

which ex-facie is inapplicable to the petitioner who is an individual, has been invoked and applied in issuing the impugned show cause notice.

14. Similar is the position insofar as the applicability of Section 137 of CGST Act is concerned. Section 137 concerns “Offences by Companies”. Subsection (1) thereof would provide that when an offence committed by a person under the CGST Act is a company, every person who, at the time of the

offence being committed, was in charge of and was responsible, to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

15. As to how Section 137 can form part of any invocation against the petitioner that too along with the provision of Section 122(1-A), qua the petitioner cannot be

comprehended, this more particularly for the reason that the show cause notice is issued under section 74 which falls under Chapter XV which pertains to “Demands and Recovery”. Section 74 provides for “*Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts*”. Certainly Section 74 is not a penal provision, whereas

Section 137 falls under Chapter XIX which provides for ‘offences and penalties’.

16. Thus, as to how such penal provision in Section 137 could be foisted against the petitioner, when the show cause notice is itself a demand cum show cause notice, is also quite intriguing, also touches the very jurisdiction in issuance of such notice. This aspect is not explained by the respondents much less satisfactorily.

17. In any case, even assuming that Section 137 could be invoked or is made applicable against the petitioner, then certainly proceedings under section 137 cannot be the proceedings which could be made answerable in a demand cum show cause notice issued under section 74, as such proceedings would be in the nature of a prosecution necessarily involving the applicability of Section 134.

18. There cannot be such intermixing of

jurisdictions, and that too in foisting a monetary liability as demanded from the petitioner, which on the revenue's own showing in the show cause notice is alleged to be the liability of the companies who are the principal noticee's.

19. For the aforesaid reasons, it is clear that the basic jurisdictional requirements / ingredients, are not attracted for issuance of the show cause notice under section 74 so as to invoke Section 122(1-A) and Section 137 against the petitioner.

Even otherwise, it is ill-conceivable to read and recognize into the provisions of Section 122 and Section 137, of the CGST Act any principle of vicarious liability being attracted. There could be none.

20. Thus qua the petitioner, the impugned show cause notice is rendered bad and illegal, deserving it to be quashed and set aside.

Hence, the petition was allowed and the impugned SCNs were quashed qua the petitioner.

6. GST - NON-SUPPLY OF ADVERSE EVIDENCE RECORDED DURING SEARCH AND SEIZURE - CONFIRMATION OF DEMAND - NOT SUSTAINABLE

In Prabhat Furniture v. Addl. Commissioner, Grade-2 (Appeal), ST, 2024(89) GSTL 84/(2024) 21 Centax 388(All.), the petitioner was engaged in the business of manufacture and sale of wooden furniture. On 24.03.2018, the search and seizure inspection of the business premises of the

petitioner was made by JC (SIB). At the time of survey, the books of accounts could not be shown and the value of the goods seized was estimated at Rs.18,00,000/-. Thereafter, the reply was submitted to the notice issued to the petitioner, adducing books of accounts. Further, notice u/s 74 was issued to which the petitioner filed his objection. Initially notice was issued u/s 73, and thereafter notice u/s 74 was issued and the

demand confirmed and sustained in the first appellate proceeding. On a writ petition, the high court observed as under:

1. It is evident from the appellate order that the appeal of the petitioner was partly allowed and the taxable turnover has partly been reduced. Further, by a letter, report was submitted by the proper officer about the survey dated 24.03.2008, which has adversely been taken against the petitioner to which, no opportunity was given.

-
2. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice, relying on the decision in *Oryx Fisheries Private Limited v. UOI & others*, 2010 (13) SCC 427.
3. In view of the above, once the material used against the petitioner has not been confirmed, the impugned order cannot sustain in the eyes of law and ought to be set aside.
- Hence, the writ petition was allowed and the impugned order was set aside and the matter was remanded to the authority concerned to decide the case de-novo.
- 7. GST - SERVICES PROVIDED TO NHAI WHOSE RECEIPT OF CONSIDERATION IS STAGGERED**

INTERVALS OVER A PERIOD OF 14 YEARS - DEMAND ON THE ENTIRE VALUE IS NOT SUSTAINABLE EVEN WHEN SUBSTANTIALLY MOST OF THE WORKS ARE COMPLETED

In K.N.R.Srirangam Infra Pvt. Ltd. v. STO, Lalgudi Assessment Circle, Trichy 2024(89) GSTL 87/(2024) 21 Centax 385(Mad.), the petitioner is providing services to the National Highways Department of India and that the

considerations are received in two parcels viz. - 40% of the consideration is received during the execution of work and remaining 60% of the consideration is received annually over the next 14 years.

The adjudicating authority confirmed the demand on the entire value of consideration since the work has been substantially completed. On a writ petition, the high court observed as under:

-
1. The impugned orders are to be set aside and the cases are remitted back to the respondent to re-examine the issue in the light of the clarification issued by the Central Board of Indirect Taxes and Customs *vide* Circular No.221/15/2024-GST, dated 26.06.2024, pursuant to the recommendation of the GST Council in its 53rd Meeting held on 22.06.2024.
 2. *Prima facie*, the petitioner is not liable to pay tax if no invoice is raised by the petitioner on the NHAI.
 3. As and when the petitioner either raises invoice for payment of the amount in 30 Annuities qua balance 60% or receives amounts in Annuities, the petitioner would be liable to pay tax.
 4. Merely because, the petitioner has sub-contracted the work and completed the work in advance for receiving the payments in the form of Annuity over a period of

15 years would not either disentitle the petitioner to avail input tax credit on the tax charged by the sub-contractor on the petitioner or to draw an inference that the petitioner was indeed liable to pay tax on the entire value of the contract with NHAI, even though the petitioner has neither raised any invoice nor received the payment.

Therefore, the impugned orders were set aside and the cases are remitted back to the adjudicating authority to re-examine the issue in the light of the above observations and in the light of Circular No.221/15/2024-GST, dated 26.06.2024.

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at reachanandvis@gmail.com)

SUMMARY OF AAR/AAAR

Applicability of healthcare exemption in respect of diagnostics aggregator



CA. AMAN GOYAL

In the case of Re: Medpiper Technologies Private Limited (referred to as “applicant”) (Oder No. KAR ADRG 41/2024 dated November 13, 2024) - Karnataka Advance Ruling Authority

Facts of the case:-

1. The applicant engages with companies to offer diagnostic lab and wellness services to employees or specified

groups through third-party labs and wellness providers.

2. The employees or groups can select a specific date, time, and type of diagnostic test from a list provided by the applicant.
3. Interaction between the employees and the

applicant, as well as with the diagnostic labs, are facilitated through a mobile app developed by the applicant, WhatsApp, email, or phone. Diagnostic labs will provide medical reports to the employees or groups via their preferred communication medium.

4. The applicant functions as an aggregator for diagnostics and labs, serving companies, insurance companies, and insurance brokers.

They offer access to a digital platform and tools to manage workflows for these entities.

5. As an aggregator, they create a network, provide standardized pricing, collect payments, and disburse payments to the labs while retaining a margin. The digital workflow tools / platform are provided for free to companies, insurance companies, and brokers for operational management.

6. Diagnostic labs and wellness providers invoice the applicant, who then invoices the recipient after adding a margin.

Question before AAR:-

a. Whether the assessee needs to collect GST on the diagnostic and lab services provided through third party diagnostic labs? If yes, whether GST has to be collected for the whole invoice amount or on the margin on the supply alone and what will be

the applicable tax rate and which SAC to be used?

b. Whether TCS needs to be collected?

c. Whether the assessee fall under the definition/ meaning of an “Insurance Agent” if invoiced to an insurance company, if yes how is GST applicable?

Interpretation of law by the applicant:-

1. According to Notification 12/2017-Central Tax, services related to

healthcare provided by clinical establishments are exempt from GST. Since the clinical establishments provide the services using the applicant's digital platform, the applicant is merely acting as an aggregator. Additionally, the service falls under the definition of e-commerce, and therefore, the applicant is not required to collect GST.

2. Since the services provided by diagnostic labs and clinical

establishments are exempt under Notification 12/2017-Central Tax, there are no taxable supplies involved. As per Section 52(1) of the CGST Act 2017, TCS is collected on the net value of taxable supplies, and in this case, since the supplies are exempt, TCS is not applicable.

3. The applicant provides aggregator services through a digital platform to the insurance company, and thus does

not fall under the definition of an insurance agent. Consequently, the Reverse Charge Mechanism (RCM) under GST does not apply to the services provided by the applicant to the insurance company.

Observations & Ruling of the Authority:-

1. The applicant merely facilitates the selection of labs, and after the tests, the labs provide reports directly to the recipients. The service is provided
2. Additionally, the applicant is providing diagnostic, lab, and wellness services to client companies by procuring

by the applicant rather than directly by the labs to the recipients. The labs invoice the applicant, who then invoices their clients. Hence, the applicant does not qualify as an e-commerce operator. The requirement to collect TCS arises only if the applicant qualifies as an e-commerce operator.

these services from third-party providers. The applicant is not acting as an agent for either the client companies or the diagnostic labs/wellness providers, as they are not supplying services on behalf of another party but on their own account. The fact that the labs invoice the applicant, who then invoices their clients, supports this nature of service provision.

3. In this case, while the services provided are covered under healthcare

services, the applicant does not qualify as a clinical establishment as defined under para 2(s) of Notification No. 12/2017. The applicant is not a hospital, nursing home, clinic, sanatorium, or any similar institution but an aggregator procuring services from diagnostic labs. Therefore, the second condition is not fulfilled, and the applicant is not entitled to the exemption. Thus, the applicant is liable to collect GST on the diagnostic and lab

services provided through third-party diagnostic labs to their clients.

4. The applicant adds a markup to the cost of services procured from the diagnostic labs/wellness providers and invoices their clients with the marked-up value. In this scenario, the applicant must charge GST on the entire invoice amount, as per Section 15(1) of the CGST Act 2017, not just on the markup value.
5. According to Section 42 of the Insurance Act 2015, an insurance agent is a representative who sells insurance policies on behalf of an insurance company. The agent assists consumers in selecting the appropriate insurance based on their needs but represents the insurance company in selling and negotiating various insurance policies.
6. In this case, the services provided by the applicant are not

connected, even remotely, with the sale of insurance policies. Hence, the applicant does not fall under the definition of an “insurance agent.” Therefore, the applicant should raise invoices in the same manner as they do for other companies.

Applicability of RCM under section 9(5) in respect of transportation services provided through subscription-based model

In the case of Re: Uber India Systems Private

Limited (referred to as “applicant”) (Order No. KAR ADRG 38/2024 dated November 04, 2024) - Karnataka Advance Ruling Authority

Facts of the case:-

1. The Applicant proposes to supply technology services by way of offering its platform to its subscribers/ drivers to connect with the riders.
2. The Applicant charges a membership/ subscription fee to drivers who intend to use

their platform to connect with customers.

3. The platform is created to link consumers desirous of availing transportation services to providers of such transportation services.
4. Once the ride is requested by riders (passengers), it is forwarded to the relevant drivers. The drivers may either accept the ride or reject or offer a counter price to the rider for the requested trip. The actual supply of passenger transportation services by
5. The terms and conditions governing the transportation service and other aspects such as quality, price etc., are mutually agreed upon by the drivers and riders.
6. No commission is charged by Applicant either from the drivers or from the riders on a per ride basis, however Applicant charges a periodical subscription membership fee from the drivers.

-
7. Applicant does not issue an invoice to the rider for the trip. Any disputes between drivers and riders are to be settled by themselves.
8. The online platform is involved only for the limited purpose of identification/connection of drivers and riders. Applicant is not in any way concerned with the collection of the consideration from the riders, the riders pay the drivers directly for the transportation service through cash or digital payments via UPI. Applicant does not have any control over the final determination of actual fare and the actual fare paid by the rider to the driver.
- Question before AAR:-**
- i. Whether the Applicant satisfies the definition of an e-commerce operator and the nature of supply as conceptualized in Section 9 (5) of CGST Act, 2017 read with notification No. 17/2017 dated 28.06.2017?

-
- ii. Whether the Applicant is liable to collect and pay GST on the supply of services supplied by the drivers/service provider (person who has subscribed to online Uber platform in relation to proposed business model) to their customers (person who has subscribed to online Uber platform) identified on the Uber's platform) under the proposed business model?
1. The Applicant would provide technology services in the form of provision of digital platform which would be operated and managed by the Applicant. The digital platform would help suppliers/ drivers to connect with the riders/ customers for the supply of passenger transportation services which would be independently supplied by the drivers without any involvement of the digital platform or the Applicant.

Interpretation of law by the applicant:-

-
2. Considering that the Applicant is operating and managing the digital platform for supply of passenger transportation services, the Applicant would be termed as an E-commerce operator as in terms of the definition. The Applicant believes that the services of passenger transportation are not provided “through” the platform of the Applicant, but the said platform is only a means of connecting the supplier and the recipient.
 3. The passenger transportation services in the present case, happens independent of the Applicant and the Applicant is involved only in the identification of the supplier of services and does not take responsibility for the operational and completion of the ride.
 4. Accordingly, the Applicant does not fulfil the conditions stipulated in Section 9 (5) of the CGST Act 2017, which is “supply of services through the e-commerce

platform”, as no portion of supply of services is under the control of the Applicant. Given the Proposed business model of the Applicant, its role is merely connecting the driver and passenger, therefore, section 9 (5) of CGST Act cannot be made applicable in the present case.

5. The Applicant cannot control the fare of the ride and the collection associated with completion of the ride. Thus, the Applicant

cannot be held liable to collect and pay the tax as specified in Section 9 (5) of the CGST Act 2017 read with Notification No. 17/2017-Central Tax (Rate).

Observations & Ruling of the Authority:-

1. The App facilitates driver onboarding, offers user interfaces for drivers and riders, allows riders to select start and end points, calculates and displays fare upon ride confirmation, shares the customer’s location and pick-up point, and tracks

and notifies the start, route, and end of the ride, thereby managing the entire transportation service from beginning to end through its digital platform.

2. The Applicant satisfies the definition of an e-commerce operator, and the nature of supply as conceptualized in Section 9 (5) of CGST Act, 2017 read with notification No. 17/2017 dated 28.06.2017.
3. The Applicant is liable to collect and pay GST on

the supply of services supplied by the drivers/ service provider (person who has subscribed to online Uber platform in relation to proposed business model) to their customers (person who has subscribed to online Uber platform) identified on the Uber's platform) under the proposed business model.

(The Author is a chennai based Chartered Accountant. He can be reached at aman.goyal@pwc.com)



ABOUT OURSELVES

The Chartered Accountants Study Circle (Regd.)

During the middle of 1978 a handful of young chartered accountants, based on MADRAS (as it then was) met periodically to discuss matters of professional relevance and significance and to widen the knowledge exposure and skills. From a limited role of discussions on tax laws and corporate laws, we have become full fledged treasure-house of talent mobilization. More than two third of our speakers / Chief guests have made their first ever public Speech under our banner.

The organization is proud that many of its members have become men of great eminence including three of its members being occupants of coveted position of the President of the Institute of Chartered Accountants of India and a number of members have been serving in the Regional and Central Councils of ICAI, ICSI, Chambers of Commerce and other Bodies. The members of CASC are interspersed in the society and more particularly in practice and in the industry.

The membership of CASC is in the form of Life, Corporate and Annual Membership.

The Composition of the members includes lawyers, company secretaries, consultants and members of the other allied and related professions. Besides our regular meetings, the CASC organizes with regularity, workshop, refresher courses, seminars and group discussions on all professional related subjects and topics in its self owned fully Air-Conditioned Premises at central location in Chennai with the state of the art infrastructure.

Every Year, scholarship are granted to meritorious students of the CA Course through the various endowments created by members and their families.

The residential Conference conducted by CASC, an annual feature is awaited eagerly by all the members. The programmes are conducted in exotic places at affordable rates coupled with good learning experience are booked well in advance.

Our monthly publication, the CASC bulletin contains thought provoking articles, exchange of problems and solution and digest of recent discussions, notifications and circulars.

Our Other Regular Publications are "Cenvat - Demystified", "User Guide to TNVAT", "Corporate Audit Check List", "Anti Dumping Measures in the WTO frame work" 'A Handy Booklet on Bank Branch Audit', and "Guide to Tax Audit".

Published by :

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

2-L, Prince Arcade, 22-A, Cathedral Road, Chennai - 600086

☎ : 044 2811 4283 📞 : 90031 03420 ✉ : admin@casconline.org

Book

Designed by

T. Babu (GB Designs)