



# GST-RECENT KEY LEGAL PRONOUNCEMENTS

DATE : 14.03.2024

**CA Vaishali B Kharde and Company**

# Overview

Whether TDR would be considered as service under GST Law?

Whether interest is payable on the GST amount, which was routinely deposited into the ECL within the due date ?

Whether interest is liable to pay on the GST amount, which was routinely deposited into the ECL within the due date ?

Whether OIO can include new grounds or arguments that are not part of the SCN?

In which scenario bail can be granted?

What are the consequences if Final audit report issued without considering reply submitted?

Whether GST registration can be canceled retrospectively?



Whether TDR would be considered as service under GST Law?

## Case

- M/s. Prahitha Constructions Private Limited [Writ Petition No. 5493 of 2020]

## Issue

- Whether TDR would be considered as service under GST Law?

## Observations

- *39. On conjoint reading of the clauses under JDA, clause d of the JDA along with clause 2.2, 2.3, 2.4, 6.1, 6.7 and 23.4 (all of which stands reproduced in the preceding paragraphs of this order) it will clearly indicate that there is no automatic transfer of ownership given to the petitioner at the time of execution of the JDA.*



## Observations

- 39 ...*That until the completion of the project takes place, the petitioner **does not get any right on the said property and it is only after the completion of the project,** issuance of completion certificate, the petitioner derives the right to sell the area of property which stood allotted to him for the realization of amount of money invested by him in the course of execution of the JDA. Thus, as has been held earlier, under no circumstances can the execution of the JDA or the mere transfer of development rights nor any of the clauses of the JDA indicate an automatic transfer of ownership or title rights over any portion of land belonging to the landowner in favour of the petitioner/developer. In the absence of any cogent and substantial material to establish right, title and ownership being created in favour of the petitioner/developer, the transfer of development rights as it stands is amenable to GST and cannot be brought within the purview of Entry 5 of Schedule-III of the GST Act.*

## Whether TDR would be considered as service under GST Law?

### Our Comment

- As per the observation of the Hon'ble High Court,
  - *In the absence of any cogent and substantial material to establish right, title and ownership being created in favour of the petitioner/developer, the transfer of development rights as it stands is amenable to GST*
- What if the clauses of Agreements are different? Whether each agreement is to be evaluated taking in to consideration the Judgment?



Whether interest is payable on the GST amount, which was routinely deposited into the ECL within the due date ?

## Case

- Eicher Motors Ltd [[2024-TIOL-133-HC-MAD-GST](#)]

## Issue

- Whether interest is payable on the GST amount, which was routinely deposited into the ECL within the due date?

## Observations

- *For payment of tax to Government, filing the monthly returns is not the matter but the last date for furnishing the monthly return is important, thus, whether the monthly return is filed in time or not but the GST has to be remitted not later than the last date for filing the monthly returns - Once the Form GST PMT-06 is generated and if any amount is paid through the said form in the authorised bank, the same will be credited to the account of the Government and thereafter only, it will be deemed to be credited to the Electronic Cash Ledger - From the moment it is deposited by generating GST PMT-06, it is the money of the exchequers, since the money was collected only under the name of the exchequer in the form of GST -*

Whether interest is payable on the GST amount, which was routinely deposited into the ECL within the due date ?

## Decision

- *+ As long as the GST, which was collected by a registered person, is credited to the account of the Government, not later than the last date for filing the monthly returns, to that extent, the tax liability of such registered person will be discharged from the date when the amount was credited to the account of the Government. If there is any default in payment of GST, even subsequent to the due date for filing the monthly returns i.e., on or before 20th of every succeeding month, for the said delayed period alone a registered person is liable to pay interest in terms of Section 50(1) of the Act.*

Whether interest is payable on the GST amount, which was routinely deposited into the ECL within the due date ?

## Our Comment

- It is observed that in certain cases the Department taken view that the deposit of GST in ECL would not amount to payment of GST and would tantamount to failure to remit GST in time, for which interest liability would be attracted. Thus, said judgment can be referred in such scenario.



Whether OIO can include new grounds or arguments that are not part of the SCN?

## Case

- *Associated Switch Gears and Projects Ltd* [[2024-TIOL-360-HC-ALL-GST](#)]

## Issue

- Whether OIO can include new grounds or arguments that are not part of the SCN?

## Observations

- *Allegation in SCN*
  - *the vehicle was travelling to a destination not mentioned in the invoice*
- *Allegation in OIO*
  - *imposed penalty on a different ground, that is, that the e-Way Bill had expired though the same was accompanied with goods*

## Decision

- *Any attempt by the authority to expand the scope of inquiry or introduce new allegations beyond those articulated in the notice would violate this principle of specificity, depriving the recipient of a fair opportunity to address the accusations levelled against it - Adhering to the show cause notice is not merely a procedural formality, but a mandatory requirement, beyond the scope of which, no action can be taken - Reason to not allow the authorities to go beyond the show cause notice is that a person must be given a chance to put up his case with regard to the said show cause notice - In the present case, it is evident that the authorities have travelled beyond reasons provided in the show cause notice and imposed penalty on the ground that was never provided to the petitioner in the show cause notice - The petitioner never had any opportunity to defend itself on the said ground and, therefore, the show cause notice is directly in teeth of the principles of natural justice, namely, the principle of audi alteram partem - Orders are hereby quashed and set aside -*

# Whether OIO can include new grounds or arguments that are not part of the SCN?

## Our Comment

- Supreme Court on numerous occasions has upheld that the authorities cannot transgress the boundaries of the SCN; It is settled principle of law that if an allegation or ground is not made at the time of issuance of SCN, the authority cannot go beyond the scope of SCN to create new ground at the later stage of adjudication.
- Thus, unless the foundation of the case is laid in SCN, the Revenue cannot be permitted to build up a new case against the assessee.
- It is critical to include even procedural aspects in the Grounds of Appeal.



In which scenario bail can be granted?

# In which scenario bail can be granted?

## Case

- . Jitendra Kumar [Criminal Miscellaneous Case No. 4528 of 2023 and others. dated January 19, 2024]

## Issue

- In which scenario bail can be granted?

## Observations and Decision

*held the Respondent was not the main accused, he was acting o the instructions of the main accused. Further, the Petitioner's antecedents were clear and were co-operating. Therefore, the grant of anticipatory bail was sustained.*

# In which scenario bail can be granted?

## Case

- Isithore v. Senior Intelligence Officer [CRL OP (MD) 838 of 2024 dated January 23, 2024]

## Issue

- In which scenario bail can be granted?

## Observations and Decision

*The Hon'ble Madras High Court allowed the bail application of the Accused Chartered Accountant on the condition that the certain amount be deposited with the GST Authorities.*



What are the consequences if Final audit report issued without considering reply submitted?

Case

- PBL Transport Corporation Pvt Ltd [[2024-TIOL-132-HC-AP-GST](#)]

Issue

- Challenged Final Audit Report issued without consideration of Reply

Observations

- *In view of Rule 101(4), it is evident that after informing about the discrepancies noticed, if the person files the reply, the same is to be considered and on such consideration, the findings of the Final Audit Report are to be furnished - Here, it is not disputed that the petitioner filed the reply and the same was not considered while finalizing the findings of the audit - **The Final Audit Report is, therefore, in violation of the principles of natural justice as also the statutory provisions** - Writ petition is partly allowed - The impugned Final Audit Report is quashed only on the aforesaid ground: High Court [para 7, 9]*



Whether GST registration can be canceled retrospectively?

# Whether GST registration can be canceled retrospectively ?

## Case

- Sharda Metal Works [[2024-TIOL-61-HC-DEL-GST](#)]

## Issue

- Whether GST registration can be canceled retrospectively?

## Observations

- *It appears that the respondents are using a template for issuing said notices without providing any particulars - There is no clarity as to whether the petitioner has issued invoices or bills without supply or the action of the petitioner has led to wrongful availment or utilization of input tax credit or refund of tax - There is no material on record to show as to why the registration is sought to be cancelled retrospectively - Both the show cause notices and the impugned order are bereft of any reasoning and particulars and are accordingly not sustainable -*

# Whether GST registration can be canceled retrospectively ?

## Observations

- *Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively - Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation - It would be, however, open to the respondent to take further action in accordance with law inter alia, cancellation of registration with retrospective effect - Petition is accordingly disposed of: High Court [para 4, 6, 9, 11]*

# Whether GST registration can be canceled retrospectively ?

## Case

- Aryan Timber Store [[2024-TIOL-222-HC-DEL-GST](#)]

## Issue

- Whether GST registration can be canceled retrospectively?

## Observations

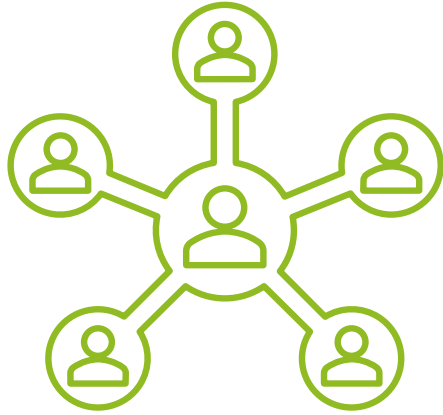
- *Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant - **A taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted** - Order of cancellation is modified to the extent that the same shall operate with effect from 06.05.2019, i.e., the date when petitioner first applied for cancellation of registration - Petition disposed of: High Court [para 7 to 9]*

## Option for Revised Return under GST Law

### Our Comment

- GST registrations are sometimes retrospectively canceled without any apparent reason. It affects the taxpayer as well as their vendor.

Therefore, in such a situation, said judgment may be referred. Hon'ble high court held that, ***A taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted***



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