

High Court

1	State of Gujarat Vs Jain Marbo India Pvt Limited	SCA 7463/17 Dt 9.3.18 (Gujarat HC) 58 GSTR 373	The power of imposing penalty would extend even on the choice of the penalty to be imposed , of course, up to a maximum of twice the value of the wrongly claimed tax credit, may emphasize, the statue has neither made it compulsory for the Commissioner to impose penalty once the breach is established nor has made the once the established nor has made quantum of penalty mandatory.
2	Chamadhi Traders Vs CTO	WP (MD) 6546/11 23.4.18 (Madras HC) 58 GSTR 120	It is clear that chips will fall under category of 'processed vegetable' and accordingly same is taxable under entry of 107 in part B of First Schedule to the TNVAT Act. Therefore it cannot be taxed under entry of 69 at rate of 14.5%.
3	Assistant State Officer Vs Alfa Aluminium	WA 1038/18 dt 22.6.18 (Kerala HC) 58 GSTR 354	We, therefore, set aside the interim order and direct release of the goods on execution of a simple bond for the value of goods in the prescribed form and furnishing of security in the form of Bank Guarantee equivalent to the amount of applicable tax and penalty payable as has been demanded
4	Sakeel Vs State Tax Officer	CW 13485 /18 dt 4.7.18 (Rajasthan HC) 58 GSTR 72	Requirement of Section 129 (4) & (5) of the Act has not been followe.d The concerned authority failed to take notice of objections and it cannot said that the order impugned is a speaking order
5	Commissioner GST Vs Jan Construction s P Ltd	Central Excise Appeal 136/2018 dt 20-7-18 (Rajasthan HC) Appealed to SC	It is thus clear that the hostel which was constructed was a girls hostel and hospital which was need of Jaipur was constructed. In view of the matter, it was not commercial building as per language used and the activities neither fall under commercial activities nor industrial activities, it is purely a social activity where the girls hostel was constructed for girls students in city of Surat and hospital in Jaipur
6	R.P.S Ent Udyog Vs State of Bihar	CWJC 15540/16 dt 23.7.18 (Patna HC) 58 GSTR 105	Admittedly, the proceedings were reopened vide show-cause Annexure-6 dated 30.04.2015 and as this was after a period of two years and the same being not permissible in view of the law laid down in the case of Ranjan Bricks Centre (supra), we have no hesitation in quashing the proceedings and the show cause notice and the consequential action
7	Mangalam Alloys Ltd Vs Commissioner of Central Excise	Tax Appeal No.1088-89/18 dt 5.9.18 (Gujarat HC)	The assessee was not able to establish the actual movement of the goods. When the RTO report strongly suggested that the vehicles in which the goods were stated to have been transported were incapable of doing so, the burden would be on the assessee to dislodge these primary findings particularly when the report of the RTO was not challenged.....The findings are based on evidence suggesting no movement of goods.
8	A Syed Ali Fathima Vs Assistant State Tax Officer	WP 36047/18 dt 5.11.18 (Kerala HC) (Question of Classification issue)	Petitioner's goods have been detained. She is ready to take release of the goods on execution of Bank Guarantee. However, she submits that since dispute is regarding the misclassification, photographs shall be taken before the release of the goods. Therefore, the writ petition is disposed of with the following directions: (i) Photographs and negatives shall be taken with regard to the nature of the goods. (ii) Goods shall be released on furnishing Bank Guarantee, applicable to the petitioner.

CESTAT

1	T M Motors Pvt Ltd Vs Commissioner GST & C.E. Alwar	Service Tax Appeal ST/53009/2015-CU(DB) dt 22.06.18 (Delhi)	Incentive on account of sales/target incentive on sale of vehicles and incentive on sale of spare parts for promoting and marketing the products of MUL, the contention is that these incentives are in the form of trade discount. The assessee respondent is the authorized dealer of a car manufactured by MUL and are getting certain incentives in respect of sale target set out by the manufacturer. These targets are as per the circular issued by MUL. Hence these cannot be treated as business auxiliary service.
2	SMP Construction Pvt Ltd Vs Commissioner of Central Excise and Service Tax	ST 118/09 dt 1-8-2018 (Ahmedabad)	In some of the contract they paid the duty on 33% of the gross value after abatement of 67% in terms of Notification No. 1/2006-ST and only in respect of these service Contract they availed the cenvat credit. The case of the department is that since the appellant in respect of some the contracts availed cenvat credit and discharged the service tax on 100% gross value of the service, they cannot opt for Notification No. 1/2006-ST, for remaining contract, accordingly, denying the exemption Notification No. 1/2006-ST demand of service tax was raised.the issue in hand already stand settled, hence the same is not resintegra. Accordingly, the impugned order is set aside and appeal is allowed.
3	Indian Institute of Technology Vs Commissioner of Service Tax	ST 51088/14 dt 6-7-18 (Delhi)	we are satisfied that the appellant is not liable to service tax under manpower recruitment and supply service as they are not a commercial concern nor they have provided any service to a commercial concern. Further, we find that the issue is squarely covered in the appellant's favour by this Tribunal in the case of Motilal Nehru National Institute of Technology vs. CE & ST, Allahabad - 2015 (40) S.T.R. 375 (Tri. - Del.). Accordingly, this issue is decided in favour of the appellant and against the Revenue. As regards the other issue, we are satisfied that the liability of tax arises only if „online information and data access or retrieval service“ are received by the recipient located in India "for use in business or commerce". We categorically find that the OIDA service received by the appellant is not in relation to any business or commerce and accordingly we hold that the same is not taxable.

GOs issued U/APVAT Act

1	GO Ms No 563	13.11.18	Amendments to Entry 8 & 20 of First Schedule to the Act
2	GO Ms No 568	14.11.18	Amendment to Rules
3	GO Ms No 569	14.11.18	Amendment to Rules
4	GO Ms No. 570	14.11.18	Amendments to Notification exempting casual taxable persons making taxable supplies of handi-craft goods from obtaining Registration issued
5	GO Ms No. 593	20.11.18	Reconstitution of AP Authority for Advance Rulings – D. Ramesh Additional Commissioner – SGST and Sadhu Narashima Reddy Joint Commissioner CGST
6	GO Ms No. 618	7.12.18	Exempting casual taxable persons making taxable supplies of handi-craft goods from obtaining registration
7	GO Ms No. 619	7.12.18	Date on which TDS provision of Section 51 will come into force – 1 st October, 2018
8	GO Ms No. 620	7.12.18	Prescribing time for filing GSTR-10 by cancelled dealers – 31 st December, 2018
9	GO Ms No. 621	7.12.18	Amendment to Rules - Examination of Goods and Services Tax Practitioners.
10	GO Ms No. 622	7.12.18	Date on which TDS provision of Section 51 will come into force - 1 st October, 2018

Advance Ruling given under GST Act

1	Taranjeet Singh Tuteja & Brothers	STC/ AAR OS /2018 Raipur (Chhattisgarh)	Comprises of two or more supplies (i.e. transportation, supply of packing material & incentives) and one of which is principal supply i.e. custom milling of paddy, it shall treated as composite supply as per section 2(30)of Chhattisgarh GST Act 2017 and as per the provision of section 8(a) of Chhattisgarh GST Act 2017. Accordingly the tax liability on a composite supply shall be decided as a supply of such principal supply under Notification no. 31/2017-CT(R) notification no.11/2017-CT (Rate) dated 28-06-2017 serial No. 26. (c), vide state notification no.F-10-82/2017/CT/V(146) dated 13.10.2017 i.e. 5% (2.5% CGST & 2.5% SGST)
2	Indian Institute of Management	KAR ADRG 25 / 2018 DT 25.10.18 (Karnataka)	<p>1.In respect of question (a), “Whether the long duration post graduate diploma/ degree granting programmes offered by the Indian Institute of Management, Bengaluru other than specifically mentioned in Sl.No.67 of Notification No.12/ 2017 – Central Tax (Rate) dated 28th June 2017 as amended by Notification No.2 /2018 dated 25th January 2018 are exempted from the GST output liability on education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force in the light of enactment of the Indian Institute of Management Act, 2017?”, the answer is “No”.</p> <p>In respect of question (b), “Whether supply of online educational journals or periodicals to the Indian Institute of Management, Bengaluru is exempted from reverse charge liability of GST under Sl. No.66 of Notification No.12 / 2017 – Central Tax (Rate) dated 28th June 2017 as amended by Notification No. 2/2018 dated 25th January 2018 being education provided as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force in the light of enactment of the Indian Institute of Management Act, 2017?”, the answer is “No”.</p>
3	Premier Vigilance & Security Pvt Ltd	Case No.23/18 20/WBAAR/20 18-19 dated 02/11/2018 (West Bengal)	<p>Toll charges paid are not to be excluded from the value of supply under Rule 33. GST shall, therefore, be payable at the applicable rate on the entire value of the supply, including toll charges paid.</p> <p>The Applicant is not acting as a ‘pure agent’ of the Bank while paying toll charges, which are the cost of the service provided to the Banks so that his vehicles can access roads/bridges to provide security services to the recipient.</p>
4	Prism Hospitality Services P Lintied	TSAAR Order No.12/18 dt 26.09.18 (Telangana)	The activity of supply of food in canteens of office, factory, hospital, college, industrial unit etc. on contractual basis excepting that supply is not event based or on specific occasions, constitute supply of service in terms of amended Notification No.13/2018-Central Tax(Rate) dt.26.7.18 and is taxable at the rate of 2.5% CGST + 2.5% SGST and the supplier is not eligible for the input tax credit..... provides transport services to a training institute for carting food from one building to another for service/sale and the applicant charges a separate transport charges, the applicant needs to discharge GST on the gross amount (cost of Food + cost of Transportation) at the rate of 18% GST.

Appeal Orders against Advance Ruling given under GST Act in other States

1	Mega Flex Plastics Ltd (West Bengal) (appeal by ACCT)	06 <i>IWBAAARI</i> Appeal/2018 dated 08.08.2018	Item Polypropylene Leno Bags (PP Leno Bags) manufactured by the respondent, be classified under Tariff Heading 39232990.
2	Giriraj Renewables Private Ltd Karnataka	KAR/AAAR/02 /2018-19 dt 5.9.18	<p>Ruling dated 21.03.18 passed by Karnataka Authority for Advance Ruling is modified as under:</p> <p>a) The supply of the PV module which is the major component of the Solar Power Plant is not naturally bundled with the supply of the remaining components & parts of the Solar Power Plant and the supply of the services of Erection, Installation and Commissioning of the Solar Power Plant.</p> <p>b) The supply of PV module is a distinct transaction from the supplies in contract in question as it is the owner whose responsibility it is to procure and supply the PV module. This PV module is to be supplied as free issue material over and above the plant being supplied by the contractor. The owner is responsible for transportation of the PV module from the point of origin till plant site-and he bears the other risks and rewards of ownership. The PV module which is procured by the Project owner on High Sea Sale basis and imported by availing Customs duty exemptions and later supplied to the Appellant as a free issue for use in the setting up of the Solar Power Plant.</p> <p>c) The supply of the remaining portion of the contract in question by the Appellant which involves the supply of the balance components and parts of the Solar Power Plant and the supply of services of Erection, Installation and Commissioning of the Solar Power Plant is viewed as a 'composite supply' as the supply of goods and services are naturally bundled.</p> <p>d) The tax liability on this portion of the contract in question (other than PV module) which is termed as a 'composite supply' will be determined in terms of Section 8 of the COST Act, 2017 wherein the rate applicable to the dominant nature of the supply will prevail.</p>
3	United Breweries Limited (Karnataka)	KAR/AAAR/03/2018-19 dt 23.10.18	<p>Ruling dated 28.06.18 passed by Karnataka Authority for Advance Ruling is modified as under:</p> <p>a) The activity engaged in by the Appellant by way of granting the contracting brewing units the representational right to manufacture and supply beer bearing its brand name, in return for a consideration, is a supply of service as mandated in Section 7 of the CGST Act read with clause 5(c) of the Schedule II of the said Act.</p> <p>b) The supply of service by the Appellant is taxable to GST in terms of Section 9 of the CGST Act.</p> <p>c) The service supplied by the Appellant is classified under the Service Code 999799 as "other services nowhere else classified".</p> <p>d) The amounts received by the Appellant from the contracting units under the Agreement, in the nature of Brand Fee and reimbursement of expenses, is termed as a consideration for the supply of service and is chargeable to GST at the applicable rate of 18%.</p>

4	R. Vidyasagar Rao Constructions (Telangana)	AAAR/03/20 18-19(Order in Appeal AAAR/2/18 dt 4.9.18	The combination of services of excavation of sand including loading with machinery at reach, formation of Ramps and Maintenance of Roads, Transportation charges for the tractors/tippers of sand from reach to stockyard and Loading cost at sand from stockyard to lorries, whether is "Works Contract" or "Composite Supply" and what is the rate of tax on the consideration received.....In the said services held by lower Authority as 'composite supply', the principal supply is 'Transport of goods by road' and hence these are classable under Service Code 996511 of the Scheme of Classification of Services vide Annexure to Notification No.II /2017-Central Tax (Rate) dated 26.6.2017 in terms of Section 8 of the Act, the rate of tax on services is 9% CGST as specified under Column (4) against the item No. (v) under Column (3) against Sl. No.9 in the Table of the said Notification plus 9% SGST as per 'the corresponding State Tax (Rate) Notification aggregating to 18%.
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AJC (ADC Appeal Orders) on GST

1	Rajkot Engineering Corporation	AJC Orders No. 3750 dt 30.11.18	it is to be interpreted unambiguously that the exclusive power to prescribe necessary documents to accompany with the interstate movement of goods solely conferred and lies with the Central Government only..... In all, the basic & important aberration observed in the IA's orders, though it is not intentional, but arised due to misconceived instructions through e-waybill implementation orders. As such, any orders based on such directions, cannot be upheld as legitimate. Hence, the tax levied based on such finding is annulled in total & the appellatant contentions are found sustainable with reference to legality for the non compulsory e-waybill generation relating to interstate movement of goods, without commenting on the genuinity of e-waybill implementation orders, but purely abiding by the High Court interpretation & contemplations in the above judgments.
2	Nagarjuna Agrichem	AJC Orders 3755 dt 4.12.18	In all, the basic & important aberration observed in the IA's orders, though it is not intentional, but arised due to misconceived instructions through e-waybill implementation orders. As such, any orders basing on such directions, cannot be upheld as legitimate. Hence, the tax levied basing on such finding is annulled in total & the appellatant contentions are found sustainable with reference to legality for the non compulsory e-waybill generation relating to interstate movement of goods, without commenting on the genuinity of e-waybill implementation orders, but purely abiding by the High Court interpretation & contemplations in the above judgments.