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THE GST PULSE

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Recent Judgement and Rulings

WORKS CONTRACT SERVICES FOR HOTEL CONSTRUCTION ELIGIBLE FOR GST INPUT TAX CREDIT

HON'BLE TRIPURA HIGH COURT

M/s. SR Constructions ("the Petitioner"), a construction company, engaged in a hotel construction project with M/s Hotel Polo Pvt. Ltd. Company received goods and services for the project and paid the corresponding GST. However, the Revenue Department issued a Show Cause Notice claiming that the company had wrongly availed Input Tax Credit (ITC) in violation to the provisions of the CGST Act. The Petitioner responded to the Show Cause Notice (SCN), but the adjudicating authority upheld the demand. Aggrieved by this the Petitioner appealed to the Appellate authority. However, the Appellate authority had also confirmed the demand.

Being Aggrieved by the Order the Petitioner filed an appeal before the Hon'ble Tripura High Court. Whether the Petitioner is entitled to avail ITC on the goods and services utilized for providing construction services to hotel building?

The Hon'ble Tripura High Court held that the Petitioner, was providing work contract services to the hotel owner and fulfilled all the conditions of the works contract. Further observed that the Petitioner was not using the goods and services for their own purposes but using for the construction services provided to the building owner. Therefore, the court concluded that the Petitioner was entitled to claim Input Tax Credit (ITC) on the goods and services utilized for taxable work contract services. Consequently, the court set aside the Order.



REVENUE DEPARTMENT CANNOT ATTACH CASH-CREDIT ACCOUNT AS IT IS NOT CLASSIFIED AS A DEBT

HON'BLE CALCUTTA HIGH COURT

M/s. J. L. Enterprises ("the Petitioner"), a partnership firm, was inspected by State Tax Department Officers who discovered irregularities in their records. Consequently, a show cause notice (SCN) was issued, disallowing an amount of INR 1,15,92,650 as Input Tax Credit (ITC) and demanding interest and penalty on the ground that the mobile phones exported were found active in Indian territory, e-invoice were generated after the goods left India and no e-way bills for purchased goods. Subsequently, a provisional attachment order was issued to the Petitioner's bank under Section 83 of the CGST Act, seeking to attach their cash-credit facility.

Being Aggrieved by the attachment Order the Petitioner filed an appeal before the Hon'ble Calcutta High Court, contending that the cash-credit facility should not be subject to attachment as it is not a debt. In response, the Revenue Department contended that Section 83 grants them the authority to provisionally attach bank accounts, including cash-credit facilities, to protect revenue.

The Hon'ble Calcutta High Court held that the cash-credit account of the taxpayer cannot be provisionally attached under Section 83 of the CGST Act. The court determined that the cash-credit facility is not considered as debt and, therefore, cannot be subjected to attachment. Further, Court advised the Petitioner to pursue for the available remedy provided in the statute by filing an objection for the release of the cash-credit account before the appropriate authority.



FABRICATION OF FIRM DETAILS LED TO THE DENIAL OF ANTICIPATORY BAIL

HON'BLE SUPREME COURT

Sheetal Mittal and Padam ("the Petitioner"), engaged in trade and business in Delhi, sought bail in a case where they were accused of non-payment of dues. They argued that the matter was of a civil nature and not related to cheating. However, the State of Rajasthan opposed the bail application, stating that the accused had submitted fabricated documents during the investigation, including a forged bill. The investigation revealed that the accused had duped the complainants and caused them a loss of approximately three crores by illegally selling the goods. The High Court of Rajasthan refused to grant anticipatory bail, stating that the ongoing investigation and the custodial investigation could reveal additional facts.

Being Aggrieved by the decision of High court, the Petitioner filed a Special Leave to Petition before the Hon'ble Supreme court of India, on whether the fabrication of documents can be a valid reason for denying anticipatory bail.

The Hon'ble Supreme Court held that the anticipatory bail cannot be granted when a taxpayer fabricates firm details, such as the firm name and GST number, which were found to be non-existent. Further, based on High Court's observation, no case for anticipatory bail was established. As a result, the Supreme Court dismissed the Special Leave Petition.



GST TO BE CHARGED ON RENTALS, NIGHT CHARGES, AND FUEL COSTS IN MOTOR VEHICLE HIRE SERVICES.

HON'BLE THE DELHI HIGH COURT

M/s. Uttarakhand Public Financial Strengthening Project ("the Applicant") received motor vehicle hire service from M/s. Baba Tour & Travel ("Service provider-1") and M/s. Rajeswari Travel ("Service provider-2") (cumulatively referred to as "the service providers").
The service provider- 1 was charging GST @ 5% on the whole amount of bill which includes monthly rental, night charges and fuel on mileage basis, whereas the Service provider- 2 was charging GST @ 5% on monthly rent component of the bill and was not charging GST on night charges and fuel charges.

The issue was whether the service provider can charge GST on the whole amount of the bill or only on the amount ofmonthly rental excluding night charges and fuel charges.

The AAR, Uttarakhand, ruled that motor vehicle hire services must include GST on the entire bill amount including rentals, night charges, and fuel costs. The AAR determined that the consideration and reimbursement of expenses in the contract between the Applicant and the service providers are additional considerations for the service provided. This ruling is based on the observation that fuel is an integral component for operating the vehicles in motor vehicle hire services, and the transactional value should include the complete bill amount.



Thank You!

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