

**GST – TAXABILITY ON HORSE RACE CLUBS**

The Hon'ble Karnataka High Court in its judgment of *Bangalore Turf Club Ltd. v. State of Karnataka*<sup>1</sup>, has held that the petitioner is liable to pay GST on the commission for the services provided and not at the total amount collected as totalisator. The Hon'ble Court declared Rule 31A(3) of the CGST Rules, 2017 ultra vires of Section 9 i.e. charging provision, as the 'totalisator' is not within the scope of the Act nor defined. The Hon'ble Court placed reliance in understanding the meaning of 'totalisator' as explained by the Hon'ble Court of Appeal of Queen's Bench Division in the case of "Tote Investors Ltd. v. Smoker"<sup>2</sup>. Further the Hon'ble Court relied upon the judgements of Hon'ble Supreme Court in *Dr. K.R. Lakshmanan v. State of T.N.*<sup>3</sup> and *Bangalore Turf Club Limited v. Regional Director, ESIC*<sup>4</sup>. The Hon'ble Court also examined Article 246A as well as Article 265, empowering and safeguards while imposition of tax through judgment of the Hon'ble Supreme Court in *Govinda Saran v. Commissioner of Sales Tax*<sup>5</sup>, *Mathuram Agarwal v. State of Madhya Pradesh*<sup>6</sup> and *State of Rajasthan v. Rajasthan Chemist Association*<sup>7</sup>.

The primary issue in the instant petition was that due to the insertion of Rule 31A(3) of CGST Rules, the petitioner was required to pay GST on the total amount collected in the totalisator and not only on the commission part.

The judgment is appreciable to hold that GST is payable by the assessee on the part of the taxable activity which is selling of goods/services and not as a role of being in transition for moment without providing services for consideration as in the instant petition, the petitioner was holding the aggregate stake till the race and thereafter paying out to the winners after deducting the administration charge and tax.

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<sup>1</sup> 2021 (51) G.S.T.L. 228 (Kar.)

<sup>2</sup> 1967 All ER 242.

<sup>3</sup> (1996) 2 SCC 226

<sup>4</sup> (2014) 9 SCC 657

<sup>5</sup> 1985 Supp. SCC 205

<sup>6</sup> (1998) 8 SCC 667

<sup>7</sup> (2006) 6 SCC 773

**GST - WRIT PETITION UNDER SECTION 482 CrPC AND ARTICLE 226,227**

The Hon'ble High Court of Tripura in the matter of *Sentu Dey v. State of Tripura*<sup>1</sup>, has held that the Hon'ble Court has power to adjudicate on the present writ pertaining to quashing of the order of the Magistrate under Section 482 CrPC read with Article 226 and 227 of the Constitution. The Hon'ble Court distinguished the present factual matrix from the decision of Hon'ble Supreme Court in *HDFC Securities Limited v. State of Maharashtra*<sup>2</sup>. The Hon'ble Court while deciding on the petition raising questions on the power of the Magistrate to issue directions for investigation in accordance of Section 156(3) Cr.PC, after taking cognizance under Section 200 CrPC, has placed reliance on *R.R. Chari v. State of Uttar Pradesh*<sup>3</sup>, *Gopal Das Sindhi v. State of Assam*<sup>4</sup>, *Jamuna Singh v. Bhadai Shah*<sup>5</sup>, *Madhao v. State of Maharashtra*<sup>6</sup>, *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy*<sup>7</sup> and *Nirmaljit Singh Hoon v. State of West Bengal*<sup>8</sup>. The Hon'ble Court quashed the police investigation order against the petitioner since the Magistrate has taken cognizance by application of mind as under Section 200 CrPC. However, the Hon'ble Court has clarified that the Magistrate shall proceed in accordance with law from the stage of taking cognizance of the offence disclosed.

The decision of the Hon'ble Court has underlined that the due process as mandated by the statute has to be adhered to while hearing the matter. In the instant petition, the Magistrate took cognizance on the complaint filed under Section 190 read with 200 CrPC by the State GST Department, for unpaid tax. After, taking cognizance under Section 200, the Magistrate issued directions for investigation under Section 156(3), which was held by the Hon'ble Court is against the mandated procedural law, as the investigation shall precede the cognizance and not the other way.

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<sup>1</sup> 2021 (51) G.S.T.L. 255 (Tripura)

<sup>2</sup> (2017) 1 SCC 640

<sup>3</sup> 1951 SCR 312

<sup>4</sup> AIR 1961 SC 986

<sup>5</sup> AIR 1964 SC 1541

<sup>6</sup> (2013) 5 SCC 615

<sup>7</sup> (1976) 3 SCC 252

<sup>8</sup> (1973) 3 SCC 753

**GST –SERVICE OF NOTICE TO DRIVER**

The Hon'ble Allahabad High Court while deciding the petition titled as *Singh Traders v. Addl. Commissioner Grade-2*<sup>1</sup>, has examined the manner of service of notice, decision, order or summons as provided under Section 169 of the CGST Act, 2017. The provision read as under:

*169. Service of notice in certain circumstances*

- (1) *Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:--*
- (a) *by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or*
- (b) *by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or*
- (c) *by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or*
- (d) *by making it available on the common portal; or*
- (e) *by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or*
- (f) *if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.*
- (2) *Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).*
- (3) *When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.*

In the instant petition, the petitioner has preferred an appeal against the order before the learned Appellate Authority, however, the appeal was dismissed on the ground of limitation. The primary contention of the petitioner was that the order was served on the driver of the truck, who cannot be termed as a representative of the petitioner assessee.

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<sup>1</sup> 2021 (51) G.S.T.L. 298 (All.)

The petitioner placed reliance on *M/s. S.S. Patel Hardware v. Commissioner, State G.S.T.*<sup>1</sup>.

The Hon'ble Court decipher the provision and held that the impugned order is arbitrary, illegal and contrary to the mandate of Section 169 of CGST Act, 2017. Therefore, the Hon'ble Court quashed and set-aside the order and directed the learned Appellate Authority to hear and decide the appeal expeditiously in accordance of law.



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<sup>1</sup> 2019 (21) G.S.T.L. 145 (All.)



**GST – NO ARREST TILL COGNIZANCE (ANTICIPATORY BAIL)**

The Hon'ble Allahabad High Court in *Nishant Garg v. Union of India*<sup>1</sup>, has allowed the anticipatory bail application by placing reliance on the judgment of the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)*<sup>2</sup> and the Hon'ble Allahabad High Court in the case of *Prateek Jain v. State of U.P.*<sup>3</sup> until the learned subordinate Court take cognizance of the police report filed under Section 173(2) of the Code of Criminal Procedure, 1973. The Hon'ble Court has also held that the arrest should be the last option for the police, reliance was placed upon the judgment of the Hon'ble Supreme Court in *Joginder Kumar v. State of Uttar Pradesh*<sup>4</sup>.

The arrest was anticipated by the applicant for the offences under the Central Goods and Services Act, 2017.

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<sup>1</sup> 2021 (51) G.S.T.L. 252 (All.)

<sup>2</sup> 2020 SCC Online SC

<sup>3</sup> Cr.P.C. No. 4002/2021,

<sup>4</sup> AIR 1994 SC 1349

<sup>5</sup> Majesty legal is law firm, established in 2013 and aim of the present article is to provide recent legal development. The opinions presented in the article are personal in nature and not to be deemed as legal advice.