

# ***FAKE INVOICING UNDER GST,***

## ***IMPACT AND WAY FORWARD***



**CA SWAPNIL MUNOT**



*This presentation and discussion during session should not be assumed as it is made in order to support any fraudulent people. Act of Fake invoicing is not acceptable.*

*This presentation is made in order to make professional aware of Fake invoicing provisions under GST, Manner in which it is executed, Board Circular, How to tackle cases for taxpayer who is honest but stuck in fake invoice due to his supplier, and understand various Judicial discipline.*

# STEPS TAKEN TO CRUB FAKE INVOICING....!

E Invoice

Blocking  
of ITC  
(Rule 86A)

GSTR 2B  
driven ITC  
availment

Subsequent GST  
Return  
can not be  
filed if  
previous  
return is  
not filed

Aadhar  
Authentic  
ation in  
Registrati  
on and  
Refund

Penalty  
increased  
to 200%  
for E way  
bill



## Sec 16(2)(b)

- Goods/Service Receipt Condition

## Sec 16(2)(c)

- Tax paid condition

## Sec 69

- Power to Arrest

## Sec 83

- Provisional Attachment

## Sec 122 and 132

- Penalty and punishment

# Bail is Rule...Jail is Exception...!!

SUPREME COURT IN ITS JUDGEMENT DATED 16<sup>TH</sup> AUG 2021 IN CASE OF **SIDDHARTH VS THE STATE OF UTTAR PRADESH & ANR.**

[CRIMINAL APPEAL NO.838 OF 2021. ARISING OUT OF SLP(CRL.) NO.5442/2021 ]

“ We may note that **Personal Liberty is an important aspect** of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. **Merely because an arrest can be made because it is lawful, does not mandate that arrest must be made.** A distinction must be made between the existence of the power to arrest and the justification for exercise of it. **If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person.** If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused ”

## SEC 122(1) – PENALTY FOR CERTAIN OFFENCES

### 1. Where a taxable person who -

- (i) supplies any goods or services or both **without issue of any invoice** or issues an incorrect or **false invoice** with regard to any such supply;
- (ii) issues any invoice or bill **without supply** of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
- (iii).... (iv).... (v)... (vi)....
- (vii) **takes or utilises input tax credit without actual receipt** of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- (viii) **fraudulently obtains refund** of tax under this Act;
- (ix).... (x).... (xi) ....
- (xii) furnishes **any false information with regard to registration particulars**, either at the time of applying for registration, or subsequently;
- (xiii)...
- (xiv) **transports any taxable goods without the cover of documents** as may be specified in this behalf;

## SEC 122(1) – PENALTY FOR CERTAIN OFFENCES

Shall be liable to pay a penalty of

Ten thousand rupees **or**

An amount equivalent to the tax evaded **or**

The tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government **or**

Input tax credit **availed of or passed on or distributed** irregularly, **or**

The refund claimed fraudulently

***WHICHEVER IS HIGHER***

## SEC 122(1A) – PENALTY FOR CERTAIN OFFENCES



**\*(1A) Any person who retains the benefit** of a transaction 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 equivalent to the tax **evaded or input tax credit availed of or passed on**

*\* Inserted by Finance Act 2020 read with Notification No 92/2020- C.T, dated 22-12-2020 w.e.f 1<sup>st</sup> Jan 2021*

## SEC 122(3) – PENALTY FOR CERTAIN OFFENCES

### (3) Any person who-

(a) **aids or abets any of the offences** specified in clauses (i) to (xxi) of subsection (1);

(b)..... (c) .....

(d) **fails to appear before the officer of central tax, when issued with a summon** for appearance to give evidence or produce a document in an inquiry;

(e) **fails to issue invoice** in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account

**Shall be liable to a penalty which may extend to Rs 25,000/-**

## SEC 132 – PUNISHMENT FOR CERTAIN OFFENCES

(1) Whoever commits, **\*or Causes** to commit and retain the benefits arising out of, any of the following offences, namely:-

(a) supplies any goods or services or both **without issue of any invoice**, in violation of the provisions of this Act or the rules made thereunder, **with the intention to evade tax**;

(b) issues any invoice or bill **without supply** of goods or services or both in violation of the provisions of this Act, or the rules made thereunder **leading to wrongful availment or utilisation of input tax credit or refund of tax**;

(c) **\*avails input tax credit using the invoice** or bill referred to in **clause (b)** or **fraudulently avails input tax credit without any invoice** or bill;

(d)....

(e) evades tax 3 or **fraudulently obtains refund** and where such offence is not covered under clauses (a) to (d)

(f)....~~(g)~~...(h)...(i)....~~(j)~~....~~(k)~~....

(l) attempts to commit, or **abets the commission of any of the offences** mentioned in clauses (a) to (f) and clauses (h) and (i) of this section,

*\* Inserted/substituted by Finance Act 2020 read with Notification No 92/2020- C.T, dated 22-12-2020 w.e.f 1<sup>st</sup> Jan 2021*

# SEC 132 – PUNISHMENT FOR CERTAIN OFFENCES

## SHALL BE PUNISHABLE -

- (i) in cases where the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken **exceeds Rs 5 Crore**
- (ii) in cases where the amount of tax evaded or ITC wrongly availed or utilised or the amount of refund wrongly taken **exceeds Rs 2 crore but does not exceed Rs 5 crore**
- (iii) **an offence specified in clause (b)** where the amount of tax evaded or ITC wrongly availed or utilised or the amount of refund wrongly taken **exceeds Rs 1 crore but does not exceed Rs 2 crore**
- (iv) **in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j),**

## WITH IMPRISONMENT FOR A TERM -

- which may extend to **5 years** and with fine;
- which may extend to **3 years** and with fine
- which may extend to **1 year** and with fine
- which may extend to **6 months** or with fine or with both

### SEC 132(5) - OFFENCE WHICH IS COGNIZABLE AND NON - BAILABLE

- The offences specified in clause (a) , (b) , (c) or (d) of Sec 132(1) **AND**
  - punishable under clause 132 (i)
- shall be cognizable and non-bailable.**

### SEC 132(4) - OFFENCE WHICH IS NON COGNIZABLE AND BAILABLE

- All the offences under the act
  - Except** Offence under section 132(5)
- shall be Non-cognizable and bailable.**

## SEC 135 – PRESUMPTION OF CULPABLE MENTAL STATE (MENS REA ....)

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state

But it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.-For the purposes of this section,-

- (i) the expression "**culpable mental state**" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability

## SEC 69 – POWER TO ARREST

- 1) Where the Commissioner has **reasons to believe** that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
- 2) Where a person is arrested under sub-section (1) for an offence specified under sub- section (5) of section 132, the officer authorised to arrest the **person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.**
- 3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),-
  - (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
  - (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

- 1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the **Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue** it is necessary so to do, he may, by order in writing, **attach provisionally, any property, including bank account**, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.
- 2) Every such provisional attachment shall **cease to have effect after the expiry of a period of one year** from the date of the order made under sub-section (1).

- The **REASONS TO BELIEVE** to arrive at a decision to place an alleged offender under arrest **must be unambiguous and amply clear. The reasons to believe must be based on credible material.**
- Since arrest impinges on the personal liberty of an individual, **the power to arrest must be exercised carefully.**
- **The arrest should not be made in routine and mechanical manner.**
- **Even if all the legal conditions precedent to arrest** mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made.
- **Means Rea / Guilt Mind** - Approval to arrest should be granted only where the **intent to evade tax** or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund

- Once the legal ingredients of the offence are made out, **the Commissioner** or the competent authority **must then determine if the answer to any or some of the following questions is in the affirmative:**
  - ✓ Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?
  - ✓ Whether arrest is necessary to ensure proper investigation of the offence?
  - ✓ Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?
  - ✓ Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?
  - ✓ As unless such person is arrested, his presence before investigating officer cannot be ensured

- **Thus, the relevant factors before deciding to arrest a person,** ( apart from fulfilment of the legal requirements), must be that :
  - ✓ Need to ensure proper investigation and
  - ✓ Prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.
- **Arrest should, however, not be resorted to in cases of technical nature** i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law.
- **Arrest may not be resorted in case of :** Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz.
  - ✓ Compliance to summons,
  - ✓ Furnishing of documents called for,
  - ✓ Not giving evasive replies,
  - ✓ Voluntary payment of tax etc.

## SEC 126 – GENERAL DISCIPLINES RELATED TO PENALTY

(1) No officer under this Act shall impose any penalty for Minor Breaches of

= >Tax regulations or **Procedural requirements** and

=> In particular, **any omission or mistake in documentation** which is easily rectifiable and **made without fraudulent intent or gross negligence**.

Explanation.-For the purpose of this sub-section,-

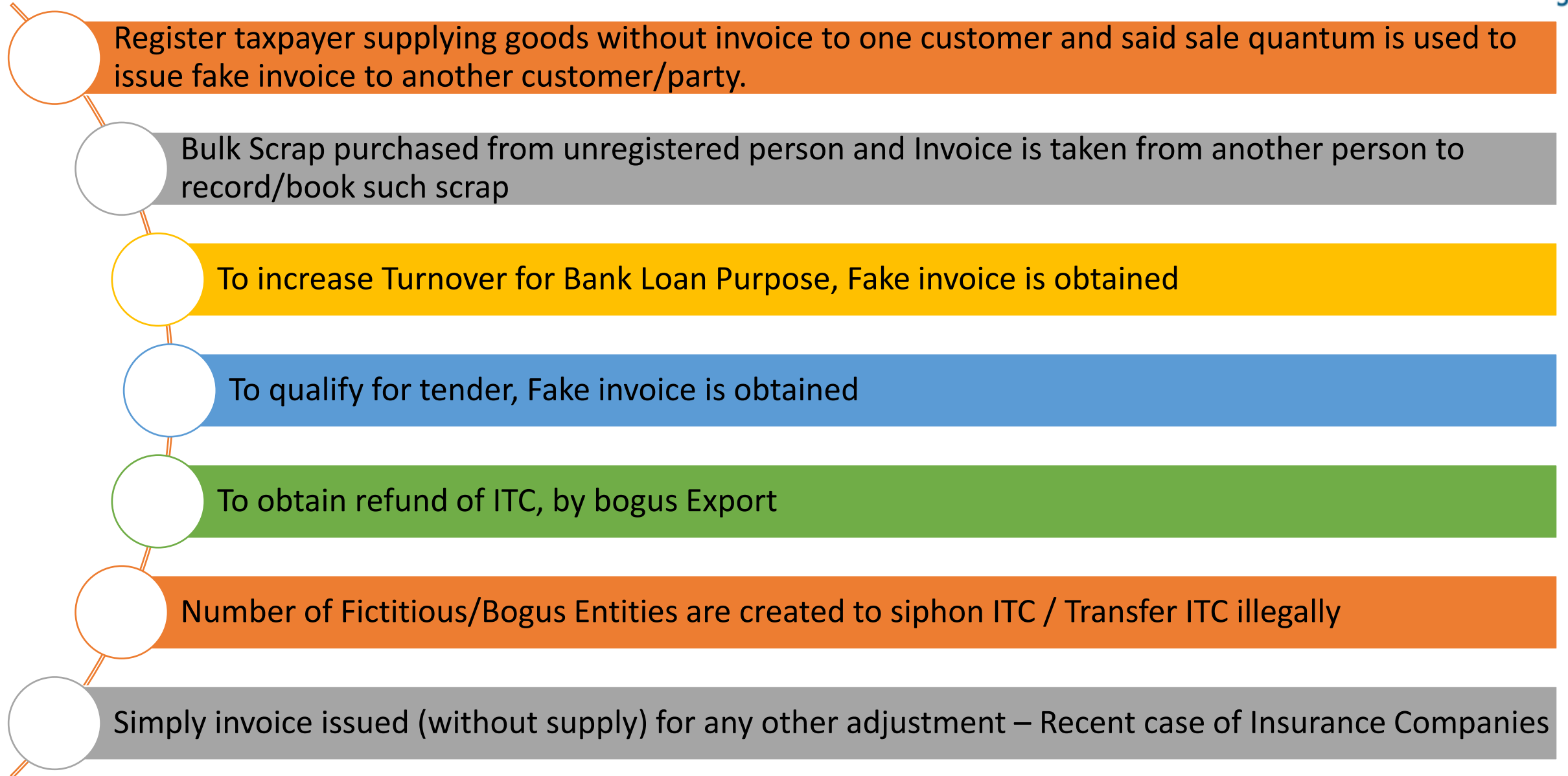
(a) a breach shall be considered a "minor breach" if the amount of **tax involved is less than Rs 5000**;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, **specify the nature of the breach and the applicable law, regulation or procedure** under which the amount of penalty for the breach has been specified.

# MODUS OPERANDI AND FACTORS BEHIND FAKE INVOICING



**Supplier not in  
Existence**

**Supplier used  
Fake ITC for  
utilising his  
output liability**

**Supplier not filed  
GSTR 1/3B**

**Supplier has not  
paid tax**

CASE	CLARIFICATION
= > 'A' issued Tax Invoice to 'B' without actual supply	<ul style="list-style-type: none"><li>• <b>As there is no supply from A to B, no outward liability arises from A.</b> Therefore no action u/s 73 or 74</li><li>• However <b>'A' shall, be liable for penal action under section 122 (1)(ii)</b> of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</li></ul>
= > 'A' issued Tax Invoice to 'B' <b>without actual</b> supply => 'B' availed ITC of it. => 'B' issued invoice to 'C' <b>with actual supply</b> and utilised ITC received against invoice of A	<ul style="list-style-type: none"><li>• 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, <b>B shall be liable under the Sec 74 of the CGST Act.</b> As per Sec 75(13) no action for this fraudulent ITC can be imposed under Sec 122</li></ul>

CASE	CLARIFICATION
<p>= &gt; A issued Tax Invoice to B <b>without actual</b> supply =&gt; B availed ITC of it =&gt; B issued invoice to C <b>without actual</b> supply and utilised ITC received against invoice of A</p>	<ul style="list-style-type: none"><li>• ‘As there was no supply of goods or services or both by ‘B’ to ‘C’ in respect of the said transaction, no tax was required to be paid by ‘B’ in respect of the same.</li><li>• The input tax credit availed by ‘B’ in his electronic credit ledger on the basis of tax invoice issued by ‘A’, without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act.</li><li>• In this case, there was no supply of goods or services or both by ‘B’ to ‘C’ in respect of the said transaction and also no tax was required to be paid in respect of the said transaction.</li><li>• Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by ‘B’ in such case or tax liability in respect of the said outward transaction by ‘B’ to ‘C’ is required to be made from ‘B’ under the provisions of section 73 or section 74 of CGST Act.</li><li>• However, in such cases, <b>‘B’ shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii) of the CGST Act</b>, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</li></ul>



**POINTERS...**  
**FOR SUBMISSION**  
**IN CASE OF**  
**ITC DISALLOWANCES**  
**FOR HONEST TAXPYER**

# REPLY POINTER TO - ITC MISMATCH NOTICES

## POINTER FOR SUBMISSION

Amendment in Sec 16(2), Sec 37, Sec 38, Sec 39 and Sec 41 of CGST Act 2017 suggest, there was no enough authority under act to government to disallow ITC, if not paid by supplier and reflected in GSTR 2A

### Press Release dated 4th May 2018

Below is relevant extract of Press release dealing with ITC mismatch:

***“(iv) No automatic reversal of credit: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.”***

From the above press release, one can understand government intention that buyer will not be directly held responsible for non payment of tax supplier. Recovery will be made from seller in case of tax default and buyer will be noticed only in exceptional situation like missing dealer.

# **REPLY POINTER TO - ITC MISMATCH NOTICES**

## **POINTER FOR SUBMISSION**

### **Para 18.3 of minutes of 28th GST Council Meeting dated 21st July 2018**

Below is relevant extract of minutes of GST Council meeting dealing with ITC mismatch:

**“There would be no automatic reversal of input tax credit at the recipient's end where tax had not been paid by the supplier. Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies, closure of business by the supplier, input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing”.**

➔ From the above recommendation of GST Council meeting, authorities are first required to take action against defaulting seller.



# REPLY POINTER TO - ITC MISMATCH NOTICES

## POINTER FOR SUBMISSION

### Doctrine of Impossibility – “Lex non Cogit Ad impossibilia”

It means the law does not compel a man to do anything vain or impossible. Law requires nothing impossible.

In this regards, Reliance can be placed on decision of Hon’ble Delhi High Court in the case of **Arise India Ltd. V. Commissioner of Trade and Taxes [TS-314-HC- 2017(Del)-VAT]**, has held that,

*“the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not to punish bona fide purchasing dealers. The latter cannot be expected to do the impossible.”*

# CASE LAWS : TAX NOT PAID BY SUPPLIER



## ❖ D.Y. Beathel Enterprises v. State Tax Officer, Tirunelveli (W.P.(MD)No.2127 of 2021)

- ✓ ITC availed by buyer can't be reversed for non-deposit of tax by seller without examining & initiation of recovery proceedings against seller: Madras HC.
- The petitioners were traders in Raw Rubber Sheets and they purchased goods from the seller. **The sale consideration was paid only through banking channels** including the tax component. They claimed ITC on basis of returns filed by sellers. **Later, during the inspection, the department observed that seller failed to pay any tax to the Government. The department, without involving the seller, passed an order levying the entire liability on the petitioners. Petitionnner challenged the order and filed a writ petition.**
- The department submitted that the petitioners had availed input tax credit on the premise that tax had already been remitted to the Government, by their sellers. When it turned out that the sellers have not paid any tax and the petitioners could not furnish any proof for the same, the department was entirely justified in proceeding to recover the same from the petitioners.



# CASE LAWS : TAX NOT PAID BY SUPPLIER



❖ **D.Y. Beathel Enterprises v. State Tax Officer, Tirunelveli (W.P.(MD)No.2127 of 2021)**

- ✓ ITC availed by buyer can't be reversed for non-deposit of tax by seller without examining & initiation of recovery proceedings against seller: Madras HC.
- **The Honorable High Court observed that the department does not appear to have taken any recovery action against the seller.** When it came out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and **strict action ought to have been initiated against him.**
- **The examination of the seller is a necessary step. Thus, the orders against the petitioners were liable to be quashed and matter remitted back and enquiry should be made against the seller.**



# CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT) (WPA No. 23512 of 2019 (DOJ: 13/12/2021))**

✓ ITC can not be denied to recipient if supplier is found non existence, in case of genuine transactions

- **FACTS** - GST authorities on inquiry, they came to know that the **suppliers from whom the petitioners/buyers are claiming to have purchased the goods in question are all fake and non-existing** and the bank accounts opened by those suppliers are on the basis of fake documents **and petitioners' claim of benefit of input tax credit are not supported by the relevant documents**. Further grounds of denying the ITC benefit to the petitioners by the respondents are that the **registration of suppliers in question has already been cancelled** with retrospective effect covering the transactions period in question.
- **PETITIONER CONTENTION** - **Transactions in question are genuine** and valid by relying upon **all the supporting relevant documents** required under law. Petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the **names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question**



# CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT)** (WPA No. 23512 of 2019 (DOJ: 13/12/2021))

- **PETITIONER CONTENTION** - Petitioners further submit that **all transactions were through banks and petitioners are helpless if at some point of time** after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. **Petitioners further submit that all the purchases in question invoices-wise were available on the GST portal in form GSTR-2A**
- **COURT FINDINGS** - These writ petitions are disposed of by **remanding these cases to the respondents concerned to consider afresh the cases** of the petitioners on the issue of their entitlement of benefit of ITC in question **by considering the documents which the petitioners want to rely** in support of their claim of genuineness of the transactions in question **and shall also consider as to whether payments on purchases in question along with GST were actually paid or not** to the suppliers (RTP)



# CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT)** (WPA No. 23512 of 2019 (DOJ: 13/12/2021))

- **COURT FINDINGS** - Also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers. If it is found upon considering the relevant documents that all the transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers , **in that event the petitioners shall be given the benefit of input tax credit in question.**

**These cases of the petitioners shall be disposed of in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners and by dealing with the judgments petitioners want to rely at the time of hearing of the cases, within eight weeks from the date of communication of this order.**

- Similar view is again held by Hon'ble Calcutta high court in case of **SANCHITA KUNDU & ANR. VS. THE ASSISTANT COMMISSIONER OF STATE TAX, BUREAU OF INVESTIGATION, SOUTH BENGAL & ORS.**



# CASE LAWS : PROVISIONAL ATTACHMENT

❖ **RADAR KRISHNA INDUSTRIES V. STATE OF HIMACHAL PRADESH** (Civil Appeal No 1155 of 2021 - Arising out of SLP(C) No 1688 of 2021)

- ✓ Provisional attachment only after the formation of opinion based on tangible material : SC
- The provisional attachment was ordered against the appellant while invoking section 83 of the GST Act. The appellant instituted a writ petition challenging the orders of provisional attachment. The High Court dismissed the said writ petition on the ground that provisional attachment could not be challenged in a petition under Article 226 on the ground that an alternative and efficacious remedy of an appeal under section 107 was available. It filed an appeal against the order.
- ✓ **The Honorable Supreme Court observed** that the High Court has erred in dismissing the writ petition on the ground that it was not maintainable. Moreover, the power to order a provisional attachment of property of taxable person including a bank account is draconian in nature and conditions which are prescribed by statute for a valid exercise of power must be strictly fulfilled. **The exercise of power** for ordering a provisional attachment **must be preceded by a formation of an opinion by the Commissioner that it is necessary so to do for purpose of protecting the interest of government revenue.**

# CASE LAWS : PROVISIONAL ATTACHMENT

- ❖ **RADAR KRISHNA INDUSTRIES V. STATE OF HIMACHAL PRADESH** (Civil Appeal No 1155 of 2021 - Arising out of SLP(C) No 1688 of 2021)
  - Before ordering a provisional attachment, the Commissioner must form an opinion on basis of tangible material that the assessee is likely to defeat the demand if any, and that therefore, it is necessary so to do.
  - **The SC held that in the instant case, there was a clear non-application of mind by the Joint Commissioner.** There was a breach of the mandatory requirement of Rule 159(5) and Commissioner was clearly misconceived in law in coming into the conclusion that he had discretion on whether or not to grant an opportunity of being heard. **The Commissioner shall be duty-bound to deal with objections to attachment by passing a reasoned order which must be communicated to the taxable person** whose property would be attached. Therefore, it was held that the appeal would be allowed and order of High Court was liable to be set aside and **the writ petition filed by the appellant under Article 226 of Constitution shall stand allowed by setting aside the order of provisional attachment**

# CASE LAWS : REGISTRATION CANCELLED – FAKE INVOICING



❖ **Bright Star Plastic Industries v. Additional Commissioner of Sales Tax (W.P.(C)No.15265 of 2021)**

✓ Registration of purchasing dealer cannot be cancelled for fraud committed by selling dealer: Orissa HC

- **The Show-cause notice was issued to the petitioner for cancellation of registration alleging the claim of ITC on fake invoices issued by a non-existent supplier.** It filed the reply but registration was cancelled holding that clarification submitted was not satisfactory. It filed for revocation of cancellation of registration but it was also rejected. Thereafter, the appeal was filed before the Appellate Authority and the same was also rejected. It filed a writ petition against the same.
- **The Honorable High Court observed** that the department would have to show that somehow the purchasing dealer and selling dealer acted in connivance to defraud the revenue. **However, the department failed to show that the petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence.** Thus, the department was directed to restore the petitioner's registration by issuing appropriate orders/directions.



# CASE LAWS : REFUND OF TAX COLLECTED DURING INVESTIGATION



❖ **Shri Nandhi Dhall Mills India (P.) Ltd. v. Senior Intelligence Officer, Director General of Goods & Service Tax**

(W.P. No.5192 of 2020 and WMP. No.6135 of 2020)

✓ Amount admitted & paid under stress of investigation can't lead to self-assessment tax, liable to be refunded:

Madras HC

- An investigation was conducted at the premises of the petitioner's company and various documents and registers were seized. **In course of that investigation, a statement was recorded from Managing Director (MD) that it had not discharged its GST liability correctly.** The petitioner submitted that it has no liability to tax and MD and **officials were forced to accept liability** to tax and the admission was, by no means, voluntary. The visit was on the eve of Deepavali and investigation was carried out in an intrusive and acrimonious fashion.
- **Assessee filed a writ petition for the refund of Rs.2 crores paid at the time of the investigation.**
- The Department submitted that the petitioner has been engaging in large scale tax evasion and has not been paying tax that it is legitimately bound to pay. During investigation, It had voluntarily offered to remit tax.



# CASE LAWS : REFUND OF TAX COLLECTED DURING INVESTIGATION



❖ **Shri Nandhi Dhall Mills India (P.) Ltd. v. Senior Intelligence Officer, Director General of Goods & Service Tax**

(W.P. No.5192 of 2020 and WMP. No.6135 of 2020)

- **The very fact that the petitioner had remitted not one but two instalments of tax would reveal that the payments were voluntary** as, if they had been coerced as alleged, the payments would have stopped with the first instalment.
- ✓ **The Honorable High Court observed that merely because an assessee has, under the stress of the investigation, signed a statement admitting tax liability and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment.** The ascertainment contemplated under Section 74(5) is of the nature of self-assessment and amounts to a determination that is unconditional, and not one that is retracted as in the present case.
- ✓ **It was noted that records did not contain any ascertainment of tax liability by the revenue officer. Therefore, it was held that amount collected, of Rs. 2 crores shall be refunded to the petitioner**



# CASE LAWS : ITC Blocking



❖ **Advent India PE Advisors Private Limited Vs The Union of India and Ors** [ Bombay HC - WRIT PETITION NO. 2320 OF 2021 ]

- **Petitioner Contention:** the input tax credit was blocked on January 26, 2020 and since more than 20 months have lapsed by now, by operation of law, the petitioner is entitled to relief claimed in this writ petition.
- **Department Contention:** The Department was in communication with the taxpayer seeking reconciliation statements for the difference in their GST returns namely GSTR-2A and GSTR-3B from FY 2017-18 to 2020-21. The last letter from the department addressed to taxpayer was sent on 31.05.2021 asking for reconciliation between ITC stated in monthly returns and annual returns. However, the reply from the taxpayer is still awaited. Instead of furnishing the documents the taxpayer has filed a writ petition.
- **Held:** If indeed the respondents were of the view that the petitioner had not been cooperating with the department, they ought to have proceeded against it in a manner known to law. **However, to say that reply is awaited and hence lifting of the restriction has not been resorted to is clearly illegal.** Having regard to the decision of this Court in Writ Petition (L) No. 128 of 2021 (M/s. Aegis Polymers vs. Union of India and Ors.), we find no reason to keep this writ petition pending.



- ❖ **AMBIKA CREATION Vs COMMISSIONER, GOVT. OF GUJARAT** [R/SPECIAL CIVIL APPLICATION NO. 17564 of 2021 – Gujrat HC ]
  - **Held:** Gujarat HC order for the removal of ITC Blocked after one year and also order that
  - **We make it clear that next time if we come across such a case, then the concerned authority would be held personally liable** for the loss which the assessee might have suffered during the interregnum period.

**CONTACT US**

✂ GST UPDATES, E BOOK, ARTICLES ✂

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**Thank You.**

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