Dimensions – 21st Edition

Rulings / Judgments under GST era:

1. Aarel Import Export Pvt. Ltd. - Maharashtra[1]	
Issues for Consideration	• Whether separate registration would be required to be obtained in each state in cases where goods are imported from outside India, stored in a customs warehouse and supplied to customers on an ex-bond basis? Can invoice for such sales be raised from head office/ registered office? • If no registration is required, then, can the e-way bill can be issued by mentioning the GSTN of head office and dispatch place as Paradip Port?
Discussion & Ruling	**Discussion:** • The Applicant is an importer and exporter / trader of various products and has its head office located at Mumbai, Maharashtra. • The Applicant wants to import Coke (processed product from coking coal) from Indonesia at Paradip Port, Odisha. The imported goods would be stored at a rented customs warehouse (Ex-bond) at Paradip Port and would then be sold to the customers in Odisha. The goods would be cleared in the name of their Mumbai office using Maharashtra GSTN. • The Applicant does not have any establishment or place of business in Odisha. • The Applicant has approached the Authority to know whether: - It is required to obtain a separate GST registration in Odisha for such sale transaction; - If no separate registration is required, then whether the e-way bill can be issued by mentioning the GSTN of Maharashtra and dispatch place as Paradip Port.

[1] Order no. GST-ARA-114/2018-19/B-42 dated April 24, 2019

	• The Applicant contended as follows: - Goods imported into India are to be treated as supply of goods in the course of inter-state trade or commerce (section 7(2) of IGST Act, 2017); - The place of supply (POS) for the goods imported into India is the location of the importer and accordingly, the POS in the present case shall be Mumbai (section 11(a) of the IGST Act, 2017); - The taxable supply is taking place from the Mumbai location since it does not have any godown in Odisha. It is only registered in Maharashtra and the goods are supplied on Maharashtra GSTN. Accordingly, no separate registration is required in Odisha; - Since no separate registration is required, the e-way bill can be generated from Mumbai GSTN mentioning place of dispatch as Paradip Port, Odisha. - Similar advance ruling was also passed in the case of *Sonkamal Enterprise Pvt. Ltd* [Order no. GST-ARA-48/2018-19/B-123 dated September 27, 2018]. • The Authority agreed to the contentions raised by the Applicant. **Ruling:** • No separate registration is required to be taken in Odisha and the goods can be sold by charging IGST from Mumbai. • The e-way bill can be issued by mentioning the Mumbai GSTN and place of dispatch as Paradip Port, Odisha.
Dhruva Comments/ Observations	• The Authority has passed a similar ruling in the case of *Gandhar Oil Refinery (India) Ltd.* [Order no. GST-ARA-112/2018-19/B-40 dated April 15, 2019] wherein the Authority had held that Applicant is not required to be registered in each State where the goods are imported. • Furthermore, section 22(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017') states that a person is required to obtain registration "*in the state / Union Territory* ***from where*** *he makes a taxable supply of goods or services*". On the basis of the definition of 'location of supplier of service', one could ascertain the place from where such services are rendered. However, for supply of goods, there are no parameters provided to identify the place from where such supplies are made. • While such rulings may be helpful for the assessees as it would reduce their compliance burden, appropriate clarification on this matter would avoid jurisdictional disputes.

2. M/s Banyan Projects India Pvt Ltd v. Local Goods and Services Tax Officer, Bangalore[2]	
Issue for Consideration	Whether an order for cancellation of registration on non-filing of required returns is maintainable if passed without providing the opportunity of being heard?
Discussion & Judgment	**Discussion:** • The petitioner filed a Writ Petition challenging the cancellation of a registration order passed without a grant of an adequate opportunity by the authorities for not furnishing the returns for the period October 2018 to April 2019. • The authorities submitted that if the returns for the abovementioned periods were submitted by the petitioner within a fixed time frame to be decided by the Hon'ble High Court, the cancellation could be revoked in accordance with section 30 of the Karnataka Goods and Services Tax Act, 2017 ('KGST Act, 2017'). • The Hon'ble High Court, placing reliance on section 30 of the KGST Act, 2017, directed the petitioner to submit the returns for the abovementioned tax periods before the Revenue within two weeks from the date of receipt of the certified copy of the Court's order. Further, the authorities were also directed to assist the petitioner in the event of technical glitches faced in filing the returns for the said tax periods. **Judgment:** • The Hon'ble High Court held that the authorities should consider the returns submitted by the petitioner in accordance with law and that cancellation of registration could be revoked in terms of section 30 of the KGST Act, 2017.
Dhruva Comments / Observations	• In terms of GST law, the authorities have been empowered to cancel GST registration if the assessee fails to file returns for a continuous period of six months. Furthermore, the proviso to section 29 (1) of the KGST Act, 2017, also provides for granting an opportunity of being heard before passing an order for cancellation of registration. • While the law is settling down and technological glitches are being addressed, it is pertinent to note that the authorities are invoking cancellation of registration provisions where default is for a continuous period of six months in filing returns. • Further, the provisions provide for revocation of a cancellation order if the default is subsequently made good within a prescribed period.

3. Gurdeep Singh Sachar v. Dream 11 Fantasy Pvt Ltd[3]	
Issues for Consideration	• Is Dream 11 Fantasy Pvt. Ltd. ('Dream 11' or 'respondent'), engaged in online fantasy sports gaming, violating the provisions under rule 31A of the Central Goods and Services Tax Rules, 2018 ('CGST Rules, 2018) on categorising 'acknowledgment' amount as an actionable claim?

[2] 2019-VIL-289-KAR – The High Court of Karnataka
[3] 2019-VIL-283-BOM – The High Court of Judicature at Bombay

	• In such event, whether GST shall be payable on the entire amount at the rate of 28% instead of 18% on merely platform fee?
Discussion & Judgment	**Discussion:** • Dream 11 is involved in conducting online fantasy sports gaming whereby users select upcoming matches from any real-life current or upcoming sports series, create virtual teams and compete against virtual teams created by other users. The winners are decided based on points scored using statistical data generated by the real-life performance of the players on the ground. • The petitioner seeks directions for initiation of criminal prosecution against Dream 11 for: - conducting illegal operations of gambling/ betting/ wagering in the guise of online fantasy sports gaming attracting penal provisions under Public Gambling Act, 1867; - evading GST payable violating provisions under rule 31A of the CGST Rules, 2018. • The petitioner submitted the following: - This game is merely a game of chance or luck played for quick earnings mostly resulting in the users losing their money similar to gambling/ betting/ wagering; - A tax invoice is issued only for the amount received and retained towards platform fees and not on the entire money put at stake. For the balance amount received, an acknowledgement is given, and this acknowledgement amount collected from each player is pooled in an Escrow Account ultimately being distributed amongst the users as prize money on conclusion of the game. Since these activities are gambling/ betting, GST would be payable on the total amount received in accordance with rule 31A (3) of the CGST Rules, 2018; - GST shall be payable at the rate of 28% instead of 18% charged by Dream 11. • It was submitted by Dream 11 that the said issue in their case, of whether the online game amounts to gambling or otherwise has already been decided by the Hon'ble Punjab and Haryana High Court in its favour. The High Court held that success in fantasy sports arises out of exercise of superior knowledge, judgment, and attention, and thus the game is exempt from penal provisions under the Public Gambling Act, 1867. The respondent also placed reliance on judgment passed by the three-member bench of the Hon'ble Supreme Court in the case of *K.R. Lakshmanan* v. *State of Tamil Nadu* [AIR 1996 SC 1153] wherein it was held that competitions which involve substantial skill are not gambling activities. Such competitions are business activities and are protected under Article 19(1)(g) of the Constitution of India. • The Hon'ble Bombay High Court concurred with the view taken by the Hon'ble Punjab and Haryana High Court and following the decision in case of *K.R. Lakshmanan (supra)* passed by Hon'ble Supreme Court held that this activity doesn't amount to gambling/ betting/ wagering as there is an involvement of substantial degree of skill. • Furthermore, the High Court observed that the acknowledgement amount pooled in the escrow account is to an 'actionable claim' as it is to be distributed amongst the winning users. Entries mentioned in Schedule III under the CGST Act, 2017 are neither

	considered as supply of goods nor services. Since actionable claims other than lottery, betting and gambling is covered under the Entry 6 of Schedule III, the High Court rejected the contention that the entire amount received from the user is exigible to GST. • It was also observed that since the amount received as acknowledgment, i.e. actionable claim, is neither supply of goods nor services, it would steer clear from being covered under the definition of consideration. Furthermore, since actionable claims in the online fantasy game are covered as per Schedule III of the CGST Act, 2017, provisions of rule 31A shall not be applicable in the instant case. • On the issue of rate of applicable tax, the High Court observed that online games intended to be played on internet are specifically covered in Explanatory Notes to the Scheme of Classification of Services "998439 Other on-line content n.e.c." and thus are liable to GST @ 18%. **Judgment:** • The Court has held that the activity of the respondent does not amount to gambling/ betting/ wagering and will not attract any penal provisions. • Furthermore, GST should not be applicable on the acknowledgement amount pooled in the Escrow Account and thus GST is payable at the rate of 18% on the platform fees collected by Dream 11.
Dhruva Comments / Observations	The litmus test repeatedly applied by the Courts has been to assess whether the design or format of a game categorises it as a "game of skill" or a "game of chance". Since not all games could qualify as game of skill, the rules of the game, scoring parameters and related conditions would play a critical role in the above assessment exercise.

4. Jalaram Feeds - Maharashtra[4]	
Issue for Consideration	Whether GST registration is required to be obtained if a person is engaged only in supply of exempted goods but is liable to pay tax under reverse charge?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the manufacture of compound animal feed which is exempt under GST. There is no other taxable supply made by the Applicant. • The Applicant is required to avail the Goods Transportation Agency Service (GTA) which is liable to tax under reverse charge mechanism vide notification no. 13/2017 Central Tax – Rate dated June 28, 2017. • The Applicant has contended that they are not required to take registration on the following grounds: - Section 22(1) of the CGST Act (section 22), states that a person is required to take registration in a state when he makes a taxable supply of goods / services and his

[4] Order no. GST-ARA-110/2018-19/B-38 dated April 10, 2019

aggregate turnover exceeds rupees twenty lakh in a financial year. Thus, as per the said section there must be a taxable supply to obtain registration;

- Section 23 of the CGST Act (section 23), states that no registration is required where a person is engaged in supply of goods that are not liable to tax or are wholly exempt from tax;
- Section 24 of the CGST Act (section 24), prescribes the categories of persons who are required to compulsorily obtain GST registration, which includes the persons liable to pay tax under reverse charge mechanism. However, the said section starts with a non-obstante clause i.e. "*Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act……*". Thus, section 24 overrides section 22(1), but it does not mention anything about section 23;
- The legislation has consciously left out section 23 from section 24;
- Section 23 would be of no relevance, if section 24 overrules section 23, since every person doing any commercial activity would require the services of lawyer or GTA or any other reverse charge liability service.

- The Authority observed as follows:
  - In terms of section 22, if a person's aggregate turnover does not include any taxable supplies then he is not required to obtain registration;
  - Section 23 which exempts certain class of persons from obtaining registration is not contrary to section 22 but is a clear expression of the intent of section 23. Therefore, there is no force in the contention that section 23 is not overruled by section 24;
  - Based on section 9(4) of the CGST Act and section 24, since the Applicant is required to pay tax under reverse charge, they must compulsorily obtain registration and the requirements of section 22 pertaining to taxable supply and threshold are not applicable to them;
  - If it is accepted that section 23 is a standalone section and the provisions of section 24 are applicable to person liable for registration under section 22(1), then section 23 would become redundant as no tax would be paid under reverse charge mechanism where a person is supplying only exempted goods. Accordingly, the rule of harmonious construction needs to be followed;
  - Similar ruling was also passed in the case of *Sonka Publications (I) Pvt Ltd.* [Advance Ruling No 05/DAAR/2018 dated April 06, 2018 (AAR-Delhi)].

Ruling:

GST Registration is required to be obtained in order to discharge the duty liability under reverse charge mechanism.

Judgement under Pre-GST era:

5. M/s Vendhar Movies and Ors. v. The Joint Director, Director General of GST Intelligence and Ors.[5]	
Issue for Consideration	Whether assignment of a specific right in a cinematographic film constitute a permanent transfer which is not exigible to Service Tax or a temporary transfer which will attract Service Tax liability?
Discussion & Judgment	**Discussion:** • The petitioners are *inter alia* engaged in production of cinematographic films. The petitioner enters into various agreements with distributors, exhibitors and television channels assigning to them exclusive right to broadcast and exhibit various cinematograph films which may be produced or purchased. The rights include satellite television broadcast, direct to home broadcast, direct satellite service, terrestrial television broadcast and all other rights connected therewith including exhibition of the film by means of wireless diffusion and by wire for communication to the public through television broadcast. • The agreement entered into by the petitioner with the distributors / exhibitors which are presently under consideration consisted of the following: - Distribution, visual recording accompanying soundtrack and other features of the film which constituted an asset or assets in which copyright subsists in respect of cinematograph films produced by the petitioner to the television owners. - Theatrical distribution of films purchased by the petitioner. • The petitioners are the owners of a bundle of rights that flow from the ownership of the cinematograph film which is a conglomerate asset and consists of several assets with concurrently existing copyright. • The assignment of rights which are perpetual in nature conferred permanent and absolute right upon the assignee and no service tax was paid on such assignment of rights by the petitioner. In respect of assignment of rights which are temporary in nature, the petitioner had duly discharged service tax liability. • In some of the assignment agreements, the rights are 'revocable' in the event of default in payment by the assignee. It was argued by the petitioner that subject to satisfaction of the said condition (timely payment), the assignment of the copyright is 'irrevocable'. Such condition has only been provided to protect the interest of the petitioner against a default in payment by the assignee. • The respondents argued the following: - It was argued that the petitioners have assigned only specific copyrights while retaining other copyrights in the same cinematograph film with themselves and thus the transfer is 'temporary' in nature. - It was alleged that the word 'perpetual' in the agreement is only a sham, designed to camouflage the true intent of the petitioner which is to enter into a temporary transaction.

[5] 2019-TIOL-1162-HC-Mad-ST – The High Court of Madras

	- In order to constitute a perpetual transfer of copyright, the entire rights in relation to the film should be transferred by the producer, which has not been done in the instant case. **Judgment:** • Upon perusal of the Copyright Act, 1957, it was noted that the term 'copyright' denotes a specific and special right bestowed by statute. It may relate to one of several kinds of creative inputs, the sum total of which / portions of which, may constitute different assets, each holding a different underlying copyright. • It was held that the cinematograph film holds a copyright of its own right. However, the film, as an asset, comprises of various smaller but equally important components, such as the script, screenplay, background score, song lyrics, melody, instrumentation etc. and each component also carries an independent and distinct copyright. Therefore, a cinematograph film is a 'bundle of rights'. • Referring to the provisions of the Finance Act, 1994, it was held that the 'right' mentioned therein, relates to the right in the film as well as each of such rights comprised in the film. The interpretation adopted by Revenue failed to appreciate and ignored that the taxable service under Service Tax law is of 'any copyright' denoting all rights that which vests in film as a whole, or any of the smaller but equally important rights comprised in the making of the film itself. In the present case, since the petitioner had transferred one such right to the assignee, hence it would constitute permanent transfer of copyright in respect of such right. • The use of word 'revocable' which was solely to protect the interest of the petitioner in the event of non-payment of consideration was accepted by the Hon'ble Madras High Court.
Dhruva Comments / Observations	The judgment of the Hon'ble Madras High Court is in line with the decision of Hon'ble Supreme Court in *Indian Performing Right Society Limited* v. *Eastern Indian Motion Pictures Association and Others* [PTC (Suppl) (1) 877 SC] where in respect of cinematographic film it was held that *"22. ……Copyright in a cinema film exists in law, but section 13(4) of the Act preserves the separate survival, in its individuality, of a copyright enjoyed by any 'work' notwithstanding its confluence in the film."*

Press Release:

6. Recommendations made by the GST Council[6]	
Background	The 35th GST council meeting was held on June 21, 2019 under the chairmanship of Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. This was the first meeting of the GST council after the swearing in of the new Government.
Key Recommendations	The followings are the key recommendations made by the council:

[6] Press release(s) dated June 21, 2019 issued by Ministry of Finance, Government of India

- The tenure of the National Anti-Profiteering Authority ('NAA') has been extended for another two years i.e. up to June 30, 2021.
- The due date for filing of annual return i.e. Form GSTR - 9 / 9A with / without Form GSTR - 9C has been extended from June 30, 2019 to August 31, 2019.
- The location of State / Area Benches for Goods and Services Tax Appellate Tribunal.
- To introduce an e-invoicing system in a phase-wise manner for B2B transactions. The first phase is proposed to be voluntary and it shall be rolled out from January 2020.
- The proposal to reduce GST rate on e-vehicles (i.e. from 12% to 5%) and chargers for e-vehicles (i.e. from 18% to 12%) and valuation of goods and services in a solar power generating system and wind turbine has been referred to the Fitment Committee for detailed examination.
- The new rule 138E pertaining to blocking of generation of e-way bills on non-filing of returns for two consecutive tax periods to be brought into effect from August 21, 2019 instead of June 21, 2019.
- The due date for filing of Form GST ITC-04 (i.e. job work declaration) for the period July 2017 to June 2019 has been extended from June 21, 2019 to August 31, 2019.

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