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ASSOCIATION OF MAHARASHTRA

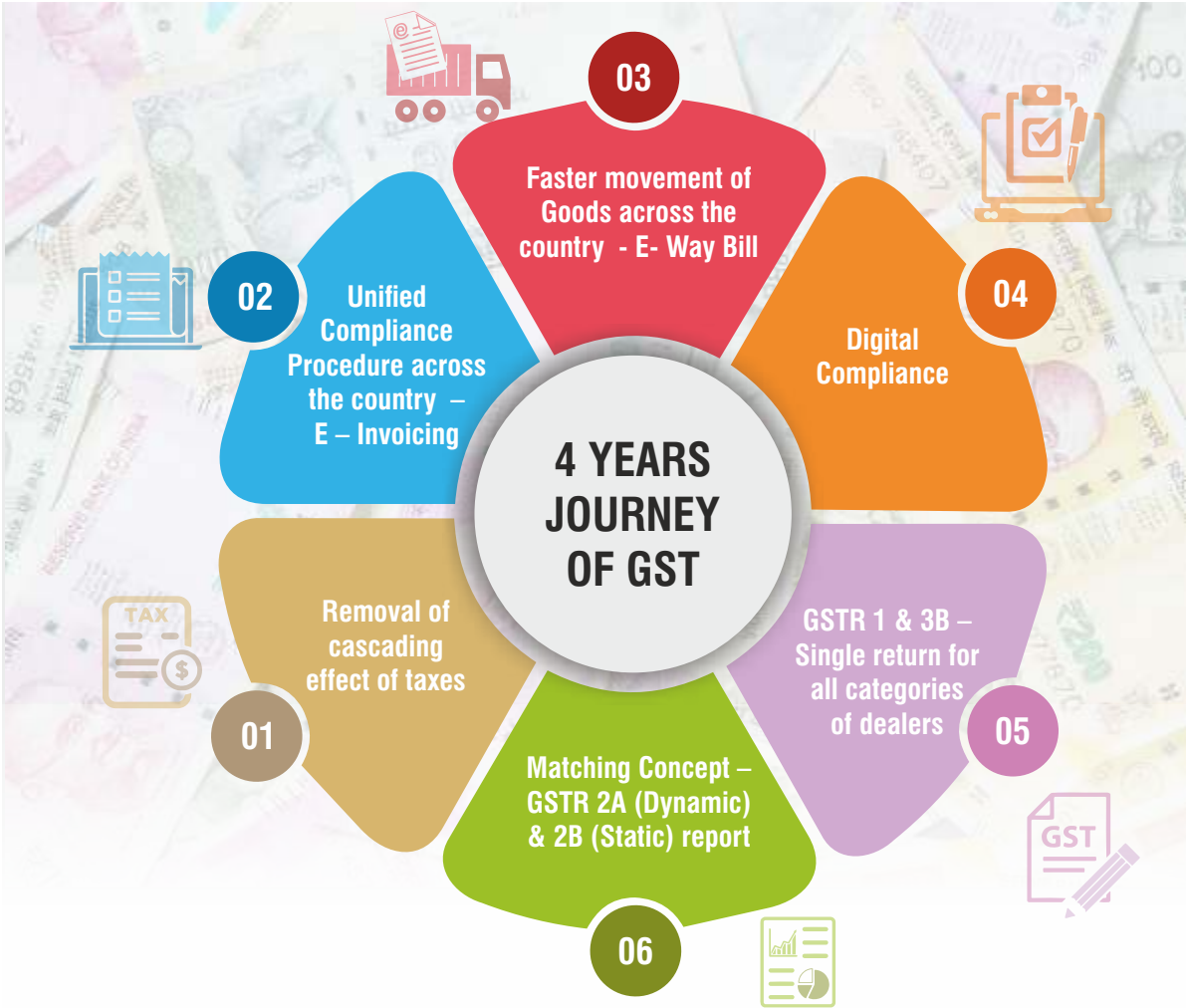
Established : 1951

GSTPAM

GST REVIEW

Your Guide to Indirect Taxes

Vol. 3 No. 11 | July, 2021



Section 17(5) of CGST Act. No reversal of ITC in respect of loss of INPUTS during manufacturing process.
Writ Petition No. 2885 of 2021 dt 29th June 2021- ARS Steel & Alloy International Ltd vs. The State Tax Officer Group I, Inspection, Intelligence - I (Madras HC)
For Full Text of judgement, please refer to page No.88.

It is held that blockage of credit shall cease to have effect after one year as per Rule 86A(3).
M/s Agis Polymers vs. Union Of India & Ors. WP (LODG) No. 128 of 2021 dt July'12,2021 (BHC)
For Full Text of judgement, please refer to page No.91.

It is only contributions to RWA in excess of Rs 7500/- that would be taxable under GST Act. W.P.Nos 5518 & 1555 of 2020 and 27100 & 30004 of 2019 dt 01/07/21 (madras HC) in case M/s TVH Lumbini Square Owner's Association & others v/s Union of India & others).
For Full Text of judgement, kindly visit Madras HC site.

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ASSOCIATION OF MAHARASHTRA
तमसो मा ज्योतिर्गमय
Established : 1951
GSTPAM

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The Goods and Services Tax Practitioners' Association of Maharashtra

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Editorial

Dhaval Talati

Four years of GST journey

On the eve of completion of 4 years of the GST, CBIC began issuing certificates of appreciation to honour taxpayers for their contribution to the GST success story.

Government reaffirms its commitment to continuous improvement in taxpayer services. GST is a historic tax reform introduced on the 1st of July 2017. Over the years, there has been a reduction in the tax rates, simplification of procedures and the growing economy has also led to an exponential increase in the tax base. GST revenues have steadily grown and have been above the 1 lakh crore mark for eight consecutive months in a row. On the eve of completion of 4 years of the GST, it has been decided to honour the taxpayers who have been a part of the GST success story.

Prior to its introduction, it was being said that GST is too important a tax reform which would lead to near universal agreement of every State and that GST was the way forward. This process involved close cooperation and coordination with states and necessarily, was compromised, as reports suggest by everyone concerned. With the Goods and Services Tax (GST) entering its 5th year, there have been strident voices from some states about its very structure and design, the tax being regressive and State Revenue getting impacted.

It has been long bulky ride by continuously improving/updating various provisions of Act, improvement GST Portal and addressing normal grievance to a great extent. Accordingly, a future of GST in India, looks bright and the world is looking at us for our IT capability handling more than 1 cr. registered persons. This in itself is a big achievement.

The introduction of GST will be remembered as biggest milestone for a long for its economic, fiscal and constitutional history. Of course, I do agree, the government was not fully ready at the stage of implementation but after journey of 4 years I feel a lot is achieved, coupled with buoyancy in revenue even under such unprecedented time of COVID -19. To name few of the achievement in this journey of 4 years we have witnessed introduction of e-way bill, e-invoicing, matching concept with both dynamic and static report. However, I still feel there is a long way to achieve stability. The appointment of Appellate Tribunal, revision of return (at least once) and a uniform policy about deciding AAR to avoid diverse views expressed at state level AARs is need of hour. Frequent amendments and issue of notifications be avoided as far as possible.

Hope this pending long term demand of stake holders are addressed at the earliest. As already communicated in last month's communication, I once again reiterate that there should be harmonious relationship between centre and various states. I am happy to note that long awaited

demand of states about their compensation are now being met by Centre by taking loan of 75000 crs. The Centre has fulfilled their commitment towards states.

Indirect tax being important revenue, the Centre should take very active role in addressing both states and stake holder grievances.

Judges must not behave like emperors

Hon'ble SC's strong observations came in judgement on an appeal filed by UP government against the Allahabad HC's order concerning back log of wages of a medical officer. The HC had, in the case, issued summons to secretary, Medical Health Department.

The Hon'ble judges of SC, Shri Kishan Kaul & Shri Hemant Gupta observed that 'do not unnecessarily call public officers to court'. The judges must know their limits & they must have modesty & humanity & not behave like emperors. The bench further said "summoning of officers frequently is not appreciable at all. The same is liable to be condemned in strong words".

In my view strong message is sent by Hon'ble SC to all judges, who are being looked for fair trial in the cases before them. The whole purpose of such observation is that whoever sits on any position in public office is to work with humanity & should not misuse the powers they are given.

Inverted Duty, Tax Slabs on Radar

Revenue secretary Shri Tarun Bajaj recently in an interview to Economic Times stated that "We still have issues on inverted duty structure, tax rates. The GST Council over a period, take a view on this. These issues have been flagged to the council a couple of times and it is cognizant of that".

"In the next one – two meetings, we will concentrate on these issues to put these before the council to take a decision."

The moot idea is merger of 12% & 18% whereby, the main tax rates are brought down to 2 major slabs from current 3. By doing so, the intention is to bring down lesser number of cases which are covered by Inverted Duty Structure, and this will give great relief to such registered persons who will be able to utilise more of their input tax credit lying in their credit ledger so that they need not apply for cash refund on account of Inverted Duty Structure. It is reported in press (on 16th July) that this item will be on agenda of the GST Council meeting to be held in later part of July'21.

Hope that, this proposal become reality in near future.

MSME (Micro, Small and Medium Enterprises)

Four years after being excluded from the category of micro, small and medium enterprises the union government on 2nd July 2021, issued a fresh guideline to reinstate the retail and wholesale trade as MSMEs. To give effect to this, notification is being issued by Ministry of MSME [No. 5/2(2)/2021-E/P & G/Policy (E-19025 dt 2nd July'21]. By doing so, it is expected that 2.5 crs wholesale and retail traders will be benefited and they will now be able to register themselves on the UDYAM Registration Portal.

The Government time and again has announced various schemes for MSMEs in order to help them get accessed to funds and tide over the impact of the COVID-19 pandemic. Now, wholesale and retail traders will be eligible to avail those schemes and gain benefits attached to them.

Major benefit which such traders can now avail is that of priority sector landing (PSL). Loans given to MSMEs comes under the priority sector. In short, by including such class of traders they will now be able to enjoy interest rate subsidy on bank loan and concession in electricity bill amongst other benefits.

Hope the benefit will reach to genuine dealers who are most affected under Covid-19 pandemic & can come to mainstream of business. It is now expected that such class of dealers will comply with their GST obligation in time.

Unfilled Vacancies in State Tax Department

It has been reported in one of the Marathi newspaper "Sakal" that there are almost 1818 vacancies at various positions in state tax department. This is really shocking. How does one expect that with present strength, department function efficiently? Under the circumstances, the sitting officials are working with additional charges & that too with lesser support staff. Efficiency is bound to suffer & may lead to endless litigation at various stages. At the end of the day who will be the sufferer, the poor dealers only. I feel at an earliest opportunity the vacant post should be filled in.

Same is the position in Maharashtra Sales Tax Tribunal. Judiciary member's positions are not being filled for a long time. There is a delay even in the appointment of technical members. Enough follow up is made by office bearers of STT Bar, Mumbai. It has been reported that huge government revenue is blocked in litigation. How such revenue is unblocked without judges! Let the appointments be made immediately & let the benches start functioning, I am sure amount blocked in stays will be open either in favour of revenue or the appellants. At least ball will start rolling.

New Team 21-22

I wish incoming president CA Aalok Mehta & his young team all the very best & good luck. Congratulations to Outgoing President Shri Raj P. Shah and his team for successfully completing their tenure.

To sum up, I wish with humility to say that both centre & all states & all stake holders have to sacrifice & give their best to make GST law best on the planet. The strength of one can be judged by his/her ability to make sacrifices. This is well explained in Bhagvad Gita Chapter 18 verse 5. "Actions of sacrifice, charity & penance should not be given up, they should certainly be performed. Sacrifice, charity & penance are purifiers of wise people". Therefore, to accomplish something, some sacrifice, penance & charity are essential. If we get into this habit of sacrifice or renunciation of even small things regularly, we will build up a strong character & our accomplishments will multiply. Let us all come forward & join hands together to have simple & compliable GST law.

Namaskar.

D. B. Talati

DHAVAL TALATI
Editor

From the Outgoing President

"President Message"

Raj Shah

Dear Members,

The year 2020-21 witnessed worst ever pandemic situation none of us had faced in our life time. It crippled our mobility and denting our finances.

As I pen my last communication as the President of this esteemed Association, it's time to introspect the activities carried out by GSTPAM during the year. It was an eventful and challenging year, not only for me but the entire professional fraternity. I was fortunate to have a dedicated team of professionals in my Managing Committee. With their sincere efforts, in spite of a very challenging year, our Association has been able to carry out various activities during the year. I am carrying many fond memories of the year that is passing now and I will cherish these memories for a lifetime.

During the year, GSTPAM has been at the forefront in disseminating knowledge to its members and making them better equipped to face the challenges not only under GST but various allied laws. Various Study Circle meetings, Mega Guidance Cell meetings, Intensive Study Circle Meetings, Coaching Classes, Webinars and Workshops were organised throughout the year for enriching the knowledge of the members.

The video recordings of various lectures have been uploaded on the GSTPAM YouTube Channel which has received an overwhelming response. Video recordings of paid events were made available at a very nominal cost to the members. Facebook and Whatsapp groups of GSTPAM was updated with constant updates of forthcoming events.

The numerous issues faced by the members under VAT and GST have been represented on an ongoing basis in the Grievance Redressal Committee and Service Cell meetings. Strong representations have been submitted to the GST Council, Hon'ble Finance Minister, India, Hon'ble Finance Minister, Maharashtra State; Hon'ble Commissioners of State and Central GST on various issues in GST.

Following activities were conducted for the first time in the history of the Association:

a) Sitting Judge of Bombay High Court Justice Shri Ujjal Bhuyan along with Sr. Adv. Vikram Nankani graced the Inaugural Study Circle.

b) Writ Petition was filed in Bombay High Court twice for extending due date for filing of Form 9 / 9C for F.Y. 18-19 and F.Y. 19-20.

c) Learning course on MS-Excel was organized

d) Lecture series on 'Advance Analysis of AAR' was organized.

e) Series of Panel Discussion was organized.

f) Workshop on Customs law was organized.

g) 2 National Tax Conferences were organized with record registrations.

h) GST Certificate Course jointly with MMK College was organized.

i) As I had promised in my first communication as a President, Workshop of GST was conducted in Marathi language particularly for the members living in the corner most district of Maharashtra.

j) In order to make inroads and spread our wings in our neighbouring state Gujarat, Workshop on GST was organized in Gujarati language.

k) Online Chess tournament was also organized.

Record-breaking 125+ event days were conducted during the year.

Arvind Thakkar Lecture Meeting was held wherein Shri. Sanjay Kandhare, Dy. Comm. State Tax, Speaker delivered lecture on the topic 'Role of Vigilance Branch in GST Department'.

Association had organised webinars jointly with Taxsutra, Zoho and Maharashtra National Law University.

Mock Tribunal was organised under J H Baheti Fund with record participation.

Apart from the educational activities, GSTPAM has been proactively encouraging its members to be health conscious in these stressful times. In the initiatives taken, various fitness – cum – yoga sessions were organized. Musical Programme was organised on the occasion of Diwali Get- together and Foundation Day of the Association wherein our own members performed. GSTPAM also celebrated International Yoga Day on 21st June 2021.

'News Bulletin' was published on monthly basis which contained details of the all programs of the Association during the month along with Income Tax updates, Recent AAR's, Gist of Notifications and Circulars for GST, VAT, Professional Tax and Income Tax. During the year committee has introduced new sections on Customs Act, Charitable Trust, Investments and Updates on Financial rates on regular basis and also started giving write up on Wills, MSME and other topics which are beneficial to members of the Association.

As the President of GSTPAM, I had the honour to represent GSTPAM Referencer to the Hon'ble Finance Minister of India, Smt. Nirmala Sitharaman at Swaminarayan Temple Auditorium, Mumbai.

The outreach to outstation members was also carried out since all the activities were carried out virtually due to covid restrictions.

The GSTPAM Referencer was released in AGM held on 16th July 2021. With the ongoing multiple amendments in the newly introduced GST law, it was a challenge in compiling the contents for the GST Referencer, but I am indeed very much thankful to the compilers, makers and checkers of the Referencer for bringing out a very useful publication along with the Alphabetical Index of rates of taxable goods and the list of rates of other goods and services.

In the quest of educating our members, GSTPAM has also published short publications on the subject 'Refund under GST' and 'E-way Bill Provisions under GST'. I appreciate put in by the authors Mr. Jignesh Kansara and Mr. Shreepad Bedarkar respectively for their untiring efforts.

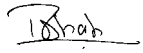
We could carry out all the activities of the association in the best possible manner because of the full support and co-operation of all the managing committee Members and Office Bearers of our association. I am very much thankful to all of them. I am also thankful to all the senior members and Past Presidents who guided me during my journey as President. I would also like to thank all the staff members for carrying out their duties diligently and with dedication.

I would like to take this opportunity and thank you all once again for your valuable feedbacks on my various communications. And if I have, despite having no intention to do so, hurt anyone's sentiments, I offer my apologies. During the year we have tried our best to serve the members of our association and I admit whatever credit is due for our activity I pass it on to my whole team and debit, if any, it on my part for which, I request you all to pardon me.

I congratulate all the winners of various prizes and awards as declared by the various judges. I wish the incoming President Shri Aalok Mehta and his team all the very best for their tenure. I am sure that they will carry out the work with utmost zeal and enthusiasm and take the name of our association to greater heights.

Wishing all the members good health, prosperity and happiness.

Jai Hind. Jai Maharashtra



RAJ SHAH
President

From the Incoming President

"President Message"

CA Aalok Mehta

Dear Professional Colleagues,

This is my first communication to you as the President of our Association. I express my sincere gratitude to all of you for unanimously electing me as the President of this esteemed Association "GSTPAM". It has been a wonderful journey for me in reaching here. I am sure that with your good wishes, the support and guidance of my seniors, my team of office bearers and Managing Committee Members and the staff of our association, I will be able to measure up to the confidence you have reposed on me.

Let me first congratulate the outgoing President Shri Raj Shah who has ably shouldered the responsibilities of our esteemed Association in the previous year and successfully completed his tenure.

The various activities of our Association such as Study Circle meetings ,Intensive Study Course, Coaching Classes, Webinars/Seminars (local as well as Outstation), Workshops, Mega Guidance Cell meetings which are regularly conducted shall continue with renewed enthusiasm.

Our Association's website www.gstpam.org is proposed to be upgraded exponentially whereby it would become more user friendly to our members. The facility for online payment for various events of our Association would be more simplified and smoothened.

Further due to ongoing pandemic situation in our country and as suggested by various members, the Constitution of our Association requires various amendments which I have kept on the top priority and the same will be carried out during this term.

The Residential Course Referencer (RRC) is one of the unique and iconic events of our association, but it is unfortunate that because of ongoing pandemic the same could not be held last year. However, this year I hope we will be able to conduct the physical RRC with all the precautions and safety measures. However, if we would not be able to conduct physical RRC, I will make sure to have at least virtual RRC with the same features that we have in physical RRC, such as compilation of paper book, paper presentation, group discussion, opinion expression by monitors, brain trust session etc.

To make effective representation before appropriate authorities, I have decided to formulate a team of strong Law & Representations Committee. I assure you that our Association through its L & R committee will play a major role in representing the needs of the Trade and all professionals in GST environment both in State and Centre. Further, every effort will be made that our representations reach the Finance Ministry and GST Council and the same would be considered by the them. I request the members to give valuable suggestion on the issues being faced by them.

I propose to arrange various events at district places as well to make them available the benefit of the knowledge and experience sharing of the eminent faculties. This will also provide us an opportunity to interact with the professionals in those regions, so as to have the first hand information about the problems being faced by them. There are extremely learned professionals at district places as well who can share knowledge in academic activities of our association such as Coaching Classes, Intensive Study Group, Workshops, Seminars etc. I shall make them available the platform to share their knowledge.

Short Publications on GST covering topic wise in–depth analysis have also been planned and it is my endeavor to release various such publications during the year.

In addition to the regular educational events and activities, there are quite many suggestions which are slated to be considered by my new team. The team incidentally consists of enthusiastic and energetic young professionals eager to prove their mettle through their dedicated work.

It is always a determination of each one of us that 'GSTPAM' should be known as an institution who trains specialized professionals. With this determination we had entered into an 'MOU' with "Maharashtra National Law University" (MNLU) to conduct one year diploma course in GST. But this has remained along-drawn plan because of ongoing pandemic situation. However, I shall make it sure that, the said GST diploma course starts at the beginning on my tenure, if not physically, at least virtually. Also, I shall make it sure that, even the persons willing to attend this course who are situated at remote district location, shall be able to attend and complete the said GST diploma course.

I also assure you that with the support of my Managing Committee members as well as staff of our Association, I will try my level best to promptly solve grievances of members as well as to serve them better.

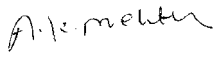
I am thankful all the candidates who had filed their nomination forms being a part of the Managing Committee and Secretary and subsequently voluntarily withdrew their candidature so as to avoid elections during this Covid-19 pandemic situation.

Swami Vivekananda had once correctly remarked, "Arise, awake, and stop not till the goal is reached." It is this determination, perseverance and never-say-die attitude that has allowed our association to reach the heights it has attained today. Through GSTPAM's 70 years of splendid performance, it has implemented the importance of making most of every opportunity and rising to all odds. I urge all to never forget that sweet taste of victory will always heal the wounds of battle; as long as one continues to tirelessly pursue excellence. Follow your passion, work with dedication, and with the virtue of Independence, Integrity and Excellence.

As it is rightly said "Coming together is a beginning, keeping together is progress and working together is success". Let's come forward and work together to make our association more active, prosperous, successful and ever shining.

Jai Hind Jai Maharashtra

Best wishes



AALOK MEHTA
President

GST Updates

CA Deepali Mehta

GSTIN is allotted on the basis of PAN. It may happen that due to some error you might have been allotted GSTIN on your PAN which is not in use and inactive. But still on the portal it shows as your GSTIN. Thus Government has now come out with a facility where in you have to report the actual GSTIN which is being used by you and cancel the incorrect/Inactive GSTIN. It can be done by the following procedure:

- Go to search Tax payer in www.gst.gov.in
- Search Taxpayer by PAN
- All GSTIN under your PAN will be displayed. Select the Correct GSTIN which is to be reported on GST portal
- Fill the Form
- Verify separately through OTP received on email and mobile.

Notification No. 28/2021-CT dated 30.06.2021: Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020. For B to C Transactions, Dynamic QR code needs to be generated by the tax payer with aggregate turnover >500Cr for each invoice. This was applicable from 1st December 2020. The current notification has waived penalty u/s 125 for noncompliance of generating the Qr code which can be upto INR 25000/- per Invoice from 1st December 2021 till 30th September 2021.

Portal News

GSTN portal has recently added an option to pre-fill an application form for the tax refund of the tax filed for the taxpayers: The portal has included the columns for the information required by the taxpayer to file the tax refund.

The columns for the tax refund details require certain information such as:

- Aadhar Number
- Income tax paid in Financial Year 2018-2019
- Capital Expenditure and investment made in Financial Year 2018-2019
- Advance tax paid in Financial Year 2019-2020 (till date)

The pre-fill application is supposed to be assisting all the tax claim refund to be quicker and easier to process as per the applicant request. This means that the taxpayer will be able to screen the tax claim for a genuine request and therefore making it accessible for all the taxpayers to claim the tax refund as soon as possible.

For filling **Navigate to Services > Refunds > Refund pre-application Form option to submit**

Refund Pre-Application Form

On submitting the refund pre-application form, you will be shown an acknowledgement message on the screen. No separate e-mail or SMS will be sent to you for the same. Once submitted; the Refund Pre-Application Form cannot be edited, revised or re-submitted again.

Upcoming functionalities to be deployed on GST Portal for the Taxpayers in the month of July, 2021

Sr. No.	Module	Form/ Functionality	Functionality released/ or to be released for taxpayers	Current status
1	Registration	Timelines for filing of Application for Revocation of Cancellation of Registration in Form GST REG-21	In view of the spread of pandemic COVID-19 across many parts of India, vide Notification No 14/2021-CT, dated 1st May, 2021, read with vide Notification No 24/2021-CT, dated 1st June, 2021, the Government had extended the date for filing of various applications falling during the period from the 15th April, 2021 to 29th June, 2021, till 30th June, 2021. In addition to this, timeline for filing of Application for Revocation of Cancellation of Registration, which were due on 15th of April 2021, had also been extended till 30th June 2021 on the GST Portal. Accordingly, these extensions have now ceased to be effective w.e.f. 1st July, 2021, and timelines for filing of application for revocation of cancellation is now changed to 90 days (as was earlier) on the GST Portal, from date of Order of Cancellation of Registration in Form GST REG-19.	Deployed on 1st July, 2021
2	Returns	Information regarding late fee payable provided in Form GSTR-10	Taxpayers whose registration is cancelled, at the time of filing of last return in Form GSTR-10, will now be provided with details of late fee payable by them, for the delayed filing of any of the previous returns/ statements in a table, for their assistance in filing of said return by them. This information can be viewed by clicking on a hyperlink provided under the column "Late Fee Payable" in the online Form GSTR-10.	

Sr. No.	Module	Form/ Functionality	Functionality released/ or to be released for taxpayers	Current status
3	Returns	Auto-population of data in Form GSTR-11 on basis of Forms GSTR-1 / 5 filed by their suppliers	The UIN holders file details of their inward supplies in Form GSTR-11 on a quarterly basis. They can subsequently file for refund (if required) in Form GST RFD- 10, for the quarter, in which summary of the documents is auto-populated from their Form GSTR-11, in an editable mode Form GSTR-11 of the UIN holder would be generated with details of their inward supplies, on basis of Forms GSTR-1 / 5 filed by their suppliers, which will subsequently help them in filing their refund claims.	

Customs:

Implementation of RMS for processing of Duty Drawback claims: The CBIC issued Circular No. 15/2021-Customs dated July 15, 2021 w.r.t. implementation of Risk Management System ("RMS") for processing of Duty Drawback claims.

Custom has inform that the above-referred risk-based processing of shipping bills with claim of duty drawback is being initiated with effect from July 26, 2021. Shipping bills with claim for duty drawback will be routed on the basis of risk evaluation through appropriate selection criteria. For this purpose, after the filing of correct and complete EGM, shipping bills will be sent by ICES to RMS. Subsequent to RMS treatment, ICES will be informed for each shipping bill whether for the processing of the drawback claim, a particular shipping bill will be facilitated without intervention or will be routed to the proper officer. This process is expected to reduce the processing time taken for drawback claims, enable quick disbursal to exporters and rationalize the Customs' workload.

RoSCTL on apparel export extended till March 31, 2024 at existing rates: The Govt has given its approval for continuation of Rebate of State and Central taxes and Levies (RoSCTL) with the same rates as notified by Ministry of Textiles vide Notification dated March 08, 2019 on exports of Apparel/Garments (Chapters-61 & 62) and Made-ups (Chapter63) in exclusion from Remission of Duties and Taxes on Exported Products (RoDTEP) scheme for these chapters. The scheme will continue till March 31, 2024.

"All of us do not have equal talent. But, all of us have an equal opportunity to develop our talents."

– Dr. A.P.J. Abdul Kalam

Greenwood Case

Vinayak Patkar,
Advocate

1. The High Court of Judicature at Madras has delivered a land mark judgement on 01.07.2021 in the case of *Greenwood Owners Association & Others vs. The Union of India & Others* in Writ Petition Nos. 5518 and 1555 of 2020.The judgment relates to the interpretation of Exemption Notification.

2. All of us are aware that the Notifications offering Exemptions /Concessions are to be construed strictly. In other words, the intention of the Legislature or the Government is not to be taken into consideration while interpreting the Notifications offering Exemptions/ Concessions and those are to be construed literally, irrespective of the consequences. If the end result of such strict interpretation is the denial of the exemption/concessions, even though unintended, then the authority which has issued such Notification should remedy the defect, if at all the same exist. The Courts can't do it by interpretation.

3. The Madras High Court in Greenwood case applied the same rule of strict construction / literal construction and came to the conclusion that the benefit of the Notification should be given to the Petitioners.

4. The Petitioners were the Resident Welfare Associations (RWA) in apartments / housing complexes. They had challenged an Order of the Authority for Advance Ruling (AAR) levying GST on the entirety of the contributions made by the residents. After the introduction of the Goods & Service Tax Act, 2017, GST was levied on various goods & services and exemptions/ concessions were also granted in respect of certain goods & services. The Court was concerned with exemption which was granted under Notification No. 12 /17 -CT dated 28.06.2017 as amended by Notification No. 2/2018 dated 25.01.2018. By this Notification , an exemption was granted to contributions made to RWA '***upto***' an amount of ₹ 7500/- per month per member for sourcing of goods and services from third person for the common use of the members of RWA i.e., housing complexes or residential complexes. Since contributions taken from members of RWA were on some occasion more than Rupees 7500, the residents in that RWA were s losing the entitlement to exemption all together, as a result that the entire contributions were liable to GST. This was due to the Advance Ruling Order passed in the case of one of the petitioners.

5. In the early years of GST, the GST department had issued a clarification in the case of Co-operative Housing Societies, wherein the department had categorically stated that GST would be applicable only on the amount in excess of the exemption limit as it then stood. The fliers so issued covered all Co-Operative Housing Societies, in essence, RWAs, Housing Societies etc. In view of this

clarification the RWAs were consistently paying the GST only on the contribution above the exemption limit. In other words, if the contribution was Rupees 9,000/- the GST was paid only on ₹ 1,500/- (₹ 9000 - ₹ 7,500= ₹ 1,500)

6. However, after the passing of the aforesaid order by the ARA, a Circular No. 109/28/2019-GST was issued by the Department and it was informed that the exemptions from GST on maintenance charges charged by a RWA from residents was available only if such charges did not exceed ₹ 7500/- per month per member. In case the charges exceed ₹ 7500/- per month per member, the entire amount was taxable. The Circular also gave an example. If the maintenance charges were ₹ 9000 per month per member GST @ 18% would be payable on the entire amount of ₹ 9000 and not on ₹ 1500 (₹ 9000-₹ 7500= ₹ 1500)

7. The Circular so issued was challenged before the Hon'ble Madras High Court and it was prayed to quash the same as being illegal, arbitrary and ultra vires the Constitution Of India and the provisions of the Central Goods & Service Tax Act, 2017. It was argued that the interpretation put in the Circular was contrary to the express language of the Notification as well as the intendment of the exemption granted. The Court was taken through various instances of grant of exemption under different Indirect Tax enactments, to illustrate the difference in language used and the meaning conveyed. Emphasis was placed on the use of the phrase '***upto***' in the relevant Entry stating that the grant of exemption was for contribution up to ₹ 7,500/- and this entailment remained constant notwithstanding any change in the amount of contribution.

8. The Court observed that the intention of the Notification was clear, i.e. to grant exemption in regard to the receipts from services that answer to the description set out therein. The description of the services was also clear , that is, services to the members of an unincorporated body or non- profit by way of reimbursement of charges or share of contribution upto an amount of ₹ 7,500/- in the sourcing of goods or services from a third person for the common use of its members. No ambiguity presented itself on a plain reading of the Entry and the intention was clear, so as to remove from the purview of taxation contribution ***upto*** an amount of ₹ 7,500/-.

9. The Court compared the Notification Entry in question with other entries granting exemption. It was compared with SSI Exemption Notifications No.8/2003 C.E. dated 01.03.2003. The language employed therein was '*First clearances up to an aggregate value not exceeding one hundred lakh rupees*'. The said Notification further spoke about 'all clearances of the specified goods'. There after the Court considered S. No. 28. of Notification No. 25/2012-Service Tax Dt.20.06.2012. The language employed therein for exemption was '***upto*** *amount of ₹ 5000 Per month per member*'. Many such Notifications were considered by the Court to understand the implications of the words 'upto' in the Notification. The Court also considered the Notification in which the words '***upto***' were not used, but, the words '*does not exceed*' were use. For example, S.No. 56 of Notification No Dt. 25./2012 had used the words, *'where the gross amount charged for such services does not exceed ₹ 5000/-'.*

10. The Court stated that a reading of the above extracts would indicate the difference in language adopted by the Revenue in the matter of grant of exemptions. In a case where the legislature intended that the exemption should apply only to cases where the

amount charged did not exceed a specified pecuniary limit, it states as much, as could be seen from the language deployed in the proviso to Clause 56 in Notification 25 of 2012 where it was stated 'the exemption shall apply only where the gross amount charged for such service does not exceed ₹ 5,000/- in financial year.'

11. There after the Court considered the Notification number 12/2017 dt. 28.06.2017. Entry No. 78 of that Notification dealt with services of an artiest and stated that the exemption would be available to the artiest for the performance of the services mentioned there in only if the consideration charged for such performance was not more than one lakh and fifty thousand rupees. The Court observe that, here too, the category of 'artiest' was on the basis of the earning of the artiest one who charged less than rupees 1.50 lakhs and one who charged more. The intention was clear, to exempt only such consideration which was below ₹ 1.50 lakhs. If the consideration exceeded ₹ 1.50 lakhs by even a rupee, the artiest would stand elevated no the next slab, losing benefit of exemption.

12. The Court considered it relevant to note that Entries 77 and 78 were from the same Circular, thus the choice of words employed was conscious one intended to have different application.

13. The Revenue had relied upon the judgment of the Constitution Bench of the Supreme Court in the case of *Commissioner of Customs Import, Mumbai vs. Dilip Kumar & Company (361 ELT 577)*, wherein the Supreme Court dealing with the grant of exemption from duty under the Custom Act, 1962 had held that in the case of ambiguity in interpretation of a tax exemption provision or Notification in regard to its applicability qua entitlement or rate of tax to be applied, the interpretation should be strict and the burden of proving applicability would fall on the assesses. In the Impugned case, however, the High Court rejected the contention. The Court observed that in case of Dilip Kumar the Supreme Court reiterated the settled proposition of law that an Exemption Notification must be interpreted strictly. However, the plain words employed in Entry 77 being, '***upto***' an amount of ₹ 7500/- could thus only be interpreted to state that any contribution in excess of the same would be liable to tax. The Court further observed that the term '***upto***' hardly needed to be defined and connoted an upper limit. It was interchangeable with the term 'till' and meant that any amount till the ceiling of ₹ 7500/- would exempt for the purpose of GST.

14. The Revenue had also compared the Impugned Notification with the provisions of the Tamil Nadu Additional Sales Tax Act,1970. Section 2 of the said Act speaks about the slab rate. It was the contention of the Revenue that where the legislature intended beneficial tax treatment by insisting upon a slab rate, such slab is usually indicated in the Statute itself. However, the Court rejected the comparison. The Court observed that a slab is a measure of determining tax liability. The prescription of a slab connotes that income upto that slab would stand outside the purview of tax on exigible to a lower rate of tax and income above that slab would be treated differently. The intendment of the exemption entry in question was simply to exempt contributions till a certain specified limit. The clarification GST Department given as early as in 2017 had taken the correct view.

15. Thus, the High Court allowed the petitions.

An overview of e-Way Bill provisions and recent related Union Budget Amendments

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In order to curb evasion of tax and to achieve ease of doing business instead of each State or Union Territories having their own tracking system for movement of goods a common portal for the Nation is created which is known as e-Way Bill System and the URL (Website Address) is https://ewaybillgst.gov.in.

Many a times it is observed that goods are detained, seized and confiscated when goods are in transit due to minor procedural infractions which results in a great hardship to the buyer, seller and even to the transport operator. This situation is aggravated due to lack of proper training to the Departmental Officers and having a very parochial and pedantic mindset of the Government Officers.

The Hon'ble Finance Minister, Mrs. Nirmala Sitharaman through the Union Budget-2021 has brought many amendments in the Central Goods and Service Tax Act, 2017, including in the provision relating to e-Way Bill more particularly the amendments made to Section 129 and 130 of the Act. Though the Finance Bill is passed in both the Houses of the Parliament, however, Notification for the effective date of the above changes to come into effect is yet awaited.

Before we delve into the provision of Section 129 and 130 of the GST Act, 2017 ('the Act'), it would be worthwhile to have an overview of the provisions of E-way bill in the Act.

The relevant Section is 68 of the Act-Inspection of goods in movement.

The relevant Rules for the above Section are as under:

Rule No.	Description	Forms
Rule 55	Transportation of goods without issue of invoice.	Delivery Challan.
Rule 55A	Tax Invoice or bill of supply to accompany transport of goods.	Rule 46-Tax Invoice, 46A-Invoice-cum-bill of supply or 49-bill of supply may be referred to.
Rule 138	Information to be furnished prior to commencement of movement of goods and generation of e-way bill.	GST EWB-01, EWB-02 (for consolidated e-way bill).
Rule 138A	Documents and devices to be carried by a person-in-charge of conveyances.	GST EWB-01, GST INV-1.
Rule 138B	Verifications of documents and conveyances.	

Rule No.	Description	Forms
Rule 138C	Inspection and verification of goods.	GST EWB-03.
Rule 138D	Facility for uploading information regarding detention of vehicle.	GST EWB-04.
Rule 138E	Restriction on furnishing of information in PART A of FORM GST EWB-01	GST EWB-05 and GST EWB-06.
Rule 140	Bond and security for release of seized goods	GST INS-04.
Rule 141	Procedure in respect of seized goods	GST INS-05
Rule 142 (1) and (5)	Recovery from a third person	GST DRC-01 and GST DRC-02, GST DRC-01A, GST DRC-03, GST DRC-04, GST DRC-05, GST DRC-06, DRC-07.

Relevant Notifications:

Notification No.	Date	Rule	Detail.
56/2018- Central Tax	21.10.2018	138	Categories of casual taxable persons specified who shall be exempted from obtaining registration. [Supersede Notification No. 32/2017/-CT, dt. 15.09.2017]
35/2020- Central Tax	03.04.2020	138	Extension of due date of compliance which falls during the period from 20.03.2020 to 29.06.2020 upto 30.06.2020 and Extension of validity of e-way bills. [as amended by Notification Nos. 40/2020-CT, dtd. 05.05.2020 and 47/2020, dt. 09.06.2020]

Relevant Circulars:

Circular No.	Date	Rule	Details
10/10/2017-GST	18.10.2017	55	Clarification on issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis.
108/27/2019-GST	18.07.2019	55	Clarification in respect of good sent / taken out of India for exhibition or on consignment basis for export promotion.
10/10/2017-GST	18.10.2017	138	Clarification on issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis.

Circular No.	Date	Rule	Details
41/15/2018-GST	13.04.2018	138	Clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances. [As amended by Circular Nos. 49/23/2018-GST, dt. 21.06.2018 and 88/7/2019-GST, dt, 01.02.2019].
47/21/2018-GST	08.06.2018	138(2A)	Clarification on certain issues under GST laws
61/35/2018-GST	04.09.2018	138	E-way in case of storing of goods in a godown of transporter.
136/6/2020-GST	03.04.2020	138	Clarification in respect of various measures announced by the Government for providing relief to text payers in view of spread of Novel Corona Virus (COVID-19).
41/15/2018-GST	13.04.2018	138A	Clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances. [As amended by Circular Nos. 49/23/2018-GST, dt. 21.06.2018 and 88/7/2019-GST, dt, 01.02.2019].
64/38/2018-GST	14.09.2018	138A	Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST, dt. 13.04.2018 and 49/23/2018-GST, dt. 21.06.2018.
41/15/2018-GST	13.04.2018	138B	Clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances. [As amended by Circular Nos. 49/23/2018-GST, dt. 21.06.2018 and 88/7/2019-GST, dt, 01.02.2019].
41/15/2018-GST	13.04.2018	138C	---do---
49/23/2018-GST	21.06.2018	138C	Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST, dt. 13.04.2018

Circular No.	Date	Rule	Details
41/15/2018-GST	13.04.2018	138D	Clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances. [As amended by Circular Nos. 49/23/2018-GST, dt. 21.06.2018 and 88/7/2019-GST, dt, 01.02.2019].

Section 67 of the Act speaks of inspection, search and seizure.

Now, Coming to Section 129 and 130, both the Sections fall under the Chapter XIX-Offences and Penalties:

Section 129 relates to Detention, seizure and release of goods and conveyance in transit. And Section 130 relates to Confiscation of goods or conveyance and levy of penalty.

The relevant rule for Section 129 of the CGST Act, 2017:

Rule No.	Description	Forms
142	Notice an order for demand of amounts payable under the Act	GST DRC-01 and 02, GST DRC-03, GST DRC-05, GST DRC-07 GST DRC-08,

Relevant Notifications:

Notification No.	Date	Section	Detail.
35/2020- Central Tax	03.04.2020	129	Extension of due date of compliance which falls during the period from 20.03.2020 to 29.06.2020 upto 30.06.2020 and Extension of validity of e-way bills. [As amended by Notification Nos. 40/2020-CT, dt. 05.05.2020 and 47/2020-CT, Dt. 09.06.2020].
40/2020- Central Tax	05.05.2020	129	Extension of the Validity of e-way bills till 31.05.2020 for those e-way bills which expire during the period from 20.03.2020 to 15.04.2020 and generated till 24.03.2020. [As amended by Notification Nos. 35/2020-CT, dt. 30.04.2020 and 40/2020-CT, Dt. 09.06.2020].
47/2020- Central Tax	09.06.2020	129	Extension of the Validity of e-way bills generated on or before 24.03.2020, whose validity has expired on or after 20.03.2020 till 30.06.2020. [As amended by Notification Nos. 35/2020-CT, dt. 30.04.2020 and 40/2020-CT, Dt. 05.05.2020].

Relevant Circulars:

Circular No.	Date	Section	Details
41/15/2018-GST	13.04.2018	129	Clarifying the procedure for interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods end conveyances. [As amended by Circular Nos. 49/23/2018-GST, dt. 21.06.2018 and 88/07/2019-GST, dt. 01.02.2019] GST MOV-01, GST MOV-02, GST MOV-03, GST MOV-04, GST MOV-05, GST MOV-06, GST MOV-07, GST MOV-08, GST MOV-09, GST MOV-10, GST MOV-11, GST INS-04,
Circular 64/38/2018-GST	14.09.2018	Sec. 68 and Rule 138A	To restrict penal consequences in specified situations.
Circular 76/50/2018-GST	31.12.2018	Sec. 73(11) and 142(2)	Sale by government departments to unregistered person; leviability of penalty under section 73(11) of the CGST Act; rate of tax in case of debit notes / credit notes issued under section 142(2) of the CGST Act;
Circular 14/15/2018-GST	13.04.2018	Rule 138 to 138D	Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.
Circular 49/23/2018-GST	21.06.2018	129	Modifications to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular No. 41/15/2018-GST dated 13.04.2018.
Circular 61/35/2018-GST	04.09.2018	Rule 138	E-way bill in case of storing of goods in godown of transporter.
Circular 38/12/2018-GST	26.03.2018	Section 143.	Clarification on issues related to Job Work.

The relevant rule for Section 130 of the CGST Act, 2017:

Rule No.	Description	Forms
142	Notice and order for demand of amounts payable under the Act	GST DRC-01 and 02, GST DRC-03, GST DRC-05, GST DRC-07 GST DRC-08,

Relevant Circulars:

Circular No.	Date	Section	Details
41/15/2018-GST	13.04.2018	130	Clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances. [As amended by Circular Nos. 49/23/2018-GST, dt. 21.06.2018 and 88/07/2019-GST, dt. 01.02.2019]

Now, before we delve into the actual amendments in the budget let us try to understand the interplay of both the Sections and their legal position.

Both the Sections start with the ***'Non Obstante'*** clause i.e. **'Notwithstanding anything contained in this Act'.**

Issues to ponder:

- Whether Sections 129 and 130 both can be invoked in a case simultaneously.
- Section 130 can be invoked directly, bypassing section 129.
- Whether 129 is mandatory before we move to section 130.

The answers to the above questions can be very well found from a very important judgment of Gujarat High Court in the case of *Synergy Fertichem Pvt. Ltd. vs. State of Gujarat, 2020 (33) G.S.T.L. 513 (Guj.)*

Based on the above judgment the answers to the above questions are as under:

Ans. to Q. No.-1:

Sections 129 and 130 of CGST Act, 2017 are mutually exclusive. It is not necessary that section 130 ibid be invoked only if person, transporting any goods, or owner of goods, fails to pay amount of tax and penalty as provided in Section 129(1) ibid. Section 130 is not dependent on Section129(6) of GST Act, 2017. Both can be invoked simultaneously.

However, Hon'ble Judge remarked that "I am of the view that the Legislature should, once again, look into both the provisions, i. e, Sections 129 and 130 of the Act and amend the Sections accordingly so as to remove certain inconsistencies in the two provisions. Let this aspect be looked into by the State Government in accordance with law."

Ans. to Q. No.-2:

For the purpose of issuing a notice of confiscation under Section 130 of the Act at the threshold, i.e., at the stage of detention and seizure of the goods and conveyance, the case has to be of such a nature that on the face of the entire transaction, the authority concerned should be convinced that the contravention was with a definite intent to evade payment of tax. The action, in such circumstances, should be in good faith and not be a mere pretence. In other words, the authorities need to make out a very strong case. Mere suspicion may not be sufficient to invoke section 130 of the Act straightway.

Ans. to Q. No.-3:

No. If it can be proved that the contravention was with a definite intent to evade payment of tax then action can be taken directly u/s 130.

Now, let us consider the relevant Amendments:

Section29(1)(a) & (b) substituted as –

(Deleted words are written in bold and strike-through mode. And newly inserted words are written in bold letters.)

- (a) on payment ~~**of applicable tax and**~~ penalty equal to ~~**one**~~ **two** hundred percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty.
- (b) on payment of ~~**applicable tax and**~~ penalty equal to fifty percent of the value of the goods ~~**reduced by the tax amount paid thereon and**~~ or two hundred percent of the tax payable on such goods, whichever is higher, and in case exempted goods, on payment of an amount equal to five percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty"
    - With this amendment requirement of payment of tax in advance before the due date of payment of tax in GSTR 3B and at the time of release is made done away with.
    - Now, the defaulting person has to pay only penalty and no tax at the time of release etc. if the owner of goods comes forward for payment of such penalty.
    - However, the quantum of penalty is just made double i.e. @ 200%.
    - If the owner of goods does not come froward then he used to get deduction of element of tax while working the fifty percent of value of goods which he will not get now and has to pay fifty percent on the gross amount of goods.

1st Proviso to Section 129 inserted as-

- ***Provided that the conveyance shall be released on payment by the transporter of penalty under subsection (3) or one lakh rupees, whichever is less.***
    - Now sub-section 129(2) is deleted. It provided for execution of a bond and furnishing of security. So, now the penalty has to be paid in cash by the transporter.
- 2nd proviso to section 129 substituted as-
- *Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of* ~~***fourteen***~~ ***fifteen*** *days may be reduced by the proper officer.*
- In the case of perishable or hazardous goods or highly depreciable goods the proper officer can dispose them off before the stipulated days of fifteen days. Before the amendment it was fourteen days, after the amendment one day is extended,

Section129(2) deleted;

- ~~(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.~~
- As explained earlier now the penalty has to be paid in cash in order to get release order of goods or a vehicle and not by way of executing a bond and furnishing a security for the provisional release.

Section 129(3) & (4) substituted as-

- *(3)The proper officer detaining or seizing goods or conveyance shall issue a notice* ***within seven days*** *of such detention or seizure, specifying the* ~~***tax and***~~ *penalty payable, and thereafter, pass an order* ***within a period of seven days from the date of service of***

***such notice**, for payment of penalty under clause (a) or clause (b) of sub-section(1)."*

- Before, there was no time limit mentioned in this sub-section for issuing a notice specifying the tax and penalty payable.

  Now, the proper officer has to issue a notice within a period of seven days (in Form MOV 07) from the date of detention or seizure for the payment of penalty (and not of the tax).

  And, then within seven days from the date of service of such notice the proper officer is required to pass the order (in form MOV 09) for payment of a penalty (and not of tax).

- *(4) No **~~tax, interest or~~** penalty shall be determined under subsection (3)without giving the person concerned an opportunity of being heard.*

- As explained earlier now only the penalty is required to be paid and not tax, interest and penalty as required earlier, of course the Notification for the effective date is still awaited. Granting of an opportunity of hearing is expressly provided.

Section 129(5)- No change:

On payment of amount referred in sub-section 129(1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

Section129(6) substituted as under:

- *Where the person transporting any goods or the owner of such goods fails to pay the amount of **~~tax and~~** penalty under sub-section(1) within **~~fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130~~** **fifteen days from the date of receipt of the copy of the order passed under sub-section(3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section(3).***

- The owner of the goods and transporter has to make payment of penalty withing fifteen days from the date of receipt of the order. Failing which the goods / vehicle could be disposed off by the proper officer in the manner provided under the Act.

  Instead of 100% tax and 100% penalty, now penalty of 200% of tax payable is applicable.

- To file appeal, 25% of penalty i.e. 50% of tax amount.

- Transporter can get the conveyance released on payment of penalty or Rs.1 lakh whichever is less.

- The proceedings under Section129 relating to detention, seizure and release of goods and conveyances in transit, delinked from the proceedings under Section130 relating to confiscation of goods or conveyances and levy of penalty.

- Amendment in Section 107(6)-Appeals to Appellate Authority:

- *Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five percent of the penalty has been paid by the appellant.*

- The pre-deposit prior to this amendment was only to the extent of 10% of tax liability in case of dispute which is now proposed to be 25% of the penalty amount in case of detention and seizure of goods and conveyance during transit.

Section 130 has been amended to match the delinking changes in Section 129.

Presently, if the person does not pay tax and penalty within 14 days of seizure, the

conveyance and goods detained are liable for confiscation as per section 130.

But, after proposed amendment is notified, the goods or conveyance detained or seized shall become liable to be sold or disposed off in the manner described in case the payment of imposed penalty is not made **within 15 days** from the date of receipt of copy of the order imposing search penalty.

Further, it is proposed that the conveyance used for transportation of the goods may be released on payment of penalty as determined under Section 129(3) or Rs. 1 Lakh whichever is less.

Some other judgments

SYNERGY FERTICHEM PVT. LTD. vs. STATE OF GUJARAT -2020 (33) G.S.T.L. 513 (Guj.)

In fact Circular No. 64/38/2018-GST, dated14-9-2018 issued by the CBIC clearly shows that Section129 of the GST Act is meant for major discrepancies such as absence of e-way bill and not minor errors in the documents accompanying the goods.

RAI PREXIM INDIA PVT. LTD. vs. STATE OF KERALA -2019 (23) G.S.T.L. 454 (Ker.)

If a human error which can be seen on naked eye is detected, such human error cannot be capitalised for penalisation.

K.B. ENTERPRISES vs. ASSTT. COMMR. OF STATE TAXES & EXCISE, CHAMBA -2020 (34) G.S.T.L. 240 (Appellate Authority -H.P.)

The benefit cannot be denied to the appellant for paltry errors of two digits in the vehicle number. The e-way bill has been duly generated and no mistake has been found in all other information entered in the EWB.

Hindon Machinery Tools vs. State of U. P. 2019 (22) G.S.T.L. 4 (All.)

Incorrectly mentioning of tax invoice number on e-Way Bill: Petitioner pleaded that e-Way Bill requires only mentioning of document details and he had correctly mentioned that goods covered by nine Tax Invoices, however, authorities wrongly took the number of tax invoices to be the tax invoice number. Prima facie, there seems no discrepancy in e-Way Bill attracting seizure of goods. Goods directed to be released without insisting for deposit of any amount and furnishing security as GST already paid on goods.

TVL. R. K. Motors vs. State Tax Officer, Virudhunagar-2019 923) G.S.T.L. 178 (Mad.)

Goods not off loaded at designated place but taken further but were covered by appropriate documents and tax payable also paid by petitioner's principal. Bill was addressed only to the petitioner's principal office at Sivakasi and delivery alone is to be made at Virudhunagar. Since goods being two wheelers cannot be sold without proper registration with the Motor Vehicle Authorities which would require proper documentation, authorities ought to have taken lenient and sympathetic view and directed the driver of the vehicle to move back towards Virudhunagar especially in view of C.B.I. & C. Circular dated 14.09.2018, calling upon the officials to condone minor lapses end not to proceed under section 129 of Tamil Nadu GST Act, 2017.

Epilogue

In order to avoid any difficulty during the movement of goods in transit during the course of business:

- The best thing would be to create an awareness amongst professionals, businessmen and transporters alike.
- Comply the provisions of law scrupulously to facilitate smooth movement of goods.
- In case minor mistakes are crept in, no need to get panicked.
- The awareness of right and duties in law will reduce corruption and build a stronger Nation.

GST Law on Export and Import

Vinay Sonpal
Advocate

PROLOGUE

It is well known to business fraternity and tax professional community, that the indirect tax reforms were introduced in India by 101st Amendment to Constitution of India. Consequently, several indirect taxes subsumed in the Goods and Service Tax regime. The concept was one country, one tax and one market. The field of legislation for levying tax on sale of goods under Entry 54 of List II of seventh Schedule of Constitution was restricted to sale of alcoholic liquor for human consumption and petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel excluding the sale in the course of interstate trade or commerce or sale in the course of international trade or commerce.

Earlier, field of legislation to levy excise duty for all products manufactured in India except alcoholic liquor for human consumption and opium, Indian hemp, narcotic drugs and narcotics, was in List I of VII th Schedule to Constitution of India. After the amendment field of legislation was restricted only to (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products. However, the Article 279(5) provides that GST Council will recommend the date on which goods and service tax will be levied on supply of (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel will. This levy shall be addition to the tax on sale of (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel as provided in Item 54 of List II of Seventh Schedule of Constitution of India, Consequently, from the date recommended by Council,(a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel will bear central excise duty, GST and Sales Tax thereby fueling the consumer price index. Now, at present, States are levying sales tax and Center is levying excise duty.

The field of legislation for tax on sale of newspapers and advertisement published therein and field of legislation tax on service i.e service tax, as contained in Item 92 and 92C respectively of List I of Seventh Schedule of Constitution were deleted by the 101st Amendment to Constitution of India.

Article 246A was inserted by 101st Amendment to Constitution of India. Consequently, the Parliament and every State Legislature is empowered to make laws with respect to goods and service tax. The States, however, were not provided with power to make laws with respect to goods and service tax in respect of supply which takes place in inter-state trade or commerce or in international trade. The powers under Article 245 and 246 were retained and because of non obstante

clause in Article 246A which means the powers in Article 246A are additional and there is no scope of repugnancy of Article 245 or 246 vis a vis Article 246A.

Article 366(12-A) defines "goods and service tax" as tax on supply of goods and/ or service except alcoholic liquor for human consumption.

Pertinent to know that in view Entry 54 read with Article 366(12A) read with Item 84 of List I, Parliament can levy goods and service tax on supply of goods and services, Parliament can also levy Excise Duty on, and State can levy sales tax on sale of (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel and alcoholic liquor for human consumption. It also means that Parliament can levy Excise Duty, inter alia, on tobacco, goods and service tax can be levied, inter alia, on tobacco by Parliament and State Legislature.

Hence (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel and Tobacco shall not be subsumed in GST and will be independently levied.

The provision of Integrated Goods and Service Tax Act 2017 is under Article 269A. Explanation to Article 269A(1) makes the supply of goods or services in the course of import into territory of India deemed to be in the course of interstate trade or commerce. Consequently, all provision of levy of tax on supply of goods and services in the course of interstate trade or commerce in IGST Act shall be applicable to imports,

Custom Duty on Imports and Export are not subsumed in GST. Consequently, Import Duty and GST both will be levied on the value of imports.

IMPORTS:

Definitions of import of goods and services are contained in section 2(10) and (11) of IGST Act;

2(10) **"import of goods"** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

2(11) **"import of services"** means the supply of any service, where––

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India;

As per Section 7(2) supply of goods till the goods cross custom frontiers of India, is treated as interstate sale.

As per section 7(4) the supply of services imported in territory of India is treated as interstate supply.

As per section 13 the place of supply of services shall be the location of recipient of services, except as provided in section 13(3) to (13).

Thus all imports and supply of imported goods till they cross custom frontiers of India are Inter State sale and thus liable to IGST, on reverse charge basis. It is available for adjustment as ITC under section 16 read with section 2 (62) which provides that "input tax" in relation to a registered person, and includes under clause (a) the integrated goods and services tax charged on import of goods, but those who do not have outward GST liability will have double jeopardy inasmuch as, he will have to pay custom duty and in addition IGST. Hitherto, such person had only to pay custom duty.

It may appear that the supply is from foreign non taxable territory, then how can India levy tax on supply from non taxable territory. Answer appears to be that provision of Article 245(2) protects and provides that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial jurisdiction.

It must be noted that import of services (not goods) for consideration not in course or furtherance of business is covered under the scope of supply u/s 7 (1)(b) of CGST Act which is applicable to IGST Act as per Section 21(i) of IGST Act.

Under the pre GST era, the import was not liable to sales tax or purchase tax as per Article 286 under any State Act. The 101st Amendment to Constitution of India amended the wordings of Article 286 by substituting "sale or purchase" with "supply of goods or services or both". Therefore, no State can levy tax on supply of goods or services or both on supply of goods or services or both in the course of import or export. This prohibition puts restrictions on States power to levy tax under Article 246A(1). However, Article 246(2) puts restriction on State to levy tax on supply of goods or services or both in the course of interstate trade or commerce. The Export and Import are treated as Inter State supply of goods or services or both. This is evident from the Explanation to Article 269A(1) and Section 7(5) of IGST Act.

Moreover, as per section 7(2), the supply of goods imported into territory of India, till they cross custom frontiers of India, are treated as sale in the Course of interstate trade or commerce.

As per Schedule II Item 1(b) and Item 5 (f) transfer of right without transfer of title or transfer of right to use goods (e.g. Lease of Goods) is treated as supply of services. If goods are imported for use for any purpose (e.g. high seas exploration of oil or gas, High Seas Drilling of Wells or dredging or an y performance of any act in land mass in India) shall be treated as supply of service and liable for IGST.

Schedule I Item 4 provides that even if services are imported without consideration by a person from a related person or any other establishment outside India in course or furtherance of business shall be treated within the scope of supply.

Hence, following import transactions shall be treated as supply of goods or services or both in the course of interstate trade or commerce:

1. Import of goods or services into India from outside India;
2. Export of goods or services to territory outside India;
3. Supply of goods imported before the goods have crossed custom frontiers of India;
4. Lease of goods from foreign country for consideration in furtherance of business;
5. Services imported without consideration by a person from a related person or any other establishment outside India in course or furtherance of business;
6. Import of services for consideration not in course or furtherance of business.

Now the Section 5, first Proviso states that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

The goods imported into India will be liable to IGST but not under IGST Act instead under section 3(7) of Customs Tariff Act. As per Taxation Laws (Amendment) Act, 2017 changes have been brought about in Customs in the wake of introduction of GST. One change is that, in addition to basic customs duty levied under

section 12 of Customs Act, section 3 of Customs Tariff Act, sub-section 7 levies IGST on import of goods.

Customs Act permits goods that have entered India to be deposited in a bonded warehouse on filing 'into-bond' bill of entry without payment of duty. Hence, goods that have entered India will not attract liability to IGST until they reach the point – location or time – when bill of entry for home consumption is filed. In such cases, IGST is to be levied only when ex-bond bill of entry is filed or until date specified in section 15 is reached. Further, goods imported by SEZ also do not attract liability to IGST as the goods are 'not yet' liable to be assessed to customs duty.

It is thus clear that the import of goods or services is liable to IGST. The rate will as per the Notification 1/2017-Integrated Tax (Rate),dt. 28-06-2017 under the Integrated Goods and Service Tax Act 2017.

By Notification 1/2017-Integrated Tax (Rate),dt. 28-06-2017 in respect of receipt of service from person located in non taxable territory to any person other than non taxable online recipient, IGST shall be payable under reverse charge mechanism by any person located in the taxable territory other than non-taxable online recipient, who is in receipt of receipt of service.

As per section 5 (1) the IGST tax is payable by taxable person. Taxable person is defined in CGST Act, which is applicable to IGST Act, as per section 2(24) and 21 of IGST Act, to mean that the person who is registered or liable to be registered under section 22 or 24 of CGST Act. The section 24(i) person making interstate taxable supply is also liable to registration. Import is treated as interstate supply. The question whether the exporter in foreign country who is exporting goods to India is liable for registration and consequences of failure to get registered are attracted to exporter to India. Consequently the supplier is foreign country is made liable to registration and tax. This is evident from the fact that all imports of goods and services are made liable to recovered as reverse charge. This fastens liability fundamentally on supplier on supply from non taxable territory.

Section 3(7) Custom Tariff Act 1975 provides that any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is levyable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8).By Notification 1/2017-Integrated Tax (Rate),dt. 28-06-2017 , IGST shall be paid on reverse charge basis by the recipient of the services. Thus any service supplied by any person who is located in a non-taxable territory to any person, other than non-taxable online recipient, to any person located in the taxable territory, other than non-taxable online recipient, shall be paid by importer of services. As per the provisions contained in Section 7(1) (b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business shall be considered as a supply. This implies that import of services even for personal consumption would qualify as 'supply' and therefore, would be liable to tax. This would not be subject to the threshold limit for registration, as tax would be payable in case of import of services on reverse charge basis, requiring the importer of service to compulsorily obtain registration in terms of Section 24(iii) of the Act. Although import for personal purposes is included in the definition of supply, the entry 10(a) to Notification No. 9/2017-Int (Rate), dated 28.6.2017 exempts import of services under entire Chapter 99 from payment of GST. However, the GST law has ensured that persons who are not engaged in any business activities will not be required to obtain registration and pay tax under reverse charge mechanism, and in turn, requires the supplier of services located outside India, to obtain registration for the

OIDAR (online information and database access and retrieval) services only. Thus, in general, import of services without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply. Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business.

Hence, information and database access or retrieval services, when recipient is non taxable person the supplier of services shall be liable to pay tax. Thus, in respect of import of online information and database access or retrieval services (OIDAR) by unregistered, non-taxable recipients, the supplier located outside India will be responsible for payment of taxes. The service provider (or intermediary as the case may be) will be required to take a single registration for paying IGST under the Simplified Registration Scheme. Notification no.2/2017 – Integrated tax, dated 19th June 2017 has notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient. Either foreign supplier will have to take registration or he will have to appoint a person in India to pay GST.

The person receiving any such services i.e. OIDAR should pay the IGST to the government only if he is registered under GST as a taxable person

EXEMPTIONS: By Notification No. 18/2017 -Integrated Tax (Rate) Government exempted services imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax levyable thereon under section 5 of the Integrated Goods and Service Tax Act, 2017. By Notification No. 64/2017- Customs, Government exempted all goods imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) read with section 5 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017).

The Import of certain services are exempted as per Notification No 9/2017 (E-10) dt 28.06.2017. Entry 10 provides exemption as follows:

Services received from a provider of service located in a non- taxable territory by –

1. The Central Government, State Government, Union territory, a local authority, a governmental authority; or
2. An individual in relation to any purpose other than commerce, industry or any other business or profession;
3. An entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities;
4. A person located in a non-taxable territory:

The exemption is not applicable to –

(i) online information and database access or retrieval services received by persons specified in entry (1) or entry (2) above; or

(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

OCEAN FREIGHT ON CIF IMPORTS IS HELD TO BE ULTRA VIRES.

The levy of reverse charge on the ocean freight in case of CIF export has been declared ultra vires by Gujarat High Court in Mohit Minerals (P) Ltd. v. UOI 2020-VIL-36-GUJ dt 23-01-2020 in SCA No.726/2018 passed by the

High Court of Gujarat at Ahmedabad. However, Union of India has filed SLP before the Supreme Court and the same is pending. It has been held that no IGST is leviable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Entry 9(ii) of NN-8/2017-IT(R) and Entry 10 of NN-10/2017-IT(R) have been declared as ultra vires the IGST Act due to lack of competency Under Section 5(3) of the IGST Act, the person liable to pay tax can only be "the recipient" of supply. The term "recipient" has been defined in the CGST Act. Importer cannot be said to be the recipient of the ocean freight service in the instant case since the importer has neither availed the service of transportation of goods nor he is liable to pay consideration for such service. The foreign shipping line is engaged by foreign exporter. The importer cannot be made liable to pay tax on a mere premise that the importer is directly or indirectly recipient of service. The Court observed that it is neither an inter-State supply under Section 7 nor an intra-State supply under Section 8 of the IGST Act.

The payment of IGST is available for adjustment as ITC u/s 16 of CGST Act read with section 2(62)(a) against out put supply liabilities. However, when the importer is not engaged in activities liable for GST or its output supply of goods and /or services are not liable to GST, though IGST available for ITC, the importer has to bear the burden over and above IGST.

CGST Circular No. 98/17/2019 issued on 23 April 2019 has clarified the order of ITC utilisation for each tax head. Section 49A provides that ITC under the IGST shall be first utilised for any tax liability before ITC under CGST or SGST or UGST is utilised. Section 49B provides for power to the Government to frame rules for order and manner of utilization of ITC. Consequently, rule 88A has been inserted which provide. The importer can utilise the amount of Integrated Tax paid on import against the liabilities under any of the GST Acts subject to provisions of Section 49,49A and 49B and Rule 88A.

SUPPLY IN COURSE OF IMPORT:

The Article 286 provides for prohibition to State to levy tax on import of goods or services into or export of goods and services out of India. Hence, no State Government levy tax on import of goods or services into or export of goods and services out of India.

Therefore tax is provided under IGST Act in respect of import of goods or services into or export of goods and services out of India.

The provisions of section 7(2) provides that any supply of imported goods before the goods cross custom frontiers of India, shall be treated as interstate supply. Here the goods have been unloaded on the air port or sea port but have not custom frontiers India i.e Bill of Entry is not yet filed, either for home consumption or warehousing, as the case may be, and supply occurs, then in that case though goods are in the Indian Territory, the transaction shall be treated as interstate supply. This is akin to provisions of section 5(2) of the Central Sales Tax Act 1956. Here the deeming fiction is about interstate supply and not import. The term crossing custom frontiers of India is defined in section 2(ab) of CST Act 1956 shall be applicable. The Bombay High Court in *The Commissioner Of Sales Tax,. vs M/S Radhasons International* by judgment dt 8 February, 2019 has held that once the bill of entry is filed either for home consumption or warehousing, goods are deemed to have crossed custom frontiers of India.

Correspondingly, provisions in Schedule III of CGST Act in item 8 provides for exclusion of such transaction from the purview of intra state supply. Supply of warehoused goods to any person before clearance for home consumption and Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the

goods have been dispatched from the port of origin located outside India but before clearance for home consumption are outside the ambit of CGST Act.

Schedule III under CGST Act is amended with effect from 1.2.2019 and Entry 8 has been added so as to provide that following transaction shall neither be supply of goods or services.

(a) supply of warehoused goods to any person before clearance for home consumption and

(b) supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

It appears that this Entry 8 of Schedule III is in contract to provision of section 7(2) of IGST Act. To reconcile both the Acts are different and one provision in the CGST Act does not appear to follow provisions of IGST Act except as provided in Section 21 of IGST Act. The Section 21(i) referes to scope of supply. The Section 7 of CGST refers to Scope of Supply which refers to Schedules. Whether the Schedule III overrides Section 7(2) of IGST Act is a question to be deliberated. If so, intermediary transactions shall not be liable to IGST.

As per second proviso to Rule 138A(1) provides that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01

EXPORTS:

Section 2 of IGST defines:

2(5) **"export of goods"** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

2(6) **"export of services"** means the supply of any service when,––

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or Indian Rupees wherever permitted by Reserve Bank of India;

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

{Section 8, Explanation 1.––provides that where an establishment in India and any other establishment outside India; then such establishments shall be treated as establishments of distinct persons.]

Condition No. (iv) and (v) are not provided in respect of export of goods.. However, as per Rule 96B the Refund availed on export needs to be reversed and paid back to Government along with applicable interest, if the export proceeds in respect of exported goods are not realised within the time permitted by FEMA. But it is actually realised belated the refund reverted back shall be again refunded but interest charged at the time of reversion of refund shall not be refunded.

As per section 13 the place of supply of services shall be the location of recipient of services. However, in certain circumstances as enumerated in S 13(3)to (13), place of supply shall be deemed to be as provided in each sub-section:

Sr No.	Sub Section	Type Of Services	Place Of Supply
1	3	Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services: and services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	The location where the services are actually performed
2	4	services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	The place where the immovable property is located or intended to be located
3	5	The place of supply of services supplied by way of admission to, or organization of a cultural, artistic,sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization	The place where the event is actually held
4	6	Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location	The location in the taxable territory
5	7	Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory,	As being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed

Sr No.	Sub Section	Type Of Services	Place Of Supply
6	8	services supplied by (a) banking company, or a financial institution, or a nonbanking financial company, to account holders; (b) intermediary services; (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.	Location of supplier of services.
7	9	The place of supply of services of transportation of goods, other than by way of mail or courier,	Place of destination of such goods
8	10	The place of supply in respect of passenger transportation services	The place where the passenger embarks on the conveyance for a continuous journey.
9	11	The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board,	The first scheduled point of departure of that conveyance for the journey
10	12	The place of supply of online information and database access or retrieval services	The location of the recipient of services

The effect of this Section 13(3) to (13) is that the definition of supply of services in the course of export as contained in Section 2(6) specially clause(iii) will be qualified and thus place of supply may fall in India. Therefore, such supply shall not fulfill the definition of "export of services". Consequently benefits such as refund u/s 54 will not be available.

As per section 7(5) when in case of supply of goods or services where supplier is located in India and the place of supply is outside India or in case of supply to or by SEZ developer or unit, are treated as interstate supply.

Exports are liable for IGST and are available for clearance without payment of IGST under LUT or Bond and exporter is entitled to refund of unutilised ITC in respect of the goods or services. From 1.4.2021 the provision for availability of clearance on payment of IGST has been restricted only to notified goods or notified taxable persons.

In respect of export of goods, there is no difficulty in determining whether it is export or not. The definition is clear and unambiguous. When the goods are taken out of India to a place outside India for consideration in the course of or furtherance of business, it will be treated as export. Hence, provisions of Section 49(5), Section 54 of CGST Act for refund and Section 16 of IGST Act for zero rated supply will apply.

In respect of supply of services, though supply of goods or services are inter state sale

as per section 7(5)(a), to treat supply of service as export, five conditions under section 2(6) will have to be satisfied before it can be treated as export to attract provisions of Section 49(5), Section 54 of CGST Act for refund and Section 16 of IGST Act for zero rated supply will apply.

Export being inter state supply is liable to pay IGST.

However, the input tax credit available can be adjusted against the liability of IGST on export, and it can be done also even if the export supply is exempt supply.[Section 16(2)].

So far as the Export Invoice is required to contain all particulars, endorsements and requirements as specified for tax invoice as per section 31 read with Second Proviso to the Rule 46.

In respect of goods taken out of India for exhibition purpose such as in trade fair, Board has issued a Circular No. 108/27/2019 dated 18.07.2019 clarifying the procedure. It has been clarified Such activity except when it is covered under Schedule I of the CGST Act does not constitute supply as no consideration is involved at that point in time and consequently same cannot be considered as Zero rated supply under section 16 of the IGST Act.

DEEMED EXPORTS

Section 147 provides for deemed exports. The Government may, on the recommendations of the Council, notify certain **supplies of goods** as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

This akin to pen ultimate sale under section 5(3) of CST Act.

Notification no. 48/2017-Central Tax dated 18.10.2017 wherein the following categories of supply of goods have been declared as Deemed Exports: –

Description of Supply

01. Supply of goods by a registered person against Advance Authorisation

02. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation

03. Supply of goods by a registered person to Export Oriented Unit

04. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation

For the purposes of the above notification,–

1. "Advance Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.

2. Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.

3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

Deemed export concept is applicable only when the goods in question are manufactured in India. Therefore, although where the goods are of the nature that are notified by the Government as goods which qualify as "deemed exports", if such goods are not manufactured in India they shall not enjoy the benefit of being treated deemed export..

The export of goods or services is treated as zero rated supply. Supply of goods or services to Developer of SEZ or Unit in SEZ are also treated as zero rated supply. "Zero rated supply" is a term and that does not mean that it is NIL rated IGST is not payable. It only means that benefits of Section 16 of IGST Act will be available to transaction which fall under zero rated supply. The benefits are:

1. He is entitled to clear the goods for export without payment of IGST under Bond or LOU under Rule 96A..
2. He can claim refund of unutilisied tax credit.
3. He can pay IGST and claim refund of such tax paid.(This is discontinued wef 1.4.2021 except for notified goods or notified persons)

For Example.

"A" is manufacturer of TV Sets:

"A" Exports television less than 32" worth Rs 30,00,000.00.

IGST liability @ 18% 5,40,000.00

In first option he can execute Bond or LUT and export without payment of IGST and subsequently claim refund of ITC related to input of this products. It is difficult to give working of the ITC related to input for export when there are intra state and interstate sales also. Hence, this mode is cumbersome.

Second, option is make payment of IGST of Rs 5,40,000.00 after deducting available ITC and then claim refund of Rs 5,40,000.00 which will cover payment of IGST and ITC.

Section 49(5), Section 54 of CGST Act for refund and Section 16 of IGST Act for zero rated supply read with. Rule 89(4) (for LOU or Bond) of the CGST Rules, 2017 as amended vide Notification No. 47/2017- Central Tax dated 18.10.2017 allows supplier of such supplies to claim refund of tax paid thereon.

Refund of tax paid on export is provided in Section 49(6) and S 54(3)(i) of CGST Act read with section 16 of IGST Act. The Relevant rules are Rule 89,96,96A and 96B.

Amendment is section 16 of IGST by Finance Act 2021 has made in definition of zero rated supply where by the supply of goods or services to SEZ developer or SEZ unit shall be treated as zero rated supply only when the same is for authorised operations. Earlier words for authorised operations was not condition precedent.

Now after amendment for exporters only one option available to the exporter that is he has clear the goods only under Bond Or LUT. The second option of paying the IGST and claim the refund has been restricted for the assesses who have been notified as class of goods or services or class of taxable persons who can export on payment of IGST and claim refund of the taxes so paid.

Consequently reading definition of Section 2(59) and 2(62), in LUT or Bond mode the ITC will not be available on the capital goods. Now determination of refund of unutilised ITC related to the export goods or services is going to be tug of war between taxable person and department. One more change is made by providing for realisation of export value of goods exported. If the amount of value of goods exported is not realised as provided as per FEMA, then exporter has to refund within 30 day of expiry of time provided for realisation as per FEMA, the amount so refunded with interest and when realisation occurs then he can claim refund again but interest paid shall not be refunded.

SPECIAL PROVISIONS FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING:

The Rule 96A. provides for special provisions for export under bond or LOU.

> Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11

> To the jurisdictional Commissioner,

(i) binding himself to pay the tax due along with the interest within a period of —

(a) fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner,] from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange [or in Indian rupees, wherever permitted by the Reserve Bank of India

> The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

♦ However, where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

♦ However, the information in Table 6A furnished shall be auto-drafted in FORM GSTR-1 for the said tax period

> Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79. (4)

> The export as allowed under bond or Letter of Undertaking withdrawn shall be restored immediately when the registered person pays the amount due.

> The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

> Circular No. 26/2017- Customs dated 1st July, 2017 has clarified that the procedure as prescribed under rule 96A of the said rules requires to be followed for the export of goods from 1st July, 2017.

> By Circular No. 2/2/2017-GST 4 th July, 2017 it is stated that the acceptance of the Bond/Letter of Undertaking required to be furnished by the exporter under rule 96A of the said rules shall be done by the jurisdictional Deputy/Assistant Commissioner.

> These provisions shall apply, mutatis mutandis, in respect of zero-rated supply

of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

DETAILED ANALYSIS OF RULES FOR REFUND OF GST ON EXPORT.

The taxable person is entitled to refund of unutilised input tax credit in respect of zero rated supplies without payment of tax under S. 54(3) of CGST Act and S. 16(3)(a) of IGST Act, and in respect of refund of IGST paid on export, he is entitled to refund under S.16(3)(b) read with S 54 of CGST Act..

Section 54 of CGST and Section 16 of IGST r/w Rules 89 to 96B, provide for refund of GST on goods or services exported out of India. First proviso to section 54(3) at threshold provides no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

REFUND IN CASE OF EXPORT OF GOODS AND SERVICES:

A. Refund of GST, other than IGST paid on export of goods or services, of unutilied tax credit for goods or services, exported out of India. (Rule 89)

The refunds, u/s 54, of unutilised ITC, which are entitled to be refunded to any person, on export of goods, except the refund of IGST, and except where export is subject to export duty, are to be granted on an application in Form GST REF 01, to be made at the end of tax period i.e. end of the period for which return is required to be furnished, before 2 years (S.54) of relevant date. The relevant date is defined in S 54. The relevant date is as follows:

For Export of Goods:

(i) In case of export by goods by sea or air, the date on which ship or air craft leaves India;

(ii) In case of export of goods by land, the date on which the goods pass frontiers of India;

(iii) In case of export of goods by Post, the date of dispatch of goods;

(iv) In case of deemed export, the date on which return for such deemed export is filed;

For Export of Services:

(i) Where services are supplied prior to receipt of consideration. The date receipt of consideration in convertible foreign exchange or Indian Rupees if permissible by RBI;

(ii) In case of advance payment of consideration, the date of issue of invoice;

Upon making an application for refund of unutilised ITC, the electronic credit register is to be debited with the amount of claim. It appears that there is no provision for reversing the debit in case, refund application is rejected for any reason.

The Rule 89(4) provides for formula for calculating the amount to be refunded.

If the claim for refund is less than **two lakh Rupees**, the claimant may file declaration, in lieu of documentary evidence to the effect that the claimant has not incidence of such tax claimed as refund has not been passed on to any other person.

The refund is compulsorily granted within **sixty days** of the date of receipt of application complete in all respect.

B. Refund of IGST paid on goods or services exported out of India. [Rule 96]

REFUND IN CASE OF EXPORT OF GOODS:

> The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India (Rule 96). [It is not applicable to the goods exported under LUT or Bond without payment of IGST. This category will file GST-RFD-1.]Hence, no separate application is required to be filed when IGST is paid on export.

> Such application shall be deemed to have been filed only when:-

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be;

> The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

> However, where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

> However, the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

> Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be **electronically credited** to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

> The claim for refund shall be withheld where,-

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

> Where refund is withheld in accordance with the provisions of clause (a) above the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

> Upon transmission of the such intimation, the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.

> Where the applicant becomes entitled to refund of the amount withheld under clause (a) above, the concerned jurisdictional officer of central tax, State tax or Union territory tax, shall proceed to refund the amount after passing an order in FORM GST RFD-06.

> The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, in that case the exporter shall not be paid any refund of the integrated tax.

REFUND IN CASE OF EXPORT OF SERVICES Rule 96(9).

> The application for refund of integrated tax paid on the **services** exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89.

> The persons claiming refund of integrated tax paid on exports of goods or services should not have :

(a) received supplies on which the **benefit** has been availed, under following Notifications of the Government of India, Ministry of Finance :

(I) Notification No. 48/2017-Central Tax, dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or

(II) Notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, or

(III) Notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017,

(b) availed the benefit under (except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.):

(I) Notification No. 78/2017-Customs, dated the 13th October, 2017, or

(II) Notification No. 79/2017-Customs, dated the 13th October, 2017 for:

> In the Explanation it is provided for the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.

PROVISONAL REFUND:

As per Section 54(6) read with rule 91, if the claimant is not prosecuted for offence under the Act or under existing law for evasion of tax exceeding Rs 2,50,000/- in last five years of the year for which refund relates, he is entitled to provisional refund of 90 % of the claim made.

RECOVERY OF REFUNDS GRANTED:

The Rule 96B provides recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.

> Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period,

> If taxable person fails to deposit the amount refunded shall be recovered along with interest under section 50 in accordance with the provisions of section 73 or 74 of the Act.

> If the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

> Where the sale proceeds are subsequently realised by the applicant, in full or part, after the amount of refund has been recovered and the applicant shall produce evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India

REFUND CLAIM IS NOT MANDATORY:

One must keep in mind that refund is alternate to adjust ITC against GST dues. If no refund application is made or no refund granted, say within a period of two years as provided in section 54, the amount of ITC will not extinguish and the same remains available for adjustment against GST dues.

The author has made efforts to bring all statutory provisions in respect of export and import under one umbrella.

(This article is also reported in Taxguru)

"Be active! Take on responsibility! Work for the things you believe in. If you do not, you are surrendering your fate to others."

"Thinking is the capital, Enterprise is the way, Hard Work is the solution"

– Dr. A.P.J. Abdul Kalam


Registration under the GST Regime Part II: Cancellation of GST Registration

CA Yash Dhadda & CA Shuchi Sethi

Introduction

In the Part I of this article series, the authors have discussed in detail the issues concerning the registration as given under Section 22, 23, 24 and 25 of the CGST/ SGST Act(s). Continuing from there, in given part of the article series, the authors have made an endeavour to dissect selected critical issues around provisions of cancellation of registration contained in the Act. The relevant procedural rules have also been touched wherever necessitated.

The registration granted under the GST Acts (cumulatively referred for CGST / SGST & IGST Act) can be cancelled for specified reasons. The cancellation can either be initiated by the department on their own motion or the registered person can apply for cancellation of their registration. In case the registration has been cancelled by the department there are provisions for revocation of the cancellation of registration also. However it is important to consider that liability to pay unpaid tax does not extinguish if registration is cancelled. The same can be proposed, confirmed and recovered even after the cancellation of registration. The machinery provisions regarding the same are well enumerated under Chapters of Assessment, Demand & Recovery contained in the GST Acts.

Analysis of Section 29: Cancellation or suspension of registration

The substantive provisions of the GST law provide power to the proper officer that he may cancel the registration of a registered person for specified reasons.

The Act does not appear to have any provision placing a compulsive mandate for the registered person to apply for cancellation of registration for any reason or event. It may choose to do so in certain circumstances. However Rule 20 requires filing of the Application for cancellation of registration in FORM REG-16 within 30 days from occurrence of event warranting cancellation. Circular No. 69/43/2018-GST has clarified that it might be difficult in some cases to exactly identify or pinpoint the day on which such an event occurs. In such cases, the 30-day deadline may be liberally interpreted and the application for cancellation of registration may not be rejected because of the possible violation of the deadline.

The cancellation can either be initiated by the proper officer on his own motion or on application by the registered person for cancellation of registration. The reasons for which cancellation may be done have been divided into two parts in the section:

I. Reasons for Cancellation by proper officer on application or on his own motion:

The reasons included in sub-section (1) are broadly the genuine cases where the registration should not be continued like discontinuation or transfer or change in constitution of business. For reasons under this category, usually the

registered person can file an application for registration which may be approved by the proper officer, or the proper officer also has power to cancel registration for such reasons on his own motion.

To avoid the misuse of discretion to approve cancellation of registration in such genuine cases, the Circular 69 *supra directs* that proper officer should accept all applications within a period of 30 days from the date of filing, except in the following circumstances:

- The application is incomplete, i.e. all the relevant particulars have not been entered
- In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation.

The reasons for cancellation under this category are:

a. Discontinuation or transfer of business

The business has been discontinued, transferred fully for any reason including

o Death of the proprietor

o Amalgamation with other legal entity

o Demerger

o Disposed of business otherwise;

b. Change in the constitution of the business

c. The taxable person is no longer liable to be registered. (Except for the person who has taken voluntary registration)

II. Reasons for Cancellation by proper officer at his discretion

The reasons included in sub-section (2) are broadly certain cases of contravention or non-compliance of the provisions of the Act or the rules and cases where the registration does not appear to have been taken for genuine business transactions. In such cases, the proper officer may cancel the registration from any date as he may deem fit, including any retrospective date.

The cancellation of registration is a severe action and a stern power bestowed by the law in the hands of proper officer. It can bring the business of a person to a complete halt. Hence the exercise of such powers must be in strict accordance to the provisions of the law only and not arbitrary. They should of course be used to curb malpractices and tax evasion, but should not cause undue hardship in conduct of business to genuine taxpayers.

The reasons for cancellation under this category are:

a) Contravention of **such provisions of the Act or the rules made thereunder as may be prescribed.**

On a careful reading of the provision, an important point which comes out is that cancellation on this ground can be attracted only on contravention of **such provisions of Act or rules which are prescribed** in this regard.

Hence the rules in exercise of the powers given by Section 29(2)(a) are only authorised to prescribe certain provisions of the Act or the rules made thereunder under which cancellation may be done. Such rule is not authorised to provide a new reason for cancellation of registration on its own beyond the provisions of the Act or rules.

Now, Rule 21 of CGST Rules prescribes certain cases in which the registration granted to a person is liable to be cancelled, which are as under:

(a) If the said person does not conduct any business from the declared place of business; or

(b) Issue of invoice or bill without supply of goods or services in violation of the

provisions of this Act, or the rules made thereunder; or

(c) Violation of the provisions of section 171 of the Act or the rules made thereunder - Anti-profiteering provisions

(d) Violation of the provision of Rule 10A

Rule 10A requires furnishing of Bank Account Details on GST portal after registration not later than earlier of the following:

- 45 days from the date of grant of registration or
- the date on which the return required under section 39 is due to be furnished

(e) ITC availment in violation of the provisions of section 16 of the Act or the rules made thereunder - Provisions for eligibility and conditions for taking ITC

(f) Reporting in GSTR-1 in excess of GSTR-3B

The person furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return in FORM GSTR-3B under section 39 for the said tax periods.

(g) Violation of the provision of rule 86B.

As per Rule 86B, the registered person shall not use the amount available in electronic credit ledger to discharge his output tax liability in excess of 99% of such tax liability. This means 1% of output tax liability shall be discharged through Electronic Cash Ledger. The provision is applicable where value of taxable supply, other than exempt supply and export, exceeds INR 50 lakh in a month. However, it is not applicable if the person falls under certain exceptions provided under the said rule. Hence cancellation can be made for this reason only for persons who are not covered under the exceptions to the rule and violated the requirement to pay tax in cash.

On a careful reading of Section 29 along with Rule 21, a disparity in the authority granted by the Act and its use through the rules is observed. The Act only allows the rules to prescribe a provision of Act or rules, on contravention of which cancellation may be invoked. Some of the clauses of Rule 21 actually prescribe a provision of Act or rules only, however clause (a), (b) and (f) above seem to travel beyond their power from the Act. Rather than prescribing a violation of provision of the Act or rules, these clauses have brought in additional conditions for cancellation of registration by themselves. For instance, with regard to clause (a), conduct of business from declared place of business is not a provision of the Act or rules and violation of such a requirement cannot be made a ground for cancellation of business by delegated legislation without any authority from the Act. Similarly, clause (b) also does not prescribe the provision of Act or rules as authorised to do.

Thus on a harmonious reading the given clause (a) should be read as one of the violations of the provisions of the Act only when it is established that assessee was conducting business from any other place not forming part of registration certificate and the place of business which is mentioned in the registration was never intended to be used to conduct business. Similarly clause (b) should be only treated as triggering point for violation of provisions of the Act when assessee never intended to make a supply against the invoice issued. Conclusively, the non-existence of the assessee at the time of visit of the proper officer to its registered premises or timing gap between the supply made and invoice raised cannot be sole reasons for triggering of clause (a) or (b) of Rule 21 unless the intention to evade taxes is also established.

b) Non-filing of returns

There are provisions for late fees and penal consequences for non-filing of returns under the law. Section 46 requires issue of notice to return defaulters for not furnishing GSTR-3B, GSTR-9 or GSTR-10 in FORM-3A. The provisions of best judgment assessment can also be invoked without any separate notice or further communication. Besides said implications for non-filing of returns, Section 29 also has a repercussion of cancellation of registration for non-filers of returns for a continuous period as under:

- For person under Composition levy - 3 consecutive tax periods
- For other registered person - Continuous period of 6 months

It is to be noted that GSTR-3B is a return under the Act and GSTR-1 is not a return but a statement of outward supplies. So non-filing of GSTR-3B for above period can be a reason for cancellation.

c) Non-commencement of business within 6 months by a person having voluntary registration

The application of registration in REG-16 requires reason for registration where Voluntary registration is a separate reason. In case of voluntary registrations, proper officer may cancel the registration if the registered person has not commenced business within 6 months from the date of registration.

d) Registration obtained by means of fraud, wilful misstatement or suppression of facts

The intent of fraud etc. must be brought on record by the proper officer to invoke the proceedings for cancellation and the replies of the registered person must be considered carefully to provide a fair opportunity of being heard to the assessee.

Amount payable on goods held with registered person on cancellation [Section 29(5)]

Every registered person whose registration is cancelled shall pay an amount, which is higher of the input tax credit availed or output tax payable on following goods held on the day immediately preceding the date of cancellation:

- Inputs held in stock
- Inputs contained in semi-finished or finished goods held in stock
- Capital goods or plant and machinery

Procedure of calculation of ITC in respect of goods held in stock

Rule 44 prescribes the manner for calculation of reversal of ITC for this purpose as under:

➢ **For inputs held in stock and inputs contained in semi-finished and finished goods held in stock**

The ITC shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs.

The amount payable shall be higher of ITC calculated in respect of stock held before cancellation or output tax payable on such goods.

➢ **For capital goods held in stock**

The Act provides that the amount payable shall be higher of Input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or tax on the transaction value as per Section 15. The provision of Act further delegates a power to the rule to prescribe the manner of calculation of amount payable.

On a perusal of Rules, it is observed that Rule 44 has been notified under powers

of Section 29(5) but it does not prescribe any percentage points as required under the proviso to Sec. 29(5). It rather describes a different manner of calculation of amount of input tax credit relating to capital goods held in stock, which is as under:

Input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

Illustration: Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month

Input tax credit taken on such capital goods= C

Input tax credit attributable to remaining useful life= C multiplied by 5/60

The above manner has to be used to calculate the ITC in respect of capital goods in stock and the resultant should be compared to tax on transaction value and the higher of the two needs to be paid and reported in the Final Return in FORM GSTR-10.

Procedure for Cancellation by officer

An opportunity of being heard must be granted to the person whose registration is sought to be cancelled.

For invoking suo motu cancellation of registration, the proper officer must have reasons to believe that the registration of a person is liable to be cancelled under section 29 and such reasons must be brought on record and communicated to the registered person.

A show cause notice in in FORM GST REG-17 shall be issued requiring the assessee to explain his grounds against cancellation, if any within 7 working days from receipt of notice by a reply in FORM GST REG-18.

On receipt of reply in REG-18 or reply to the intimation of suspension cum notice of cancellation in REG-31, the proper officer shall issue Order for cancellation in REG-19 within 30 days or if the reply is satisfactory, the proper officer shall drop the proceedings and pass an order in REG-20. In case Order of cancellation is issued in REG-19, the order will also direct the person to pay arrears of any tax, interest or penalty including the amount liable to be paid on account of ITC reversal on stock and capital goods under Section 29(5).

Proceedings in case of cancellation on ground of non-filing of returns

In the usual course, the notices for cancellation on non-filing of returns are issued with a time frame of 30 days to reply. Instead of replying to such notice, the noticee can furnish all the pending returns, at priority.

Where the noticee furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer has to drop the proceedings and pass an order in FORM GST-REG 20.

However, if the returns are not filed within given time frame and the Order of Cancellation is issued by the proper officer, the proceedings of revocation of registration have to be resorted to.

Suspension of Registration

Vide CGST (Amendment) Act, 2018 dated 29.08.2018, an amendment was brought in the substantive provisions of cancellation of registration under Section 29 of the Act to provide for suspension of registration during pendency of cancellation proceedings. The amendment was notified with effect from 01.02.2019.

Further vide Notification 03/2019- Central Tax dated 29.01.2019, Rule 21A was inserted in the CGST Rules 2017 for procedural aspects related to suspension of registration and the said rule was also effective from 01.02.2019.

Effect of Suspension of registration

Broadly, whether the suspension has been done either on application of cancellation by registered person or by the proper officer on his own motion, the effect of suspension of GST registration is that during the period of suspension –

- **The registered person shall not make any taxable supply.**

  This means he shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

- **The registered person shall not be required to furnish GSTR-3B**

  This means he shall not be required to furnish returns under Section 39 i.e. GSTR-3B.

  However, the requirement to furnish any other return or statement has not been done away with, hence furnishing of GSTR-1, ITC-04 or any other statement or return is required as per usual time limits under the provisions of law.

  A Circular was issued vide Circular No. 69/43/2018-GST dated the 26th October, 2018 regarding cancellation of registration which directs the authorities not to issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration. As per the Circular, the intent of the amendment to bring suspension provisions into the Act is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the pendency of the proceedings related to cancellation.

Further in case where the suspension has been done by the proper officer on his own motion under Rule 21A (2) or (2A), an additional effect of suspension is that during the period of suspension-

- **The registered person shall not be granted any refund under section 54**.

  In cases where the suspension has been done during pendency of cancellation proceedings initiated by the proper officer on his own motion having reasons to believe that there is violation of certain provisions of the Act or rules, proper officers will not grant any refund under Section 54 of the Act.

Reasons for which Suspension of registration can be done

The cancellation of registration whether on application by the registered person or by the proper officer on his own motion, has to be done by following a procedure which shall be concluded by issue of Order for cancellation of registration on completion of proceedings. The substantive provisions provide that **during the pendency of the proceedings of cancellation,** the registration may be suspended **for such period and in such manner as may be prescribed.**

The provisions of the Act are clear to state that registration may be suspended during the pendency of the proceedings of cancellation. The reasons for which proper officer has powers for cancellation of registration have already been discussed above, and the cancellation proceedings can be initiated by exercise of such powers only and hence suspension may be done during pendency of said proceedings only.

The Act does not provide any scope for a delegated legislation to prescribe reasons for which suspension of registration may be done. The rules are authorized only to prescribe the **period and manner** in which registration may be suspended.

However, it appears that Rule 21A (2A) in an unwarranted manner provides for a reason where a mismatch or any other analysis indicates contravention of provisions of Act or rules leading to cancellation

- **Deemed Suspension on application for cancellation**

  The rules in this regard provide that in case, the registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, till the completion of proceedings for cancellation.

- **Suspension by proper officer**

  In case, the proper officer exercises his powers to cancel the registration, he has been granted a discretionary power that he may suspend the registration of a person with effect from a date to be determined by him, for the period during pendency of the cancellation proceedings.

  1) Specified circumstances where registration is liable to be cancelled as per proper officer

  Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21 (Situations mentioned under the Topic at Point II above), he may suspend the registration the said person from a date at his discretion including a retrospective date.

  2) Analysis indicating contravention of the provisions of the Act or rules, leading to cancellation of registration

  Rule 21A(2A) of CGST Rules has been brought w.e.f 22.12.2020 to provide for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and where continuation of such registration poses immediate threat to revenue.

  As per the rule, immediate suspension of registration can be done where significant differences or anomalies indicating contravention of the provisions of the Act or the rules, leading to cancellation of registration are shown on following analysis –

  - Comparison of GSTR-3B with GSTR-1 (Details of outward supplies furnished in FORM GSTR-1)
  - Comparison of GSTR-3B with GSTR-2A/2B (Details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1)
  - Such other analysis, as may be carried out on the recommendations of the Council.

The above rule makes the repercussions of mismatch between GSTR-1 and GSTR-3B or mismatch between GSTR-2A/2B and GSTR-3B very grave, since such registrations will be prone to suspension with immediate effect without any pre-intimation. Even if there is no contravention of the Act or rules according to the person, his business can be brought to standstill by suspension. The registered person will only have a chance to give reply to the show cause notice for cancellation which may

be acted upon by the proper officer in their own way and time frame.

There is a procedure for further actions to be taken by the proper officer prescribed by Rules and guidelines have been issued by CBIC vide **Circular No. 145/01/2021-GST** for implementation of the provision of suspension of registrations under such rule, i.e. Rule 21A(2A).

Procedure of Suspension based on mismatch or other analysis (Rule 21A (2A) and Circular No. 145/01/2021-GST)

1) As per the rules, Intimation in **FORM GST REG-31** has to be made to the registered person highlighting the differences and anomalies observed, in either of the two modes:

   o Electronically, on the common portal

   o By sending a communication to his e-mail address provided in registration profile

2) As per the Circular, the registration of specified taxpayers shall be suspended on the recommendation of the Council.

3) System generated intimation for suspension and notice for cancellation of registration in FORM GST REG-31 shall be sent to such taxpayers on their registered e-mail address.

4) The notice/intimation shall be made available to the taxpayer on common portal in FORM GST REG-17 (Form for Show Cause Notice for Cancellation of Registration) till the time functionality for FORM REG-31 is made available on portal.

5) The person would be required to reply to the jurisdictional officer against the Notice/Intimation in FORM GST REG-18 (Form for Reply to Show Cause Notice for Cancellation of Registration) at common portal within 30 days.

6) After examination of the response received, proper officer may pass an order either for dropping the proceedings in FORM GST REG-20 or for cancellation of registration in FORM GST REG-19.

7) Detailed verification of the documents and recovery of short payment of tax, if any can be continued post revocation of suspension also. In case, the proper officer finds the registration liable for cancellation after detailed verification or otherwise, he can again initiate the proceeding of cancellation of registration by issuing of notice.

Principles of Natural Justice and rights of registered person w.r.t Cancellation and Suspension

Opportunity of being heard

Section 29(2) requires the proper officer to grant an opportunity of being heard to the person before cancellation of registration.

In this regard, an issue was raised before High Court of Allahabad in case of **Kashi Bartan Bhandar Vs State of U.P.** that order has been issued for the cancellation of registration only on the prima facie satisfaction that assesse is not carrying any business and assessee was not served with any show cause notice in proper mode as prescribed under Act. The Court held that the said order was in violation of principles of natural justice and deserved to be set aside since assessee was not served with any show cause notice in proper mode and the order was passed only on prima facie satisfaction that assessee was not carrying any business without coming to any final conclusion.

Unlike cancellation, under the Act or the rules relating to suspension of registration, there is no provision for granting of opportunity of being heard to the registered person. Initially when Rule 21A was inserted in the CGST Rules for suspension of registration, the proper officer was allowed to suspend the registration

of a person only after affording a reasonable opportunity of being heard to the person. However such requirement has been omitted with effect from 22.12.2020 vide Notification No.94/2020- Central Tax.

However, suspension of registration being such an aggressive action which can put the business of a person to a standstill, it is difficult to sustain the principles of natural justice without an opportunity of being heard.

Challenge against suspension

On perusal of the rules for suspension of registration, it is observed that there is no requirement for issue of any order of suspension of registration and neither any procedure nor Forms have been prescribed for the suspension of registration. Practically, when a registration is suspended by the proper officer, the status of GSTIN of the registered person is marked as 'Suspended'.

In this regard, recently High Court of Rajasthan has given a judgment in case of **Avon Udhyog v. State of Rajasthan [2021] 128 taxmann.com 122 (Rajasthan),** where a Notice for cancellation was issued to the registered person and his registration was suspended with immediate effect and no order for proceedings was issued and 3 months were passed.

The assessee plead before the Court that the Assessing Authority is required to take a final decision pursuant to notice of cancellation of registration at the earliest, so that a businessman's fundamental rights are not kept in abeyance on account of suspension of registration.

The Court held as under:

Suspension of a registration of an assessee has its own consequences - it brings the entire business of an assessee to a stand still. In a way it is worse than cancellation. Against cancellation, an assessee can take legal remedies but against suspension pending an enquiry, even if the assessee chooses to take remedies, the authorities or the Court(s) would normally show reluctance.

In the opinion of this Court, the proceedings of cancellation of registration cannot be kept hanging fire on any pretext, including that assessee failed to file reply within the time allowed. Authority issuing the notice is statutorily bound to pass order in terms of sub-rule (3) of Rule 22 of the Rules.

Hence a conclusion can be drawn that the Court has clarified that suspension of registration should not be dragged beyond the period of 30 days. A final order must be issued for the proceedings in such time frame which gives the effect of revocation to the suspension.

Revocation of suspension of registration

The suspension of registration shall be deemed to be revoked upon completion of cancellation proceedings by proper officer with effect from date of suspension itself. Further, in case having regard to the submissions of the assessee, if the proper officer deems fit, he may revoke the suspension of registration anytime during the pendency of the proceedings for cancellation also.

Where any order having effect of revocation of suspension is passed, the invoices for supplies made during suspension should be issued within 30 days of such order and such outward supplies shall be declared in the first return after such revocation of suspension.

Analysis of Section 30: Revocation of cancellation of registration

Any registered person whose registration is cancelled by the proper officer on his own motion may apply to such officer for revocation of cancellation of the registration within 30 days from the date of service of the cancellation order. The rules are authorised to prescribe conditions subject to which revocation can be applied and the manner of application in FORM REG-21.

Conditions and Procedure of Revocation of Cancellation for non-filers of returns

Application for revocation in case of cancellation due to non-filing of returns shall not be filed unless such pending returns are furnished and dues have been paid.

The returns due for the period after the date of order of cancellation or effective date of cancellation till the date of the order of revocation of cancellation shall be furnished by the person within a period of 30 days from the date of order of revocation of cancellation.

Q. Whether late fees or interest/penalty can be levied on delayed filing of return for period of wrong cancellation?

In a writ petition filed in High Court of Madras in case of **Special Wire Products (P.) Ltd. Vs Deputy/ Assistant Commissioner of GST and Central Excise,** the Court waived the interest, penalty and late fee on payment of GST charged by department for period during which registration was cancelled due to fault of respondents.

Extension of time frame for application for revocation

There was cancellation of a large number of registrations by the proper officers by service of notice on email address or portal where the assessees did not observe the receipt of such notices and all the time limits for replying to SCN, applying for revocation and even filing of appeal along with condonation were passed. Hence considering that GST is a new Act and taxpayers were not familiar with the manner of service of notice by e-mail or on portal, a Removal of Difficulty Order was issued vide **Order No. 5/2019-GST dated 23rd April, 2019** to add a proviso to Section 30 of the Act to allow filing application for revocation of cancellation up till 22.07.2019 against such orders passed up to 31.03.2019. The difficulties in revocation of cancellation persisted and one more Removal of Difficulty Order vide **Order No. 01/2020-Central Tax dated 25th June, 2020** was issued which clarified that for time limit of 30 days shall be calculated from 31st of August 2020 or date of service of cancellation order whichever is later.

Further vide Finance Act 2020, Section 30 has been amended and the amendment has been notified with effect from 01.01.2021 vide **Notification No. 92/2020- Central Tax, dated 22.12.2020** to grant power for extension of time limit to the following officers for applying for revocation of cancellation:

- The Additional or Joint Commissioner, as the case may be, for a period not exceeding 30 days
- The Commissioner, for a further period not exceeding 30 days in addition to above

A Circular vide **Circular No. 148/04/2021-GST dated 18th May, 2021** has also been issued for implementation of the above provision of extension of time limit.

Remedy after rejection or lapse of time limit for application of revocation of cancellation

In case, the application for revocation could not be filed under any of the extended time limits, the registered person has to file an appeal under Section 107 of the Act to the First Appellate Authority. The time limit to file the appeal is 3 months from service of order and the delay of 1 month can be condoned by the Authority.

In case, the application for revocation was filed but the same was rejected and the time limit to file appeal against the cancellation order has been elapsed, the appeal can be filed against the order of rejection of revocation of cancellation.

Filing of Final Return after Cancellation

Section 45 of the Act requires every registered person whose registration has been

cancelled to furnish a final return within 3 months of the date of cancellation or date of order of cancellation, whichever is later, in FORM GSTR-10. On failure to file such return within 3 months, a late fee of Rs. 100 per day subject to a maximum amount of Rs. 5000 is payable.

Method of Authentication and Service of Documents

The submissions by the registered person (applications, reply to notices, returns, appeals or any other document under the provisions of registration rules) and all notices, certificates and orders under the provisions of Registration Chapter shall be issued by the proper officer or authorised officers electronically.

- Digital signature certificate
- E-signature as specified under the provisions of the Information Technology Act, 2000
- Any other mode of signature or verification as notified by the Board in this behalf

It should be noted that the procedure for application for cancellation or revocation of cancellation require the person to submit the applications electronically at the common portal but there is no provision under the rules requiring the uploading of any of the notices or orders by the proper officer on the common portal.

Hence the service must be governed by the provisions of Section 169 of the Act which allows service by any one of the following methods:

- Physical tendering
- Registered Post
- E-mail at registered e-mail address
- Making available at common portal
- Publication in newspaper

As per definition of common portal in Sec. 2(26) read with Section 146 of the Act, the common portal for registration has been notified as www.gst.gov.in.

Conclusion

The cancellation of registration has severe impact on business. The Appellate and judicial authorities may be reached out in case of unjust approach of Assessing Authorities but the acts of suspension and cancellation brings the business to a halt for the period of proceedings at any forum. Hence endeavour should be made to comply with the provisions of the Act and adhere to the time limits.

"Unless India stands up to the world, no one will respect us. In this world, fear has no place. Only strength respects strength."

"Climbing to the top demands strength, whether it is to the top of Mount Everest or to the top of your career."

– Dr. A.P.J. Abdul Kalam

Note on Section 49 i.e. ITC Utilisation

CA Suresh Choudhary

A. Legal Provisions

To understand the manner of ITC utilisation we must first read following legal provisions:

1. *Section 49 (5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of--*

   (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

   (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

   (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

   Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

   (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

   Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

   (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

   (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

2. Additional Sections Inserted with effect from 01/02/2019

Section 49A. *Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.*

Section 49B. *Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation*

of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

3. Rule 88A Inserted vide Notf No. 16/2019-CT dt. 29.03.2019

Rule 88A.

Order of utilization of input tax credit. - Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

B. Storyline: Kahani Ghar Ghar ki

To understand how ITC is utilised towards payment of GST liabilities, one needs to read section 49 followed by section 49A and 49B. Finally rule 88A. Do you think it is simple and if not, lets make it simple.

There are three members in a family.

a) Husband / Son (IGST)

b) Mother (CGST)

c) Wife (SGST)

Rules of Family:

i. Son will have to bear his own expenditure from his own pocket first;

ii. Mother and Wife will not spend anything from their own pockets till Son / Husband has any money left with him;

iii. Mother and Wife will not give any money to Son / Husband till he has any money left with him;

iv. Son can give his money to mother and Wife;

v. In case Son / Husband needs any money, he will have to ask mother first and then Wife;

vi. In any case wife will not give any money to Husband until mother has emptied her pockets;

vii. Mother and Wife does not give any money to each other.

C. Analysis

Having understood the provisions, is it perfect, let's see with examples

Scenario I: IGST Purchase and No IGST SALES

	ITC AVAILABLE	LIABILITY	FIRST SET OFF	SECOND SET OFF	LIAB. TO BE PAID IN CASH	BALANCE ITC
IGST	16000	0				0
CGST	14000	20000	(8000)-IGST	(12000)-CGST		2000
SGST	14000	20000	(8000)-IGST	(12000)-SGST		2000

Scenario II

1st month: IGST Sale and No IGST Purchase

	ITC AVAILABLE	LIABILITY	FIRST SET OFF	SECOND SET OFF	LIAB. TO BE PAID IN CASH	BALANCE ITC
IGST		4000		4000 CGST		0
CGST	22000	18000	(18000)-CGST		0	0
SGST	22000	18000	(18000)-SGST		0	4000

2nd month: No IGST Purchase or sale

	ITC AVAILABLE	LIABILITY	FIRST SET OFF	SECOND SET OFF	LIAB. TO BE PAID IN CASH	BALANCE ITC
IGST						0
CGST	18000	20000	(18000)-CGST		2000	0
SGST	18000 +4000 (b/f)= 22000	20000	(20000)-SGST		0	2000

In certain situations, like scenarios II above, there would be ITC available in SGST but Liability in CGST. These difficulties arise due to factors like CGST and SGST are not adjustable with each other, Order of using CGST credit first towards IGST Liability, etc.

D. Takeaways

Following guiding points may help for better management of ITC

1. In case where IGST Purchase is more than Local purchase and sales are majorly Intrastate, one may use IGST credit equally between CGST and SGST liability

2. In case where IGST sales is more than Local sale and purchase are majorly Intrastate, one may try to maintain the closing inventory equal to Opening inventory and in next period if situation changes to 1. above one may try to use IGST credit towards CGST liability to the maximum possible extent

3. When there is combination of IGST purchase and IGST sales over different periods, one may try to keep ITC balance more in CGST then SGST to the extent possible. This will reduce the impact of the provision which says CGST credit must be first use towards IGST liability before utilizing SGST credit.

4. In case there is no fixed trend, one case use different combinations of 1. 2. And 3. above in different return period(s).

Revocation of cancellation of registration

CA Pranav Mehta

Revocation of cancellation means revalidation of cancelled registration.

Section 30 of the CGST Act, 2017 read with Rule 23 of CGST Rules, 2017 provide for revocation of cancelled registrations.

This column explains the statutory provisions and procedure for revocation of cancelled registration.

A. Application for Revocation of Cancellation

As per Section 30 of the CGST Act, 2017, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the FORM GST REG-21 within thirty days from the date of service of the cancellation order at the common portal.

As per proviso to Section 30, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended:

a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).

As per proviso to Rule 23(1), in case the registration has been cancelled due to non-filing of returns the application of registration can be filed only after furnishing of returns and payment of tax, interest, penalty and late fee.

Further, second proviso to Rule 23(1) states that the returns for the period from date of order of cancellation of registration till the date of order of revocation of cancellation of registration shall be furnished within 30 days from date of such order.

Example:

Date of order of cancellation of M/s ABC Ltd.	01.06.2021
Date of order of revocation of cancellation	31.07.2021

M/S. ABC Ltd. shall be required to furnish all the returns for the period from 01.06.2021 to 31.07.2021 by 31.08.2021 i.e. within a period of 30 days from 31.08.2021.

Further, as per the third proviso to Rule 23(1), where the registration has been cancelled with retrospective effect, all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be furnished by a registered person whose registration is cancelled. Such returns shall be furnished within 30 days from the date of order of revocation of cancellation of registration.

Example:

Date of order of cancellation of M/s ABC Ltd retrospectively with effect from 01.01.2019	01.06.2021
Effective date of cancellation of registration	01.01.2019
Date of order of revocation of cancellation	31.07.2021

M/s ABC Ltd. shall be required to furnish all the returns for the period from 01.01.2019 to 31.07.2021 by 31.08.2021 i.e. within a period of 30 days from 31.07.2021.

B. How to file Form GST REG-21?

Steps to file REG-21:

- Login to the GST portal and select Services-Registration and then application for revocation of cancelled GST registration.
- Provide the required information and reasons for restoration of the GST registration. Supporting documents can be attached. Click on the verification checkbox. Select the authorized signatory and place.
- Apply form GST REG-21 with DSC or with EVC. The application will be submitted successfully.

C. Relaxation to Assessees whose GSTIN cancelled during 15.3.2020 to 14.3.2021

The Hon'ble Supreme Court, vide judgment dated 23.03.2020, 2020-VIL-12-SC, taking suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 virus and resultant difficulties faced by the litigants across the country had extended limitation prescribed under the general law or special laws from 15.03.2020 till 14.03.2021 and, vide judgment dated 27.04.2021, 2021-VIL-54-SC until further orders.

Pursuant to the judgment, following instruction are issued by Principal secretary/ Commissioner of commercial tax, Chennai giving relaxation to Assessees whose GSTIN has been cancelled during 15.3.2020 to 14.3.2021.

"6.1. If the Registration certificate issued under GST is cancelled for the reasons referred in Section 29(a) to (d), and any application for revocation of cancellation of Registration received after thirty days from the date of cancellation, and if such period falls between 15-03-2020 till 14-03-2021, the balance period of Limitation remaining as on 15-03-2020, if any shall become available with effect from 15-03-2021.

6.2. The prescribed period of 30 days shall be calculated from the date of cancellation of Registration Certificate by excluding the days failing during the period from 15-03-2020 to 14-03-2021.

6.3. If the tax payer filed application for revocation of cancellation of Registration and if the said date of filing application falls within 30 days after excluding the period from 15-03-2020 to 14-03-2021, the Proper officer shall pass revocation order on merits subject to fulfillment of conditions stipulated in the Rules by considering the said application filed within 30 days.

6.4. If any application for revocation of cancellation of Registration is already rejected on the ground of exceeding 30 days without considering the period from 15-03-2020 to 14-03-2021, the said tax payers may be requested to file an application again and orders passed on merits.

6.5. If any appeals have been filed against the Cancellation of Registration order by the Tax Payers, and if the said period falls beyond the period the prescribed period specified under Section 107, then the Deputy Commissioner, GST Appeals and Joint Commissioner, GST Appeals shall admit the application and pass order on merits if the prescribed period specified under Section 107available with effect from 15-03-2021 after excluding the period from 15-03-2020 to 14-03-2021.

6.6. In paragraph 2 of the order of Honourable Supreme Court, it has been ordered that in cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply. Therefore, if the application for revocation has been filed in less than 30 days prior to 15.03.2020 or after 15.03.2020, the limitation period of 90 days would be available after 14.03.2021. Therefore, Proper officer may proceed to finalize such applications for revocation of cancellation of registration on merits, even if they have been rejected during this period on the grounds of exceeding the limitation period of 30 days provided in the Act. The appellate authorities shall also take into

account this extended limitation period provided by Honourable Supreme Court."

The instructions broadly states that If any application for revocation of cancellation of Registration is already rejected on the ground of exceeding 30 days without considering the period from 15-03-2020 to 14-03-2021, the said tax payers may be requested to file an application again and orders passed on merits.

D. Extension of date for filing revocation application

Vide **Notification No. 14/2021 dated 01.05.2021,** the timeline for filing the 'Application for Revocation of Cancellation' has been extended to 180 days from 90 days which will be valid up to 15th June 2021.

E. Revocation of Cancellation

As per Rule 23(2)(a), where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

CBEC Circular No. 1/1/2017 dated 26.06.2017 specifies Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax as 'proper officer' for this purpose.

F. Rejection of Revocation Application

As per Rule 23(2)(b), the proper officer, by an order in form GST REG-05, rejects the application for revocation of cancellation of registration. He will communicate the same to the applicant.

As per proviso to Section 30(2), the proper officer shall not reject the application for revocation of cancellation of registration without giving an opportunity of being heard.

As per Rule 23(3), the proper officer shall, before passing the order for rejection, issue a notice in form GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation should not be rejected. The applicant shall furnish the reply within seven working days from the date of the service of notice in form GST REG-24.

As per rule 23(4), upon receipt of the information or clarification in form GST REG-24, the proper officer may proceed to dispose of the application within thirty days from the date of receipt of such information or clarification from the applicant.

Our Comments:

No time limit is specified for rejection of revocation application under Rule 23(2)(b). Can time limit prescribed for revocation of 30 days under Rule 23(2)(a) be applied here? What if the officer does not reject the revocation application within 30 days? If no order is passed for rejection within 30 days can it amount to deemed revocation?

Example:

Application for Revocation	1.07.2021
30 days from application date	31.7.2021

No order has been passed by the officer till 31.7.2021. What is the remedy?

In our view, deemed revocation cannot be presumed in such case. It can be argued that a reasonable time period of 30 days may be applied to Rule 23(2)(b) too.

The registered person in such case however may file appeal under section 107 of the Act or writ with the court to obtain necessary relief on account of suspension of registration.

Conclusion

Application of revocation has to be made within the prescribed time limit. if the registration has been cancelled due to the failure in filing returns, revocation of cancellation of GST registration can be applied for only after filing returns for the relevant period with payment of interest and penalty.

जीएसटी कायद्या अंतर्गत कलम ६५ प्रमाणे ऑडिट

Kishor Lulla,
Advocate

मुंबई विक्रीकर कायदा आणि मूल्यवर्धित कायदा या अंतर्गत ज्याला आपण इंग्रजीमध्ये असेसमेंट आणि मराठीमध्ये निर्धारणा म्हणायचो त्याला वस्तु व सेवाकर कायद्या अंतर्गत ऑडिट हा शब्द वापरलेला आहे. कलम ६५ खालील ऑडिट हे चार्टर्ड अकाउंटंट करीत असलेल्या ऑडिट पेक्षा वेगळ्या स्वरुपाचे आहे. यामध्ये जीएसटी अधिकाऱ्याने ऑडिट करणे अपेक्षित आहे. पूर्वीच्या कायद्याप्रमाणे रिटर्न, चलने, जमाखर्चाच्या वह्या, खरेदी विक्रीची बिले, स्टॉक रजिस्टर आणि इतर अनुषंगीक कागदपत्र तपासणे याचा ऑडिटमध्ये समावेश होतो. त्या मध्ये नवीन असे काहीच नाही. एखाद्या व्यापाऱ्याने किंवा वकिलानी वरील माहिती दाखवण्यापूर्वी जी काही तयारी करावी लागत असे तीच तयारी आता देखील करावयाची आहे. त्यामुळे त्याचा परत उल्लेख न करता वस्तू व सेवा कायद्याअंतर्गत जे वेगळे मुद्दे आहेत, तेवढ्याचा फक्त उहापोह येथे थोडक्यात आणि सोप्या भाषेत करीत आहे.

१) कलम ६५ प्रमाणे जे ऑडिट होते त्याची व्याख्या कलम २(१३) मध्ये दिलेली आहे. तसेच त्याची कार्यपद्धती नियम १०१ मध्ये दिलेली आहे.

२) सध्या २०१७-१८ या एकाच वर्षाचे ऑडिट करण्याच्या सूचना आहेत.

३) व्यापाऱ्याच्या धंद्याच्या ठिकाणी जाऊन ऑडिट करण्याचे आहे. त्यामुळे व्यापाऱ्यांनी वस्तु व सेवाकर कार्यालयात फेऱ्या मारणे अपेक्षित नाही. माझ्या मते अधिकाऱ्याने किती जरी विनंती केली तरी आपण तेथे जाऊ नये आणि त्यांनाच आपल्या ठिकाणी बोलवावे. माझा अनुभव असा आहे की त्यामुळे ऑडिट लवकर संपते. अशा वेळी कदाचित ऑडीट अधिकाऱ्याने आपल्या व्यवसायाच्या ठिकाणी येऊ नये अशी व्यापाऱ्याची इच्छा नसते. परंतु त्यांना नीट समजावून सांगितले तर आपला त्रास बराच वाचतो.

४) ऑडीट अधिकाऱ्याने या करिता १५ दिवसांची नोटीस देणे आवश्यक आहे.

५) सर्वात महत्वाचा मुद्दा असा आहे की ऑडिट सुरु केल्यानंतर ते ऑडिट तीन महिन्यात संपवण्याचे आहे. जर काही योग्य कारणामुळे तीन महिन्यात ऑडिट संपू शकत नसेल तर अशी लेखी नोंद ठेवून सहा महिन्यापर्यंत ऑडिट संपविण्याचे आहे.

६) ऑडिट करण्यासाठी व्यापाऱ्याने संपूर्ण माहिती अधिकाऱ्यास देण्याची आहे. तसेच सर्वतोपरी सहकार्य करण्याचे आहे. ऑडिट संपल्यानंतर तीस दिवसात अधिकाऱ्याने त्याचे निष्कर्ष आणि त्याची कारणे व्यापाऱ्याला कळवण्याची आहेत.

७) ऑडिट पूर्ण झाल्यानंतर जर अधिकाऱ्यास असे लक्षात आले की काही भर भरलेला नाही किंवा भरला आहे किंवा चुकीचा परतावा घेतलेला आहे. किंवा इनपुट क्रेडिट चुकीचा घेतलेला आहे किंवा वापरलेला आहे, तर अशावेळी तो कलम ७३ केव्हा ७४ खाली कार्यवाही करु शकतो.

८) एका वर्षातील काही महिन्यांचे किंवा संपूर्ण वर्षाचे किंवा एका वर्षापेक्षा अधिक कालावधीचे ऑडिट करता येते.

९) ऑडिट करण्याकरता जीएसटी एडीटी-०१ ची नोटीस काढली पाहिजे.

१०) ऑडिट पूर्ण झाल्यानंतरचे निष्कर्ष फॉर्म जीएसटी एडिटी-०२ मध्ये व्यापाऱ्याला कळविण्याचे आहे.

११) कलम ३५ आणि ३६ तसेच नियम ५६ ते ५८ प्रमाणे व्यापाऱ्याने जमाखर्चाच्या वह्या ठेवणे अपेक्षित आहे.

१२) ऑडिट करत असताना ऑडिट अधिकाऱ्याने काही गोष्टींचे विशेष पालन करणे अपेक्षित आहे. त्या म्हणजे अस्तित्वात असलेल्या व्यापारी पद्धती, उद्योग आणि धंदा मधील ज्या वातावरणात व्यापारी, व्यापार अगर व्यवसाय करतो तेथील आर्थिक वास्तविकता.

१३) नोंदीत व्यापाऱ्याने शक्यतो स्वैच्छिक पूर्तता कराव्यात याकरिता ऑडिट अधिकाऱ्याने महत्त्वाची भूमिका निभावायची आहे.

१४) ऑडिट करण्यासंबंधात ऑडिट अधिकारी हा जबाबदार राहील आणि त्याने प्रत्येक मुद्याच्या बाबतीत अंतिम निर्णय घेतलाच पाहिजे.

१५) ऑडिट करीत असताना प्रत्येक टप्प्याचे काम पूर्ण झाल्यावर ऑडिट अधिकाऱ्याने कार्यरत कागद व्यवस्थित भरला पाहिजे. संबंधित कागदपत्रं बोलकी असली पाहिजेत. म्हणजेच एखादा मुद्दा ऑडिटमध्ये का घेतला त्याचा स्पष्ट उल्लेख त्यामध्ये असला पाहिजे. हरकतींची देखील नोंद पाहिजे. या सगळ्याचा उल्लेख अंतिम ऑडिट तपासणी अहवालामध्ये आला पाहिजे.

१६) पुराव्याच्या कागदपत्रांचा वरील अहवालामध्ये समावेश झाला पाहिजे.

१७) संवेदनशील आणि गोपनीय मुद्दे ऑडिट अधिकाऱ्याने गुप्त ठेवले पाहिजेत. ऑडिट अधिकाऱ्याकडे सादर केलेले सर्व रेकॉर्ड त्याने इतर कोणत्याही कारणासाठी वापर करण्याचे नाही.

वर नमुद केलेले सर्व मुद्दे लक्षात ठेवल्यास ऑडिट अधिकारी नोंदीत व्यापाऱ्यास विनाकारण त्रास देऊ शकणार नाही.

"Take up one idea, make that one idea your life. Think of it, dream of it, Live on that idea let the brain, muscles, nerves, every part of your body be full of that idea, and just leave every other idea alone. This is the way to success."

"Stand up, be bold, and take the blame on your own shoulders. Do not go about throwing mud at other; for all the faults you suffer from, you are the sole and only cause."

"The goal of mankind is knowledge ... Now this knowledge is inherent in man. No knowledge comes from outside: it is all inside. What we say a man 'knows', should, in strict psychological language, be what he 'discovers' or 'unveils'; what man 'learns' is really what he discovers by taking the cover off his own soul, which is a mine of infinite knowledge."

– Swami Vivekananda


Income Tax Update
– Highlights on Recent Amendments

CA Sonakshi Jhunjhunwala &
CA Sunil Jhunjhunwala

1. CBDT releases interim action plan for FY 2021-22; Identifies key result areas for the Department and prescribes timelines to achieve them: Dated 11th June, 2021

2. Relaxation in electronic filing of Income Tax Forms 15CA/15CB

a. Press Release dated 14th June, 2021

As per the Income-tax Act, 1961, there is a requirement to furnish Form 15CA/15CB electronically. Presently, taxpayers upload the Form 15CA, along with the Chartered Accountant Certificate in Form 15CB, wherever applicable, on the e-filing portal, before submitting the copy to the authorized dealer for any foreign remittance.

In view of the difficulties reported by taxpayers in electronic filing of Income Tax Forms 15CA/15CB on the portal www.incometax.gov.in, it has been decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till June 30th, 2021. Authorized dealers are advised to accept such Forms till June 30th, 2021 for the purpose of foreign remittances. A facility will be provided on the new e-filing portal to upload these forms at a later date for the purpose of generation of the Document Identification Number.

b. Press Release dated 5th July, 2021

CBDT, due to difficulties reported in electronic filing of Forms 15CA/15CB on the portal, extended the date of manual filing to July 15, 2021. Taxpayers can now submit the said Forms in manual format to the authorized dealers. The Press Release advised authorized dealers to accept the Forms till July 15, 2021 for the purpose of foreign remittances. It further states that a facility will be provided on the new e-filing portal to upload these forms at a later date for the purpose of generation of the Document Identification Number.

3. CBDT Notifies Cost Inflation Index for the Financial Year 2021-22: Notification No. 73/ 2021/F. No.370142/10/2021-TPL dated 15th June, 2021

CBDT has notified the Cost Inflation Index at 317 for financial year 2021- 22.

4. Status of New Income Tax Portal 2.0

The new Income Tax Portal 2.0 was launched on 7th June, 2021. In the beginning it had many technical issues.

Finance minister Nirmala Sitharaman called on technology provider Infosys to resolve "grievances and glitches" with the new income tax electronic filing portal launched on 7th June, 2021 after users complained they were unable to access the site.

Infosys co-founder Nandan Nilekani responded to Finance Minister Nirmala Sitharaman. In a post on Twitter, Nilekani said that the company "regrets these initial glitches" and assured that the system will stabilise in a few days. "The new e-filing portal will ease the filing process and enhance end user experience. Sitharamanji, we have observed some technical issues on day one, and are working to resolve them," Nilekani wrote on the micro-blogging site.

Since then many of things are smoothen and still some part is difficult to operate. In the meeting scheduled on 22nd June, 2021 between senior officials of Ministry of Finance with Infosys and also representatives of stakeholders, issues had been discussed in great detail. The comments from stake holders were also invited and now hopefully things should work well.

5. Govt. notifies "ESIC Covid-19 relief scheme" to help families of insured persons who died due to COVID-19: Notification No. N-12/13/01/2019-P&D., dated 15th June, 2021

The Employees' State Insurance Corporation has notified the scheme 'ESIC Covid-19 Relief Scheme' under Section 19 of the Act as a welfare measure for the Insured Persons who are employees under Section 2(9) of the ESI Act under which in case of death of IP due to COVID-19, the eligible dependent family members of IP will be paid periodic payments directly to their bank accounts.

According to the Scheme, The IP (insured person) who died due to Covid-19 must have registered on the ESIC online portal at least three months prior to the date of diagnosis of COVID-19 disease resulting in his/ her death. The deceased IP must have been in employment on the date of diagnosis of COVID-19 disease and contributions for at least 70 days should have been paid or payable in respect of him/ her during a period of a maximum of one year immediately preceding the diagnosis of COVID-19 disease resulting in death.

In case of the death of IP due to Covid-19, his/her relatives shall be eligible to receive periodical payments. 90 % of the average daily wages of the deceased IP who died due to COVID-19 which will be called the full rate of the relief will be paid to the dependents of the IP who died due to COVID-19 disease. The minimum relief under the scheme shall be Rs 1800/- per month.

6. Net Direct Tax Collections for Financial Year 2021-22 have grown at over 100 percent: Press Release dated 16th June, 2021

Despite extremely challenging initial months of the new Fiscal, the Advance Tax collections for the first quarter of the F.Y. 2021-22 stand at Rs. 28,780 crore against Advance Tax collections of Rs. 11,714 crore for the corresponding period of the immediately preceding Financial Year, showing a growth of approximately 146%.This comprises Corporation Tax (CIT) at Rs. 18,358 crore and Personal Income-tax (PIT) at Rs. 10,422 crore. This amount is expected to increase as further information is received from Banks.

Refunds amounting to Rs. 30,731 crore have also been issued in the F.Y. 2021-22.

7. New Functionality – Compliance Check for Section 206AB & 206CCA: Circular No. 11 of 2021, dated 21st June, 2021

CBDT issued functionality to verify whether the Vendors have filed tax return for compliance of Section 206AB and Section 206CCA. As per Circular No 11, the deductor can verify from income tax portal about its vendor's status of filing tax return in preceding 2 years.

Further it had been clarified that preceding 2 previous years for FY 2021-22 shall mean FY 2018-19 and FY 2019-20.

The name of specified persons who have not filed tax returns uploaded at the beginning of the year by CBDT will be valid for the entire FY as no further addition will be made to this list. However deletion will be done by CBDT in case any specified person in the list files its tax return.

This will now make compliance of Section 206AB and 206CCA much easier as it will be one time exercise of verification in the beginning of the year of all vendors. No need now to obtain any declaration from resident Vendors. It is to be noted that this new requirement of Section 206AB and 206CCA are not applicable to non-residents except when a non-resident has a PE (Permanent Establishment) in India. Thus in the case of non-residents, a declaration that it doesn't has a PE will still be required in case it hasn't filed its tax return.

Further CBDT in order under section 138(1)(a)(i) of the Act dated 21st June, 2021 has directed Director General of Income-tax (Systems), New Delhi shall be the specified income-tax authority for furnishing information to the Tax Deductor/Tax Collector, having registered in the reporting portal of the Project Insight through valid TAN, to identify the Specified Persons for the purposes of section 206AB and 206CCA of the Act through the functionality "Compliance Check for Section 206AB & 206CCA".

The information to be furnished shall be:

a) Name: Name as per PAN Record (Masked)

b) PAN Allotment date: xx-xx-xxxx

c) PAN Aadhaar Link Status: Status of linking of PAN and Aadhaar for individual PAN Holders as below:

   i. Linked: PAN and Aadhaar are linked

   ii. Not Linked: PAN & Aadhaar are not linked.

   iii. Exempt PAN is exempted from PAN-Aadhaar linking requirements as per CBDT's Notification No. 37/2017 dated 11th May 2017.

   iv. Not - Applicable: PAN belongs to non-individual person.

d) Specified person u/s 206AB & 206CCA: (Yes/No)

To facilitate the process of furnishing information through the functionality, the Director General of Income-tax (Systems) would notify the procedure and format regarding the functionality "Compliance Check for Section 206AB & 206CCA" after taking approval from the CBDT.

This functionality is issued with the following logic:

a) A list of specified persons is prepared at the start of the financial year 2021-22, taking previous years 2018-19 and 2019-20 as the two relevant previous years. The list contains the name of taxpayers who did not file a return of income for both assessment years 2019-20 and 2020-21 and have an aggregate of TDS and TCS of Rs. 50,000 or more in each of these two previous years.

b) During the financial year 2021-22, no new names are added to the list of specified persons.

c) If any specified person files a valid return of income (filed & verified) for the assessment year 2019-20 or 2020-21 during the financial year 2021-22, his name would be removed from the list of specified persons. This would be done on the date of filing of the valid return of income during the financial year 2021-22.

d) If any specified person files a valid return of income (filed & verified) for the

assessment year 2021-22, his name would be removed from the list of specified persons. This will be done on the due date of filing of return of income for A. Y. 2021-22 or the date of actual filing of valid return (filed & verified), whichever is later.

e) If the aggregate of TDS and TCS, in the case of a specified person, in the previous year 2020-21, is less than Rs. 50,000, his name would be removed from the list of specified persons. This would be done on the first due date under sub-section (1) of section 139 of the Act falling in the financial year 2021-22.

f) Belated and revised TDS and TCS returns of the relevant financial years filed during the financial year 2021-22 would also be considered for removing persons from the list of specified persons on a regular basis.

The Director of Income Tax (Systems) on 22nd June, 2021 released two documents under compliance check which provides details steps to be taken:

- Frequently Asked Questions [FAQs] Version 1.0 (June 21)
- Quick Reference Guide [QRG] Version 1.0 (June 21)

We have mailed these two documents earlier to you. However, in case you have not received it and need it, we will mail it to you on hearing from you.

8. Cabinet approves information exchange agreement with St. Vincent & Grenadines: Press Release dated 23rd June, 2021

The Union Cabinet approves a new agreement for Exchange of Information and Assistance in Collection with respect to Taxes between the India and Saint Vincent and the Grenadines for the Exchange.

Agreement between the Republic of India and Saint Vincent and the Grenadines will help in facilitating the exchange of information between the two countries including sharing of information held by the banks and other financial institutions encompassing the information regarding the legal and beneficial ownership. It will also facilitate the assistance in collection of the tax claims between the two countries. Thus, it will strengthen India's commitment to fight offshore tax evasion and tax avoidance practices leading to generation of unaccounted black money.

Agreement also contains tax examination abroad provisions which provide that a country may allow the representatives of the other country to enter its territory (to the extent permitted under its domestic laws) to interview individuals and examine records for tax purposes.

9. Tax Exemption for expenditure on Covid treatment and exgratia received on death due to Covid: Press Release dated 25th June, 2021

Many taxpayers have received financial help from their employers and well -wishers for meeting their expenses incurred for treatment of Covid-19. In order to ensure that no income tax liability arises on this account, it has been decided that income-tax exemption will be provided to the amount received by a taxpayer for medical treatment from employer or from any person for treatment of Covid-19 during FY 2019-20 and subsequent years.

Unfortunately, certain taxpayers have lost their life due to Covid-19. Employers and well-wishers of such taxpayers had extended financial assistance to their family members so that they could cope with the difficulties arisen due to the sudden loss of the earning member of their family. In order to provide relief to the family members of such taxpayer, it has been decided that income-tax exemption will be

provided to the ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of Covid-19 during FY 2019-20 and subsequent years.

The exemption shall be allowed

- without any limit for the amount received from the employer; and
- the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other persons.

Necessary legislative amendments for the above decisions shall be proposed in due course of time.

10. CBDT extends various compliance deadlines by Circular No. 12/2021; Notification No. 74/2021 and Notification No. 75/2021 dated 25th June, 2021

The Government has decided to extend the various time barring dates, which were earlier extended to 30th June, 2021, by various notifications. It has been decided to extend due dates from 30th June 2021 to various dates as per table below. These are notified by Press Release; Circular No. 12/2021; Notification No. 74/2021 and Notification No. 75/2021 all dated 25th June, 2021:

Section	Particulars	Earlier extended due date / Original due date	New due date
Under Circular No. 12 of 2021 dated 25th June, 2021:			
144C	Filing of objections to DRP and AO	1st June or thereafter	31/08/2021
200 read with Rule 31A	TDS return for Q4 of FY 2020-21	31/05/2021 extended to 30/06/2021`	15/07/2021
Rule 31	Issue of TDS certificate in Form No. 16	15/06/2021 extended to 15/07/2021	31/07/2021
Rule 12CB (Form 64D)	Statement of Income paid/credited by Investment Fund to the Unit holder	15/06/2021 extended to 30/06/2021	15/07/2021
Rule 12CB (Form 64C)	Statement of Income paid/credited by Investment Fund to the Unit holder	30/06/2021 extended to 15/07/2021	31/07/2021
10(23C) / 12AB / 35 / 80G (in Form 10A / 10AB)	Application for registration / re-registration / approval / re-approval	Extended 30/06/2021	31/08/2021
54 to 54GB	Compliance by way of investment deposit, payment, acquisition, purchase, construction	01/04/2021 to 29/09/2021	30/09/2021
Rule 37BB (Form 15CC)	Quarterly statement by Authorized Dealer in respect of remittance made for the quarter ending 30/06/2021	15/07/2021	31/07/2021
Finance Act (Form 1)	Equalization Levy Statement for F.Y. 2020-21	30/06/2021	31/07/2021

Section	Particulars	Earlier extended due date / Original due date	New due date
9A(5) Form 3CEK	Eligible Investment Fund for F.Y. 2020-21	29/06/2021	31/07/2021
Uploading of 15G/15H	Uploading of declaration received during the quarter ending 30/06/2021	15/07/2021	31/08/2021
245M(1) Form 34BB	Exercising of option to withdraw the Application	27/06/2021	31/07/2021
Vide Notification No. 74 of 2021 dated 25th June, 2021			
153 / 153B	Passing of order of Assessment or Reassessment	30/06/2021	30/09/2021
Chapter XXI – Penalty	Passing of penalty order	Upto 29/09/2021	30/09/2021
139AA	Linkage of Aadhaar with PAN	30/06/2021	30/09/2021
168(1) of Finance Act	Intimation of processing of Equalization levy	30/06/2021	30/09/2021
Vide Notification No. 75 of 2021 dated 25th June, 2021			
Direct Tax Vivad se Vishwas Act	a) Payment of tax without additional charge	30/06/2021	31/08/2021
	b) Payment of tax with additional charges	-	Notified as 31/10/2021

11. CBDT issues guidelines to clarify provisions related to TDS u/s 194Q on purchase of goods: Circular 13 of 2021, dated 30th June, 2021

The Finance Act, 2021, has inserted a new Section 194Q in the Act with effect from 01-07-2021. This section requires deduction of tax at source by a buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of value exceeding Rs. 50 lakhs in any previous year. This Section empowers the CBDT (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties faced by the taxpayer while complying provisions of section 194Q of the Act.

In exercise of such power, the board has issued following clarifications:

a) Threshold limit of Rs. 50 lakhs is to be computed from 01-04-2021;

b) Where tax is required to be deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted on the amount credited without including such GST;

c) Where tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount;

d) In case of purchase return, if money is refunded by the seller then the tax

deducted may be adjusted against the next purchase against the same seller. However, if seller replaced the goods, no adjustment is required;

e) A non-resident, whose purchase of goods is not effectively connected with the permanent establishment in India, is not required to deduct tax at source;

f) No tax is required to be deducted where seller is a person who is exempt from income tax under the Income-tax Act or any other Act passed by the parliament. Similarly, no tax is required to be collected under Section 206C(1H) of the Act, where buyer is a person who is exempt from income tax under the Income-tax Act or any other Act passed by the parliament;

g) Tax is required to be deducted on advance payment made by the buyer to the seller;

h) If a transaction is covered both within the purview of Section 194-O of the Act as well as Section 194Q of the Act, tax is required to be deducted under section 194-O of the Act and not under section 194Q of the Act;

i) If a transaction is covered both within the purview of section 194-O of the Act as well as Section 206C(1H) of the Act, tax is required to be deducted under section 194-O of the Act.

12. Central Government notifies amendment to the Tribunal, Appellate Tribunal and other Authorities Rules, 2020: G.S.R. 458(E), dated 30th June, 2021

In exercise of the powers conferred by section 184 of the Finance Act, 2017, the Central Government has amended the Tribunal, Appellate Tribunal, and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020.

Rule 15 has been substituted by the Government and new limit for availing the benefit of House Rent Allowance (HRA) has been prescribed.

With effect from 01-01-2021, the Chairman, Chairperson, President, Vice Chairman, Vice-Chairperson, or Vice President shall have the option to avail of accommodation to be provided by Central Government or entitled to House Rent Allowance (HRA) subject to a limit of Rs. 1,50,000 per month.

The Presiding Offices and Members shall have the option to avail of accommodation to be provided by Central Government or entitled to HRA subject to a limit of Rs. 1,25,000/- per month. Erstwhile Rule 15 had provided that members shall be entitled to HRA at the same rate that was admissible to a Government of India officer holding Group 'A' post carrying the same pay.

13. CBDT notifies Rule 8AB for computation of sum attributable to capital asset u/s 48(iii): Notification No. 76/2021, dated 02-07-2021 and Circular No. 14 of 2021, dated 2nd July, 2021

Finance Act, 2021 inserted a new Section 9B in the Act which provides that whenever a partner or member (Specified person) receives any capital asset or stock in trade or both from a firm/AOP/BOI (Specified entity), during the previous year, in connection with the dissolution or reconstitution of such specified entity, then it shall be deemed that the specified entity have transferred such capital asset or stock in trade or both, as the case may be, to the specified person. Further, Section 45(4) of the Act was substituted to provide that where a specified person receives any money or capital asset or both from a specified entity, during the previous year, in connection with the reconstitution of such specified entity, then any profits or gains arising from such receipt by the specified person

shall be chargeable to income-tax as income of the specified entity under the head "Capital gains".

Consequently, Section 48 of the Act was amended to provide that the amount chargeable to income-tax as income of such specified entity under Section 45(4) of the Act, which is attributable to the capital asset being transferred by the specified entity, shall be reduced from the full value of consideration while computing capital gains.

The CBDT was empowered to specify the manner in which such computation is to be made. In exercise of such power CBDT has inserted Rule 8AB which provides that where the amount is chargeable to income-tax as income of specified entity under Section 45(4) of the Act, the specified entity shall attribute such amount to capital asset remaining with it in the following manner:

(a) Where the amount chargeable to tax under Section 45(4) of the Act, relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount attributable to the capital asset remaining with it shall be the amount which bears to the amount charged under Section 45(4) of the Act in the same proportion as the increase in, or recognition of, value of that asset because of revaluation or valuation bears to the aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation; or

(b) Where the amount chargeable to tax under Section 45(4) of the Act, does not relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, or relate only to the capital asset received by the specified person from it, the amount charged to tax under Section 45(4) of the Act shall not be attributed to any capital asset for the purposes of Section 48(iii) of the Act.

Further, the CBDT has also clarified that the Rule 8AB is also applicable to the capital assets forming part of block of assets. The specified entity is required to furnish the details of amount attributed to capital asset remaining with the specified entity in Form No. 5C.

14. India joins OECD/G20 Inclusive Framework tax deal: Press Release dated 2nd July, 2021

Majority of the members OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (including India) adopted yesterday a high-level statement containing an outline of a consensus solution to address the tax challenges arising from the digitalization of the economy. The proposed solution consists of two components- Pillar One which is about reallocation of additional share of profit to the market jurisdictions and Pillar Two consisting of minimum tax and subject to tax rules. Some significant issues including share of profit allocation and scope of subject to tax rules, remain open and need to be addressed. Further, the technical details of the proposal will be worked out in the coming months and a consensus agreement is expected by October. The principles underlying the solution vindicates India's stand for a greater share of profits for the markets, consideration of demand side factors in profit allocation, the need to seriously address the issue of cross border profit shifting and need for subject to tax rule to stop treaty shopping. India is in favour of a consensus solution which is simple to implement and simple to comply. At the same time, the solution should result in allocation of meaningful and sustainable revenue to market jurisdictions, particularly for developing and emerging economies. India will continue to be constructively engaged for reaching a consensus based ready to implement solution with Pillar one and Pillar two as a package by October and contribute positively

for the advancement of the international tax agenda.

15. Processing of Returns with Refund claims under Section 143(1) beyond prescribed time limits in non-scrutiny cases: Order F. NO. 225/98/2020IITA-II, dated 5th July, 2021

CBDT had earlier issued instructions/ orders u/s 119 of the Act from time to time relaxing the prescribed statutory time limit upto 30th October, 2020 for processing of validly filed returns with refund claims in non-scrutiny cases for various assessment years up to the assessment year 2017-18.

The matter has been re-considered by Board in view of pending taxpayers' grievances related to issue of refund. The CBDT hereby relaxes the time-frame prescribed in second proviso to section 143(1) of the Act and directs that all validly filed returns up to assessment year 2017-18 with refund claims, which could not be processed under section 143(1) of the Act and which have become time-barred, subject to the exceptions mentioned in para below, can be processed now with prior administrative approval of Pr. CCIT/CCIT concerned. The intimation of such processing under sub-section (1) of section 143 of the Act can be sent to the assessee concerned by 30-9-2021. All subsequent effects under the Act including issue of refund shall also follow as per the prescribed procedures.

The above relaxation will not apply to the following:

a) returns selected in scrutiny;

b) returns remain unprocessed, where either demand is shown as payable in the return or is likely to arise after processing it;

c) returns remain unprocessed for any reason attributable to the assessee.

16. CBDT notifies rule for computation of capital gain and WDV u/s 50 if depreciation was claimed on goodwill: Notification No. 77/2021, dated 7th July, 2021

The Finance Act, 2021, has amended the various provisions of the Income-tax Act, 1961, to prohibit the deduction for depreciation on goodwill. Section 2(11), which defines the term "block of assets" was amended to remove the goodwill of business or profession from the ambit of a block of asset.

The CBDT was empowered to specify the manner in which the written down value (WDV) and capital gains are to be computed where goodwill forms part of a block of assets. In the exercise of such powers, CBDT has inserted a new Rule 8AC to the Income-tax Rules, 1962. This Rule provides that where the goodwill of the business or profession was the only asset or one of the assets in the block of asset "intangible" for which the assessee obtained depreciation in the assessment year beginning on 01-04-2020, the WDV of this block of an asset for the previous year relevant to the assessment year commencing on 01-04-2021 shall be determined in the following steps:

Step 1: Determine the Opening WDV of a block of assets as on 01-04-2020;

Step 2: Add the Actual cost of the asset (other than goodwill) acquired during the previous year;

Step 3: Reduce the money payable in respect of any asset, sold, destroyed, discarded, or demolished during the previous year together with the scrap value, if any;

Step 4: Reduce the WDV of the assets, transferred under 'slump sale' falling under that block; and

Step 5: Reduce the Actual cost of goodwill after reducing depreciation allowed, falling within the block.

Further, Rule also provides that if the actual cost of goodwill after reducing depreciation (amount calculated at Step 5) exceeds the aggregate of opening WDV and the actual cost of asset acquired during the year, such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

Furthermore, it also provides that if goodwill of the business or profession was the only asset in the block of asset for which assessee had obtained depreciation in the assessment year 2020-21, and the block of asset ceases to exist on account of there being no further asset acquired during the assessment year 2021-22 in that block, there will not be any capital gains or loss on account of the block of asset having ceased to exist.

17. Exemptions: Statutory Authority / Body / Commission: Notified Body or Authority: Section 10(46) of the Income Tax Act, 1961

The Central Government hereby notifies following entities as eligible under section 10(46) of the Income Tax Act, 1961.

Sl. No.	Name of the Entity	Notification No. and date	Period for which income is notified as exempt
(1)	(2)	(3)	(4)
1	Competition Commission of India (CCI	Notification No. 72 of 2021 dated 9th June, 2021	Notification shall be applicable to the financial years 2021-2022, 2022-2023, 2023-2024, 2024-2025, and 2025-2026
2	Haryana Building and Other Construction Workers Welfare Board' (PAN AAATH6995H)	Notification No. 78/2021/F. No.300196/ 5/2018-ITA-I dated 9th July, 2021	Notification shall be deemed to have been applied from 01-06-2020 to 31-03-2021 in the financial year 2020-2021 and shall apply from the financial years 2021-2022, 2022-2023, 2023-2024 and 2024-2025

The terms and conditions have been prescribed.

18. M/s Patanjali Research Foundation Trust, Haridwar (PAN:- AABTP8183E) under the category "Research Association" for Scientific Research for the purposes of clauses (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read: Notification No. 79/2021/F. No. 203/09/2020-ITA-II] dated 12th July, 2021

The Central Government hereby notifies following entities as eligible under section 35(1)(ii) of the Income Tax Act, 1961.

Sl. No.	Name of the Entity	Notification No. and date	Period for which income is notified as exempt
(1)	(2)	(3)	(4)
I	M/s. Patanjali Research Foundation Trust, Haridwar (PAN:-AABTP8183E)	Notification No. 79/ 2021/F. No. 203/ 09/2020-ITA-II dated 12th July, 2021	From the Previous Year 2021-2022 and accordingly shall be applicable for Assessment Year(s) 2022-23 to 2027-28.

The terms and conditions have been prescribed.

Do You Know?

Moti B. Totlani,
Advocate

1. That income received by assessee was correctly reflected in the return for that year but it was shown by payee in ETDS statement for next financial year and accordingly mismatch was seen in Form 26AS of the assessee for next financial year. Revenue was asked by ITAT to prove whether any prejudice to revenue was caused or there was malice on part of assessee (matter was remanded)

   (Ashok Construction Co. vs. ACIT – 188 ITD 896 – ITAT – Allahabad dt. 17-03-2021)

2. That since Audit Report and Audited Balance sheet is available with AO, he cannot partly accept expenditure and disallow the remaining because presumption is that the expenditure has been verified by Auditor.

   (M/s. Share Aids P. Ltd vs. ITO – Tax Case Appeal No. 381/2009 dt. 01-12-2020 - Madras HC.)

3. That claim of bad debt was disallowed by ITAT as money lent by assessee was not in the ordinary of course of business hence conditions of section 36(2) were not satisfied but ITAT held that claim of assessee would not get jeopardized for deduction as business loss provided same satisfied conditions of section 37(1) - Matter was remanded.

   (Futura Polysters vs. ITO – 184 ITD 158 – Mumbai ITAT Dt. 16-07-2020)

4. That assessee sold MRI machines enabled with software required to run the equipment and charged separately for it in the invoice - since dominant and essential character of transaction was sale of machinery and amount received for sale of software was inseparable part of hardware ,it was not royalty as per section 9(1)(vi) accordingly TDS u/s 195 was not deductible.

   (Agfa Healthcare NV vs. DCIT - 182 ITD 398 – Mumbai ITAT Dt. 25-11-2019)

5. That once it is proved that the moment assessee stopped claiming depreciation and reflected the W.D.V of that assets as "Investment" in its Balance sheet by removing it from "Fixed Assets" it ceased to be a business assets or depreciable assets on and from the date it was treated as Investment, which was later let out and Rent Income was declared as "Income From House Property".

   (M/s. Nutech Engineering Technologies Ltd. vs. DCIT – ITANO 3347/MUM/2018 Dt. 19-04-2021)

6. Further, in above case it was held, that upon transfer of that particular long term asset the gain is to be considered as LTCG after indexation.

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Speaker's Forum

CA D. J. Ruparelia &
CA Ashish Ruparelia

12th Virtual Study Circle Meeting of GSTPAM for the year 2020-21 was held on Saturday 5th June, 2021 at 4:00 pm.

Speaker: Adv. Bharat Raichandani, Managing Partner, UBM Legal

Subject: Issues arising out of mismatch of matching provisions of ITC in GST Laws

President Mr. Raj Shah, welcoming the participants, said that about 4 and a half years back we were introduced to the realm of "seamless" credit but it seems the word "seamless" has somewhat lost today. The subject of today's SCM "mismatch in matching" itself is very intricate. He said that today's speaker Mr. Raichandani will discuss in details the intricacies.

Introduction

Joint Convener Advocate Parth Badheka briefly introduced the learned Speaker Adv. Bharat Raichandani. He said there could be no better person than him for this intricate subject. The learned Speaker is Managing Partner at UBM Legal. He is a Gold Medallist at Law College awarded by the then Governor of Maharashtra Shri S. M. Krishna. With over 18 years of experience in arguing cases in Supreme Court and various High Courts, he has been bestowed with various awards by the professional and other bodies including 'Under 40 Achievers Award'.

Presentation by the Speaker

The Speaker began with a rider saying that whatever he presents today is a matter of his opinion. The participants may have other opinions. He said that difference of opinions, is in a way healthy for evolving of the laws. There are so many differing decisions of various Tribunals and High Courts because of this. He quoted Mr. Robert Jackson, a Supreme Court judge, who himself had said of the Supreme Court that "We are not final because we are right, but we are right because we are final". Therefore, as far as laws are concerned, there is no right and there is no wrong. It is always a matter of opinion.

ITC under GST Law

The Speaker began with explaining what is ITC under the GST law. He explained the Scheme of Returns from where the matching concept arises. He referred to the following definitions:

Section 2 (63) of CGST Act defines ITC as "credit of input tax" and

Section 2 (62) of the CGST Act defines Input Tax as "input tax" in relation to a registered person, means the Central Tax, State Tax, Integrated Tax or Union territory tax ***charged*** on any supply of goods or services or both made to him.

He emphasized on the word "***charged***" by the supplier of goods or services.

Eligibility for ITC

The Speaker discussed **Section 16 (1)** of the CGST Act, which in his opinion is the enabling provision for the claim of ITC, and in a way a benevolent provision. Section 16 (1), subject to certain conditions and restrictions allows ITC of

tax ***charged*** on supply of goods or services and ***not of tax paid*** by the supplier. The conditions and restrictions have been mentioned in **Section 16(2)**. Thus, in the opinion of the Speaker, there is a difference in the language of Section 16 (1) and Section 16(2). Section 16 (1) which is an enabling provision allows ITC of tax ***charged*** by the supplier and not of tax paid by the supplier. This, he said, has to be brought to the notice of the Courts and litigated upon.

The second point which he explained was that it is a settled principle that ITC is not a fundamental right and it is a concession granted under the law and hence restrictions can be placed for its claim. But having granted that benefit, can the law attach conditions which are so onerous so as to negate the benefit itself. This in his opinion should not be sustainable. The condition of allowing ITC only when the supplier has paid the tax charged by him is one such onerous condition which negates the benefit itself. This is the real question which the Courts might have to deal with in this matter. In his opinion denial of ITC claim for non-payment of tax by the supplier, all other conditions being fulfilled for the claim, should not stand in law.

Relevant Rulings

In *Arise India Ltd. & Ors vs. Commissioner of Trade and Taxes, Delhi & Ors. (TS-314-HC-2017 (Del) VAT)* a Delhi High Court judgement on VAT laws, the Delhi HC had read down the provisions having similar conditions on claim of input taxes. It held that the restrictions on claim of ITC applied only when the purchaser of goods had not done initial due diligence about the registration status of the supplier, obtaining legitimate tax invoice and the receipt of goods. **The Delhi HC had allowed the claim of ITC even though the supplier has not paid the tax,** since the receiver had done his due diligence in the matter and there was nothing more which he could have done for the claim of credit. It held that the restriction would apply only when the purchaser was at fault or had connived with the supplier. It cannot be applied in a blanket way.

This decision was confirmed by the **Supreme Court in MANU/SCOR/01183/2018.** This decision, in the opinion of the Speaker will be very relevant under the GST regime. It lays down a sound principle of classification of law based on which the provision was read down. The scheme of things in GST with Section 16 (2) and the return prescribed under Rule 60 are bound to create mismatch in ITC.

In *DY Beathel Enterprises vs. State Tax Officer (2021-TIOL-890-HC-Mad-GST)* a Madras High Court decision under State GST law, the Madras HC had set aside the assessment orders disallowing ITC for non-payment of tax by the supplier. The purchasers had argued in the Court that there were no proceedings initiated against the sellers and that they were registered under the same jurisdiction. A Press Release of 04.05.2018 issued by the GST Council was brought to the notice of the Court where it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on nonpayment 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 the supplier or the supplier not having adequate assets etc. The restriction on ITC for non-payment should not automatically apply in every case.

The concluding remarks in the ***Mahalaxmi Cotton and Ginning Mills*** judgement also spoke that action must first be initiated against the seller and only if recovery is not possible from him, the matter should be brought against the purchaser. However, in the above case the challenge was against the Assessment Orders and not against the constitutional validity of Section 16 (2) or Rule 36 (4).

However, in the opinion of the Speaker this judgement can be relied upon to argue that ITC can be denied only when first the recovery measures have been taken against the seller

and tax cannot be collected from him or they can prove that there was no supply of goods or services. This is also evident from the Press Release.

In *M/s. TVS Motor Company Limited vs. The State of Tamil Nadu and Others (2018-TIOL-386-SC-VAT)* a Madras High Court judgement which went to the Supreme Court, the SC relied on ***Jayam & Co's (2016-TIOL-128-SC-VAT)*** case. There was a challenge to an amendment brought in Section 19 (20) of the Tamil Nadu Vat Act with retrospective effect. The amendment was that where a registered dealer sold the goods at a lesser price than they were bought for, the input tax credit over and above the output tax has to be reversed. The challenge was upheld by the SC saying that this provision is not violative of Article 14 of the Constitution. ITC being a concession was admissible to all kinds of purchasing dealers and where certain dealers are excluded, such exclusion is not hit by rule of reasonable classification in Article 14. The challenge was repelled on the basis that input tax credit was available on the basis of an Invoice and once Invoice was in place, the dealer was eligible for input tax credit. However, the retrospective amendment was struck down by the SC saying it leads to confiscatory in nature affecting the right of the dealer and that the provision would apply only prospectively.

This case was followed in ***TVS Motor Company's*** case. In this case the dealer was required to furnish Form C against intra state sales to be eligible to claim input tax credit (Section 19(5) of the Tamil Nadu Vat Act). It was argued that such condition was reasonable as the state authorities did not have jurisdiction and wherewithal over dealers in another state. In concluding remarks the SC had read down this condition stating that this condition would not apply to dealers who are exclusively supplying goods in inter-state trade.

The above case may not apply in the GST regime where the whole tax system is on one platform and there is a single law governing the whole of India. Also the development of the GST portal has changed many of the dynamics in the sense that the authorities are now able to enforce things by click of a button. The Speaker says even with these things there will be many situations where the principles underlying these judgements can hold true.

In *Vinayaga Agencies vs. Assistant Commissioner & Ors (MANU/TN/1386/2013)* the Court squashed the Assessment Orders on the ground that the condition that the seller dealer should have paid tax is **arbitrary and onerous.** This condition should apply only when the purchasing dealer has given some information as to the in-genuineness of the transaction and not otherwise. Similar arguments also made and upheld in *Sri Ranganathar Valves Pvt. Ltd. vs. Assistant Commissioner (CT) (2016-TIOL-2966-HC-MAD-VAT).*

The following cases are still pending at various stages for judgements where the Constitutionality of Rule 36 (4) have been challenged:

GR Infraprojects Ltd. vs. Union of India (Civil Writ Petition No. 6337 of 2020), M/s. LGW Industries Ltd. vs. Union of India (W.P.A 92 of 2020) and M/s. Society for Tax Analysis and Research vs. Union of India (R/Speacial Civil Application No. 19529 of 2019).

The Speaker opined that even with the recent amendment to bring in clause (aa) to Section 16(2), Rule 36 (4) would not stand legal validity as it is a subordinate legislation and it cannot be contradictory to the parent provisions of the Act. There can also be no arguments that Rules get parentage from Section 164 of the Act since Section 164, which gives general rule making power, has to confine itself to the other provisions of the Act.

Issues

Among the other things, the following questions arise in the current scheme of things:

- What is the Status of GTR 2 ?

- Can matching provisions starts with GSTR 2 ?
- What about application of Rule 36(4) in absence of GSTR 2 ?
- Can one upload invoices in GSTR 1 after deadline ?
- When GSTR 1 is not allowed to update can they disallow ITC for want of 2A ?
- Which is the correct form GSTR 2A or 2B for claim of ITC ?
- Can department block ITC for want of GSTR 2A ?
- Can department block ITC despite reported in GSTR 2A ?
- What is the meaning of term provisional acceptance of credit and final matching ?

The current scheme of things has made a mess and a cobweb of presumably simple way of things. With plethora of Press Releases, Notifications and Circulars the GST laws have now been made more complex.

The GSTN Portal cannot override the provision of the Act. The thing to be remembered here is that the portal and systems are facilities to enable payment of taxes and filing of returns. In no way they should be construed as the governing laws or rules for allowing of credits and payment of liabilities. If the Act allows the credit, it should be claimed in the returns.

The Speaker said that the Courts should eventually read down the provisions of claim of ITC with such onerous conditions and Rule 36 (4) should not go through in its present form.

Questions & Answers

Mr. Parth Badheka sought the Speaker's view on use of the word "***entitlement***" in Section 16. He asked will this word confer a right to claim ITC and how it is to be read in the scheme of matching provisions and payments by the supplier dealers.

Speaker replied that Section 16(1) is an enabling provision. It confers a concession of claim of ITC. The conditions prescribed in Section 16(2) cannot negate this concession. They have to be read in harmony with Section 16 (1). Hence the conditions cannot work in a manner that the base provisions itself are negated.

The compliance to the conditions is always subject to eligibility. This is what the Supreme Court has explained in ***Mangalore Fertilisers*** case. It said that there are conditions and conditions. Because they are statutory you would not give equal weightage to all of them. Some may be procedural, some may be substantive.

In Speakers' view the substantive condition in Section 16 (2) is receipt of goods and services. If that is complied, **credit cannot be denied**. If you look at the basic premise of introducing the GST law, the intention was to allow the credit of input tax. One of the principal reasons to bring in a single law was to avoid cascading effect of taxes.

Shri Janak Vaghani pointed out an anomaly:

He said the GST Act allows claim of input tax credit for pre-registration period in case of fresh registrations. But the GST portal does not allow upload of invoices when they are dated before the registration date of the purchasing dealer. This is a clear anomaly and with clause (aa) of Section 16 (2) coming into effect, this can never be ensured. Section 16 (1) and Section 16 (2) have to be harmoniously construed. The GST portal cannot restrict the credit and override the law.

The Speaker said what would have happened if there were no systems and there were manual filing of all returns. What one would have done then?

Today because of the GST portal, one can block the credits, the systems cannot override the law. The Supreme Court has said that Systems are hand-maid of justice and should not be its mistress.

Mr. Parth said here that when laws are made from evaders point of view this is what is going to the result. The Speaker said he is not against strict laws for the evaders who may be 5% but there cannot be a single law for everyone. They have to design separate provisions. A single law gives undue powers to the executive to harass the genuine purchasers where they do not have any control over the sellers.

Another anomaly pointed out by **Shri Janak Vagahani** was in the current scheme of returns. He said that Rule 60 prescribing the returns have been substituted w.e.f. January 2021. But Section 38 also casts an obligation to file details of inward supplies which are to be matched. Now currently there is no GSTR 2 prescribed for return of inward supplies. So how one can match when there is no counter leg to match? Also Section 41 and Section 42 speaks of provisional credit. Rules 69 and beyond, dealing with matching provisions and final credit, technically are still in vogue. He sought the Speakers view on these contradictory provisions and ways to balance them.

Mr. Raichandani replied by saying that what happens when you give a match box to a two year kid. The entire house will be on fire. This has what happened when the powers have been given to the executive. The Rules are subordinate legislation. They have to confirm to the provisions of the law. If there is any conflict between the Rules and the parent provisions of the law, the provisions of law should prevail.

Thus the doctrine of impossibility is now in the provisions of the Act itself. The Speaker feels that eventually the contradictory provisions in the Act and the Rules will have to be read down by the Courts. Where the statute requires you to do something which is impossible to perform then that is not a law. The law will be struck down on that ground.

The Speaker then proceeded to answer the following **queries** from the participants:

For discount given on Sales, is there a requirement to reverse the ITC credit on purchases?

Not required to reverse ITC if no refund has been claimed under Section 54.

ITC on CENVAT credit (50%) on purchase of Fixed Assets in FY 2016-17 was not shown in TRAN 1? Can it be claimed now in May 2021?

The Speaker opined to claim the credit in GSTR 3B but it will be highly litigative. There are restrictions even in normal credit, for this they will have to fight.

Where GSTR 3B for the month of March 2020 is filed after October 20, 2020 can the department deny ITC credit in that return?

No, the department cannot deny.

ITC of IGST of October 2019 is wrongly claimed as ITC of CGST/SGST due to accounting error. The situation is not rectified even till the return of September 2020. Is ITC of IGST required to be lapsed or is there a way to rectify this?

There is a provision enabling correction of such mistakes where there is no effect on revenue of the government. In the month where CGST/SGST ITC is paid, the dealer can claim the ITC of IGST.

*(**Columnists remark** : Refer - Section 77 and Rule 89 of CGST Act and Section 19 of IGST Act.)*

Can one argue that Rule 36 (4) is a restriction on Section 16(1) since Section 16 (1) also speaks of conditions being prescribed?

This is a very good question. The answer is no on two grounds. One the conditions are provided in Section 16 (2) itself. The subordinate legislation cannot prescribe the restrictions. They

have to be provided by the parent statute itself. Secondly, the Rules are only procedural. Hence they cannot lay down conditions. Therefore the answer is No. The legislative function cannot be abducted by the procedural requirements. This is the same conflict which **Mr. Janak Vaghani** pointed out and which we have to resolve.

Will ITC be denied with clause (aa) of Section 16(2) coming into effect and that it will be a condition precedent to the claim of ITC?

That seems to be the intention of the government. Unless it is reflected in GSTR 2B there will be no ITC claim. But in the opinion of the Speaker that is not what the substantive provisions of law intends.

If the invoices are reflecting in GSTR 2A but not in GSTR 2B, it would be advisable to claim the same in the returns. Hence it would be advisable to claim credit on the basis of GSTR 2A rather than GSTR 2B.

Where GST charged on an inward supply has not been paid by the supplier and it is subsequently recovered from him, whether interest is to be paid on reversal of ITC in such case?

In the opinion of the Speaker there is no provision for reversal of ITC. Even if reversal is required, there should be no interest liability.

Can you comment on Section 16 (4) – time limit for claim of ITC

In case ITC is claimed beyond the time limits prescribed in Section 16 (4), it will be highly litigative.

In case of sou-moto cancellation and restoration of registration on appeal, the returns are filed beyond the time limits prescribed under the Act. Even in these cases there have been notices to reverse the ITC credits.

According to the Speaker this is incorrect because the period for which the license to revoke and again reinstated by the court would be excluded. Though Section 14 of the Limitation Act may not apply in this case but the principles of Section 14 should apply as held by SC in ***M.P. Steel.*** Even the *doctrine of relating* back would be in operation here meaning you would be remitted back to day one and you should be able to do things which you would have done on day one.

Is TRAN 1 a Return and provisions of Section 73 and Section 74 apply to TRAN 1?

TRAN 1 is not a Return. It is a form. Hence provisions of Section 73 and Section 74 should not apply to TRAN 1.

The GST portal reflects restriction of ITC of CGST/SGST where the place of supply is other than the registration state of the receiver of services. Is there a legal backing to this?

In the opinion of the Speaker there is no legal backing to this provision.

Is interest payable on reversal of ITC mandated by GST departmental audit where the credit ledger has balance of such amount from the inception of GST i.e. July 01, 2017?

No interest should be payable on such amount.

In cases where the department is insisting on payments by way of DRC 03 and the situation warrants giving in to their demands, the Speaker suggested to ensure that a **letter of protest** is lodged with the Tax Officer. This is very important since the forms filed online do not allow any amendments or edits. The systems shortcoming should not come in the way of communication between the dealer and the department.

Conclusion & Vote of Thanks

Committee Member Adv. Sejal Shah gave well deserved vote of thanks to the learned Speaker and the participants.

Representation & Response

June 25, 2021

To
The Grievance Redressal Committee Pune Zone
C/o Chief Commissioner of GST & Customs, Pune Zone

Respected Madam/Sir,

Sub: Issues for consideration at the 5th meeting of Grievance Redressal Committee to be held on June 25, 2021

We thank you for the opportunity to represent issues faced by tax practitioners and taxpayers in compliance of the GST law and present before you the following issues for your kind consideration:

1. Issues in reporting of HSN codes while generating e-way bill and in FORM GSTR-1:

a. In terms of Notification No. 78/2020-Central Tax, dated 15-10-2020 effective January 1, 2021, taxpayers having aggregate annual turnover up to Rs. 5 crores are required to mention 4 digits of HSN code for goods and services in their B2B tax invoices and taxpayers having aggregate annual turnover more than Rs. 5 crores are required to mention 6 digits of HSN code in all tax invoices.

b. It has been reported to us that in several cases, the e-way bill portal has its own requirement of the number of digits of HSN code to be reported for generation of e-way bill. Therefore, taxpayers who are only required to mention 4 digits of HSN code on their invoice are facing difficulty in finding out the 6 digit / 8 digit HSN code of the goods. Similarly, taxpayers who are required to mention 6 digits of HSN code on their tax invoice are facing difficulty in finding out 8 digit HSN code for the goods.

c. While filing GSTR-1 of January to May 2021, it was observed that Table relating to HSN codes required the taxpayers to report 8 digit HSN code irrespective of their turnover.

d. It is, therefore, requested to integrate the e-way bill portal with the GST portal in a manner that taxpayers falling in a particular category shall be required to report a 4 digit / 6 digit HSN code across platforms.

2. Issues in revocation of cancelled registration:

a. The GST portal does not allow making an application for revocation of cancellation of registration beyond the prescribed period.

b. The Hon'ble Supreme Court vide its Order dated 23.03.2020 in Suo Moto Writ (Civil) No. 3 of 2020 has ordered that period of limitation in all petitions / applications

/ suits / appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State) proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15.03.2020 till further orders. In view of the new surge of cases, the Supreme Court on 27.04.2021 restored the order of 23.03.2020 and further suspended limitation under general or special laws in respect of all judicial or quasi-judicial proceedings till further orders under Article 142 read with Article 141 and listed the matter for 19.07.2021. Thereby, effectively limitation stands suspended from 15.03.2020 till date.

c. Necessary changes must be carried out on the GST portal to allow the taxpayers to file application for revocation of cancellation of registration and/or appeal against order of rejection of application for revocation of cancellation in view of the orders of the Hon'ble Supreme Court.

d. In many cases, while deciding the application for revocation of cancellation of registration or in appeal against the order of rejection of revocation of cancellation, the authorities are asking to first pay the tax with interest. In some cases, they ask for late fees for the period from the date of cancellation to the last period for which return is due. This is not correct on the part of the authorities, since second proviso to rule 23 of CGST Rules specifically provides for filing of returns within 30 days from the date of order of revocation of cancellation. We request that necessary instructions / clarification be issued to address this issue.

3. Refund of IGST on zero rated supplies with payment of tax:

a. Refund of IGST in case of zero rated supplies with payment of tax are being withheld for want of verification report.

b. In the current times of COVID-19, the businesses are already cash strapped due to not one but two lockdowns and several businesses are on the verge of closure.

c. As per rule 36(4), the ITC claim is now matched with invoices appearing in GSTR-2A/ GSTR-2B.

d. Therefore, it is requested that refunds should be disposed expeditiously when the ITC is matching with GSTR-2A / GSTR-2B.

4. Issues arising out of inability of suppliers to report invoices raised on recipients with suspended / cancelled GSTINs in their FORM GSTR-1:

a. Cancellation of GSTIN of the recipient after issuance of invoice but before filing FORM GSTR-1 by the supplier:

i. Since the recipient is registered at the time of issuance of invoice, the invoice must be allowed to be reported under B2B supply category in FORM GSTR-1 irrespective of the fact of subsequent cancellation of registration of the recipient of supply.

b. Cancellation of GSTIN of the recipient after issuance of invoice but before raising debit/ credit note relating to such invoice:

i. In such a scenario, the invoice has been reported under B2B supply category in GSTR- 1, but the credit note cannot be reported under CDNR section owing to cancellation of GSTIN of the recipient of supply.

ii. Since a debit / credit note is an extension of the original supply, it is ideal that the same be reported under the same category, i.e., B2B as that of original invoice.

iii. Further, if reporting of such credit note under CDNR is not allowed, then while the invoice reported under B2B category will appear in the recipient's GSTR-2A / GSTR- 2B, the credit note shall not be so reflected leading to claim of excessive credit by the recipient.

iv. Therefore, credit notes in case of invoices reported under B2B section of FORM GSTR-1 must be allowed to be reported under CDNR section (as B2B) irrespective of the fact that the registration of the recipient of the supply has been cancelled after reporting of invoice but before reporting of the credit note.

c. Cancellation of GSTIN and retrospective restoration thereof on application / appeal by the recipient taxpayer:

i. While the invoice raised on such taxpayer whose GSTIN has been cancelled suo-moto must be reported by the supplier under B2C section of FORM GSTR-1, the cancelled GSTIN may be subsequently restored upon application for revocation of cancellation by the concerned taxpayer u/s 30 of the CGST Act, 2017.

ii. Upon such restoration of registration, the concerned recipient will not be able to see the invoice in his GSTR-2A / GSTR-2B and will not be able to claim the ITC of the GST paid on such transaction.

iii. This will result in the supplier having to amend his FORM GSTR-1 of the concerned period at various times for invoices raised on each such taxpayer whose cancelled registration is subsequently restored.

iv. It is a known fact that amendment to B2CS section of FORM GSTR-1 can only be made once for a particular month.

d. Suspension of registration pending cancellation and subsequent restoration thereof:

i. Suspended GSTIN may be made active upon fulfilment of conditions by a taxpayer. While the invoices raised on such taxpayer during the subsistence of suspension of his GSTIN would be reported under B2C section of GSTR-1, the recipient will not be in a position to claim ITC upon revocation of suspension of registration as stated above.

ii. Further, the problem for the supplier of multiple amendments to FORM GSTR-1 as stated in Para (c) above shall also arise in case of suspension of registration and subsequent revocation thereof.

e. Therefore, in case of situations arising as under Para (c) & (d) above, the supplier must be allowed to report such invoices under B2B section in his FORM GSTR-1. Since the recipient's GSTIN is suspended / cancelled, he will not be in a position to file his

return in FORM GSTR-3B and claim ITC anyway. However, if the registration of such recipient is subsequently restored retrospectively, he will be able to claim the ITC, subject to fulfilment of other prescribed criteria. This will absolve the supplier from having to make multiple amendments and further issues arising out of the restriction in number of permissible amendments.

f. Another issue arising out of cancellation or suspension of registration and subsequent revocation is with respect to e-invoicing. Where an e-invoice is not allowed to be generated for an invoice raised on a taxpayer whose registration is cancelled or suspended and the cancellation / suspension is subsequently revoked retrospectively, the recipient will not be in a position to claim ITC irrespective of the fact that the supplier reports the invoice in his GSTR-1 by making amendment or otherwise.

We thank you once again for the opportunity to present the aforesaid issues before you.

Yours sincerely,

For **The Goods and Services Tax Practitioners' Association of Maharashtra**

Law & Representation Committee

Shri. Raj Shah	**CA. Janak Vaghani**	**Adv. Parth Badheka**	**CA. Aditya Surte**
President	*Chairman*	*Convenor*	*Convenor*

June 29, 2021

To

The Commissioner of State Tax Maharashtra State
Mazgaon, Mumbai – 400 010

Respected Sir,

Sub: Technical glitches and issues in filing MVAT Annual Return in terms of rule 17(4B) of the MVAT Rules for the years 2019-20 and 2020-21

In terms of rule 17(4B) of the MVAT Rules, 2005, for the period starting from 1st April 2019, every registered dealer whose tax liability during the previous year had not exceeded Rs. 25,000 is required to file an annual return within 21 days from the end of the financial year to which the return relates. Further, vide Notification No. VAT-1520/CR-57/Taxation-1 dated 8th July 2020 and Notification No. VAT-1521/CR-39/Taxation-1 dated 20th April 2021, the due date for filing the said annual return for the F.Y. 2019-20 and F.Y. 2020-21 has been extended to 30th June 2021.

We are writing this letter to urgently bring to your kind attention the following issues faced by the dealers and tax professionals while attempting to file the said annual returns on the MahaGST portal:

1. Registered dealers who are eligible to file their annual return under rule 17(4B) of the MVAT Rules are unable to file the same for the F.Y. 2019-20 and F.Y. 2020-21 since the MahaGST portal is showing that returns for F.Y. 2016-17 and/or F.Y. 2017-18 are unfiled. In many

cases, the dealers have previously filed their returns for the F.Y. 2019-20 but are unable to file the same for F.Y. 2020-21 due to the said "unfiled period" issue. We are attaching herewith screenshots of the error for your ready reference. It may be noted that the screenshots are of representative cases, but the issue is being faced widely by many dealers.

2. Vide Para 4 of Trade Circular No. 9T of 2021 dated 31st May 2021 issued by your good office, it has been clarified that those dealers who have already filed quarterly return for the part of F.Y. 2019-20 shall be required to continue with filing quarterly returns for the balance part of F.Y. 2019-20. Further, Para 5 of the said Trade Circular clarifies that late fee will not be applicable in case of late filing of quarterly returns for both years 2019-20 and 2020-21, if such dealers file their returns for balance of remaining quarters on or before 30th June 2021. We are reproducing Paras 4 & 5 of Trade Circular No. 9T of 2021 for your ready reference:

"4. Periodicity of return is set at the beginning of every financial year. The notification to file annual return was issued in August 2019 and many dealers whose periodicity was set as quarterly were required to be shifted to annual frequency. However, some of such dealers have filed return at quarterly periodicity for part of financial year before the issuance of the notification. In view of this the applicable periodicity of filing for those dealers is as follows:

a) The dealers who have already filed quarterly return for the part of financial year, periodicity in SAP system cannot be changed during the year for balance part of the year. Therefore, they have to continue to file quarterly returns for such balance part of the financial year 2019-20. Whereas, the periodicity for subsequent financial year would be in accordance with eligibility as per amended provisions thereto.

b) The similar principle will be applicable to cases, where any return pertaining to financial year 2020-21 has also been filed at quarterly frequency. However, the dealer who have not filed any returns for part of the year 2020-21 are eligible to file returns as per amended periodicity.

5. It is needless to state say that the late fee will not be applicable in case of late filing of quarterly returns for both years 2019-20 and 2020-21, if such dealers file their returns for balance remaining quarters on or before 30th June, 2021."

However, we have come across cases where late fee of Rs. 5,000 has been added by the system to the returns of dealers who are falling under the purview of rule 17(4B) and have filed their periodic return for the quarter ended March 2021 on 9th June 2021. To add to the woes of such dealers, the local Jt. Commissioners are taking a view that irrespective of what the Trade Circular states, once late fee has been shown as payable by the system, they will be obliged to proceed with recovery of the dues.

In view of the above issues, we request your good office as under:

i. The due date for filing annual return for F.Y. 2019-20 and F.Y. 2020-21 in terms of rule 17(4B) of the MVAT Rules, 2005 be further extended to a suitable date by which the technical issues relating to the filing on MahaGST portal are duly resolved by the department.

ii. The technical issues being faced by the dealers in filing the aforesaid annual returns be resolved on a priority basis.

iii. The system may suitably be corrected so that no late fees are shown as payable in case of quarterly returns for the F.Y. 2019-20 and 2020-21 filed on or before 30th June 2021 by the

dealers who fall under the purview of rule 17(4B) of the MVAT Rules, 2005.

iv. Suitable instruction may please be issued to the field officers to adhere to the instructions of Trade Circular 9T of 2021 issued by your good office and not press for recovery of late fees wrongly shown by the system generated quarterly returns for the F.Y. 2019-20 and F.Y. 2020-21 filed on or before 30th June 2021.

Kindly treat this matter as urgent to issue suitable relief and oblige.

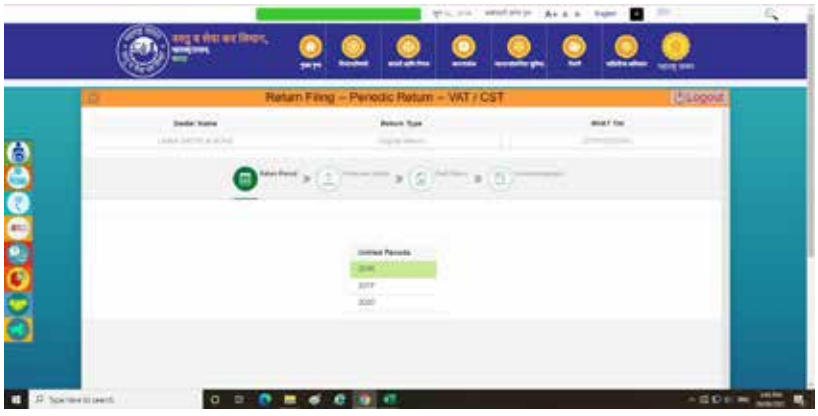
Thank you,

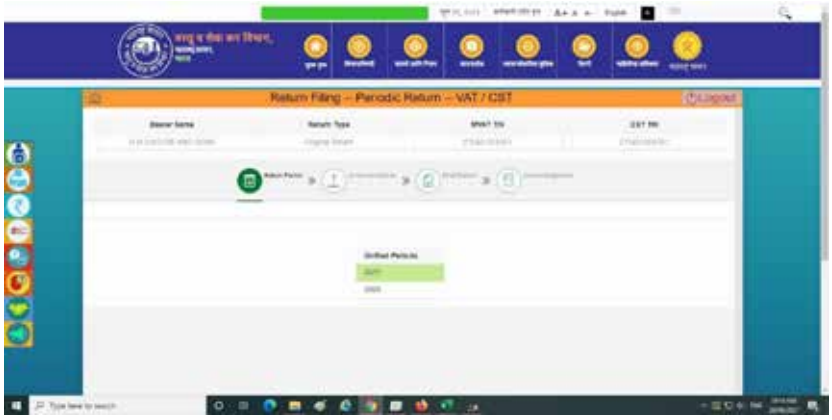
Yours sincerely,

For **The Goods and Services Tax Practitioners' Association of Maharashtra**

Law & Representation Committee

Shri. Raj Shah	**CA. Janak Vaghani**	**Adv. Parth Badheka**	**CA. Aditya Surte**
President	*Chairman*	*Convenor*	*Convenor*





Encl: As above

July 06, 2021

To
The Commissioner of State Tax, Maharashtra State,
Mazgaon, Mumbai – 400 010.

Respected Sir,

Sub: Representation on pressing issues in e-filing of first appeal and revision of returns during assessment under the MVAT Act, 2002 and CST Act, 1956 during the COVID-19 pandemic

Respected Sir,

We wish to bring to your kind attention the following pressing issues for your consideration and necessary action:

1. E-filing of appeals and redundant requirements:

First Appeals under the MVAT Act, 2002 and the CST Act, 1956 are being uploaded online. However, when the concerned appellate Dy. Commissioner or Jt. Commissioner is approached subsequently, they are demanding physical copies of the all the papers submitted online. It has also been brought to our notice that in majority of the cases, stay orders are not reflected on the website but are being issued in hard copy.

Many of our members, especially in smaller towns of Maharashtra, have reported that submission of physical copies of appeal papers is a routine procedure. Shockingly the authorities are making this a condition precedent for grant of stay and admission of appeal. These actions are not just unfair but patently illegal and violative of section 26(6A) of the MVAT ACT. This is further exacerbated by the fact that during the lockdown caused by the COVID-19 pandemic, the physical submissions are not possible and yet dealers and practitioners are made to do the completely redundant activity to manage physical submission over and above the online filing of appeals. This makes the entire purpose of online appeal filing otiose.

Trade Circular No. 11T of 2020 issued by your office on 29th July 2020 provides for e-submission of documents and virtual hearing in appeal proceedings. While attempts should be made to make even the hearing process virtual for the next several months, compelling the submission of physical copies of documents as a pre-condition for accepting the appeal is a huge setback.

We, therefore, request your good office to look into the matter urgently and issue necessary instructions so that the appellate authority does not insist on submission of physical copies of the appeal papers as a condition for acceptance of appeal and the dealers and their authorised representatives are not made to submit physical copies of the documents already submitted online at the time of filing of appeal.

2. Revision of returns during assessment:

Since 2016, the MVAT Department has been following the invoice-wise SAP based new returns. As per the first circular onwards 22T of 2016, it has been instructed, that revision of returns shall be allowed subject to revision of annexures.

Several practitioners who are dealing with the Assessments and other notices in relation to periods 2013-14 up to 2016-17, have informed us that once the notice is issued, the return filing utility does not allow revision of returns. This is problematic, especially in cases where certain dealers have misclassified certain transactions which are OMS purchases and their vendors are now seeking declarations in Form 'C'. In such cases, they are unable to revise returns and apply for 'C' Forms. Revision of returns must be allowed, especially in cases where there are no revenue implications or in cases of OMS purchases if certain transactions were misclassified or missed out totally.

Similar problem also arises in case of declarations other than Form 'C'. It is well accepted law, that CST declarations can be accepted at any stage in Appeal, Tribunal, High Court or even Supreme Court. Since the CST declaration utility directly matches the OMS purchases with the returns, if the returns are not revised, businesses will not be able to apply for CST declarations to be issued to their sellers. This will have a negative impact on the trade, since the direct impact on non-receipt of CST declaration at concessional rate of 2% is tax at local rate on the seller, which in turn will be recovered from the buyer.

In the event the revision after issuance of notice or assessment is not allowable, in such a case, an alternate mechanism to apply for 'C' Forms on the basis of physical confirmation of accounts of the applicant must be devised.

Kindly look into the above issues and oblige.

Thanking you in anticipation,

Yours sincerely,

For **The Goods and Services Tax Practitioners' Association of Maharashtra**

Law & Representation Committee

Shri. Raj Shah	**CA. Janak Vaghani**	**Adv. Parth Badheka**	**CA. Aditya Surte**
President	*Chairman*	*Convenor*	*Convenor*

2021-VIL-484-MAD

IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P. Nos.2885, 2888, 2890,3930, 3936 and 3933 of 2020

&

WMP Nos.3341, 3345, 3336, 4664, 4656 and 4661 of 2020

W.P.No.2885 of 2021

Dated: 24.06.2021

M/s ARS STEELS & ALLOY INTERNATIONAL PVT LTD

vs.

THE STATE TAX OFFICER, GROUP - I, INSPECTION, INTELLIGENCE - I, CHENNAI

For Petitioner in W.P.Nos.2885, 2888 and 2890 of 2020: Mr. M.A. Mudimannan

For Petitioner in W.P.Nos.3930, 3933 and 3936 of 2020: Mr. Joseph Prabakar

For Respondents in the above W.Ps.: Mr. TNC. Kaushik, Government Advocate

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

COMMON ORDER

This batch of Writ Petitions relates to two sets of assessment orders passed in the case of two assessees under the provisions of Goods and Services Tax Act, 2017 (in short 'GST Act') for the periods 2017-18, 2018-19 and 2019-20. They are disposed by way of this common order, since the legal issue that arises in these cases is one and the same.

2. In W.P.No.3936 of 2020, it is argued by Mr.Joseph Prabakar, learned counsel for the petitioner that an additional issue is raised in regard to stock reconciliation. The admitted position as far as this issue is concerned is that the vehicle movement register correlating to the vehicle gate passes issued, have been specifically sought for by the authorities but not produced at the time of assessment. Though the learned counsel for the petitioner states that the details have produced

before this Court, learned counsel for the respondent would point out that this issue is factual in nature and as such, it would be better that the petitioner approach the appellate authority by way of a statutory appeal.

3. I agree, Since the evidences in support of the petitioner's stand have been produced only at this stage, it would be appropriate that this issue should be dealt with by the departmental authorities at the first instance. The petitioner is permitted to file a statutory appeal as regards this issue within a period of four weeks (4) from today.

4. As far as W.P.Nos.2885, 2888 and 2890 of 2020 are concerned, Mr. Mudimannan, learned counsel for the petitioner submits that apart from the legal issue raised in these Writ Petitions, statutory appeals have been filed with regard to the other issues.

5. This order is thus confined to a decision on the legal issue as to whether a reversal of Input Tax Credit (ITC) is contemplated in relation to loss arising from manufacturing process.

6. The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There is a loss of a small portion of the inputs, inherent to the manufacturing process. The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5) (h) of the GST Act.

7. As regards the Legislative history of this provision, the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') contained an equivalent provision in Section 19 thereof, which deals with various situations arising from the grant and reversal of ITC. Section 19 (1) grants eligibility to ITC of the amount of tax paid under the TNVAT Act by a registered dealer. It sets out situations where such ITC shall be denied as well.

8. The provisions of Section 19, as relevant for the issue dealt with in these matters, are extracted below:

> ***19. Input tax credit .-***
>
> *(1) There shall be input tax credit of the amount of tax paid Omitted[or Payable] under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :*
>
> *Provided that the registered dealer, who claims input tax credit, shall establish that the tax due On purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold such goods and that the goods have actually been delivered Provided further that the tax deferred under section 32 shall be deemed to have been paid under this Act for the purpose of this sub-section.*
>
> .....
>
> *(8) No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.*
>
> *(9) No input tax credit shall be available to a registered dealer for tax paid Omitted [or Payable] at the time of purchase of goods, if such-*

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit; or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

9. The prescription in Section 19 is echoed in the provisions of Section 17 of the GST Act. Section 17 (1) to (4) set out the entitlement of the assessee to ITC. Sub-section (5) and its sub-clauses provide for situations where ITC claimed shall be restricted and read as follows:

17. Apportionment of credit and blocked credits.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

.....

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.-- For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

10. The impugned assessment orders reject a portion of ITC claimed, invoking the provisions of clause (h) extracted above. This relates to *goods lost, stolen, destroyed, written off or disposed by way of gift or free samples.* In my considered view, the loss that is occasioned by the process of manufacture cannot be equated to any of the instances set out in clause (h) above.

11. The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.

12. In the case of *Rupa & Co. Ltd. vs. Cestat, Chennai (2015 (324) ELT 295 - 2015-VIL-373-MAD-CE),* a Division Bench of this Court decided a question of law in regard to the entitlement to Cenvat credit involving the measure of inputs used in the manufacturing process, in terms of the provisions of Section 9A and 2(g) of the CENVAT Credit Rules, 2002.

13. In that case, a certain amount of input had been utilised by the assessee, whereas the input in the finished product was marginally less. The department proceeded to reverse the cenvat credit on the difference between the original quantity of input and the input in the finished product.

14. The Bench, noticing at paragraph 13 that some amount of consumption of the input was inevitable in the manufacturing process, held that cenvat credit should be granted on the original amount of input used notwithstanding that the entire amount of input would not figure in the finished product. They state at paragraph 13 as follows:

> *13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'*

15. In the light of the discussion as above, I am of the view that the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5) (h).

16. The impugned orders to the above extent are set aside. Writ Petitions in W.P.Nos.2888, 2890 and 3936 of 2020 are partly allowed and W.P.Nos.2885, 3930 and 3933 of 2020 are allowed in full. No costs. Connected Miscellaneous Petitions are closed.

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(Courtesy: VILGST)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG)NO. 128 OF 2021

M/s. Aegis Polymers .. Petitioner

vs.

Union of India & Ors. .. Respondents

Mr. Rahul Thakar i/b. C. B. Thakar, for the Petitioner.

Mr. Sham Walve with Ms. Sangeeta Yadav, for Union of India-Respondent no.1.

Ms. Jyoti Chavan, AGP for the State.

CORAM :- DIPANKAR DATTA, CJ & G. S. KULKARNI, J.

Date :- July 12, 2021.

PC :

1. Heard Mr. Thakar, learned Counsel appearing for the petitioner, Mr. Walve, learned Counsel appearing for respondent no.1 and Ms. Chavan, learned AGP appearing for the State.

2. The primary grievance of the petitioner in the present petition is to an action of the respondents in blocking of the electronic credit ledger of the petitioner by virtue of which the petitioner could not avail the benefit of the input credit. Such blockage was undertaken on January 28, 2020. Although there are diverse reliefs claimed in the petition, Mr.Thakar, learned Counsel appearing for the petitioner has very fairly pointed out that by operation of law, the impugned blockage would cease to have effect by virtue of the provisions of sub-rule (3) of Rule 86A of the CGST Rules,2017. The Rule reads thus:-

> **"86A. Conditions of use of amount available in electronic credit ledger.-**
>
> (1)… … …
>
> (2)… ... …
>
> (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."

3. Mr. Walve, learned Counsel appearing for the Revenue would not dispute such contention as urged by Mr. Thakar. He would however, submit that there is a show cause notice dated October 24, 2019 issued to the petitioner, to which no reply has been submitted.

4. We have perused the record. It appears to us that there was some technical error on the part of the petitioner in wrongly submitting the details of the input credit in different forms than the requisite form. Be that at it may, we do not intend to dwell on such issues, suffice it to observe that the primary concern of the petitioner appears to have been redressed by operation of sub-rule (3) of Rule 86A of the CGST Rules, to the effect that the impugned blockage has ceased to have effect, as already a period of more than one year has passed, after the electronic ledger of the petitioner was blocked on January 28, 2020.

5. We accordingly dispose of the petition, keeping all contentions of the parties open on other issues. No costs.

(G. S. KULKARNI, J.) (CHIEF JUSTICE)


Association News

Pravin Shinde & Mahesh Madkholkar,
Hon. Jt. Secretaries

I. Admission of New Members to the GSTPAM

A. The 12th Managing Committee Meeting for the year 2020-21 was held on Zoom Platform on 26th June, 2021 and the following persons were admitted as the members of the Association:

A	LIFE OUTSTATION MEMBER	GSTPAM NO
	Jadhav Jyoti Hemant	LMJ00025
B	**ORDINARY OUTSTATION MEMBERS**	**GSTPAM NO**
	Bhojwani Jitendra Ramchand	OOB00282
	Agrawal Kamlesh Suresh	OOA00148
	Gundalwar Satyan Sitaram	OOG00268
	Nikam Sanjay	OON00104
	Bukate Sunil Pandharinath	OOB00245
	Patel (Risaldar) Iliyas M Sadik	OOP00342
	Gattani I. R.	OOG00041
	Subhedar Gajanan	OOS00550
	Patkar Mahadev Satyawan	OOP00360
	Kulkarni Sameer Pandurang	OOK00401
	Paranjape Sudhakar	OOP00361
	Choukekar Shivprasad	OOC00137
	Tejam Shankar	OOT00120
	Pandit Shrikant	OOP00362
	Thanedar Mahesh	OOT00121
	Nachankar Ritesh Ravindra	OON00105
	Karangutkar Siddesh Anil	OOK00419
	Bodake Motiram B.	OOB00048
	Dubey P. K.	OOD00090

	Assawa Shiwbhagwan Chaturbhuj	OOA00149
	Rahate Vinod	OOR00103
	Gadgil Mandar Y.	OOG00269
C	**ORDINARY LOCAL MEMBERS**	**GSTPAM NO**
	Parekar Amit Sadashiv	OP00411
	Salgia Atul Rajendra	OS00945
	Rathod Manish Devji	OR00166
	Shah Pranav Ashokkumar	OS00946
	Salgaonkar Tushar Yeshwant	OS00947
	Vasani Vihit Himanshu	OV00164
	Sonpal Vinay Amritlal	OS00948
	Kariat Krishnakumar	OK00211
	Jain Vinod Pukhraj	OJ00098
	Patel Rakesh Mansukhbhai	OP00275
D	**ORDINARY OUTSTATION**	**GSTPAM NO**
	FIRM MEMBERS	
	Sundaram Seshan & Associates	OOS00572
E	**CONVERSION FROM ORDINARY TO LIFE MEMBER**	**GSTPAM NO**
	Munot Swapnil	LMM00028
F	**ORDINARY LOCAL DONER MEMBERS**	**GSTPAM NO**
	Patodia Sunil Kumar	DMP00001

B. The 13th Managing Committee Meeting for the year 2020-21 was held on Zoom Platform on 08th July, 2021 and the following persons were admitted as the members of the Association:

A	**LIFE OUTSTATION MEMBER**	**GSTPAM NO**
	Dasgupta Arup	LMD00035
B	**ORDINARY OUTSTATION MEMBERS**	**GSTPAM NO**
	Shaha Amol Navnitlal	OOS00573
	Naphade Siddesh Satish	OON00106
	Shewale Sidram Jaykumar	OOS00574
	Adavadkar Milind Prabhakar	OOA00150
C	**ORDINARY LOCAL MEMBERS**	**GSTPAM NO**
	Vora Devchand L	OV00165
	Vyas Shrawan Kumar	OV00166

II. Past Events

1. Organised Webinar jointly with AIFTP(WZ) and TBA Pune

Sr. No.	Date	Day	Topic	Faculties
1	20th June, 2021	Sunday	Legal Issues in E-way Bill Provisions	Adv. Sujit Ghosh Moderator Adv. Milind Bhonde

2. Yoga Session

The Virtual International Yoga Day Celebration Organized on Virtual Platform Zoom held on Monday, 21st June, 2021 from 08.00 am. To 09.00 a.m. The Yoga Session was convened by The Certified Yoga Instructor Mr. Sai Sukhathankar.

3. Organised Lecture on Youtube Virtual Platform jointly with ITAT, AIFTP, BCAS and CTC

Sr. No.	Date	Day	Topic	Faculties
1	25th June, 2021	Friday	Constitutionality of Tax Laws	Senior Advocate Shri Harish Salve

4. Organised Webinar jointly with AIFTP(WZ) and MCTC

Sr. No.	Date	Day	Topic	Faculties
1	2nd July, 2021	Friday	Practice Development Strategies - Networking, Specialisation, Technology	Panel Moderator CA Priti Savla Panelists : CA Himanshu Kishnadwala CA Ashit Shah CA Adarsh Madrecha

5. Know your Candidates meeting

Know your Candidates meeting for the members of the Association for the ensuing election of GSTPAM, was held on 3rd July, 2021 from 04.00 pm to 06.00 pm at Zoom Platform.

6. 70th Annual General Meeting

70th Annual General Meeting was held on 16th July, 2021 at 02.00 P.M in GSTPAM Tower office, 8 & 9, Mazgoan Tower, 21-Mhatar Pakhadi Road, Mazgoan, Mumbai-400010

7. Access to all workshop videos for the year 2020-21

Opportunity missed is not the opportunity lost.

GSTPAM had organized the various paid workshops:

1. Learning Series on Basic to Advanced including Automation in Excel (5 sessions)
2. Introduction to Customs Law (5 sessions)
3. Charitable Trusts (3 sessions)
4. Panel Discussion on GST (4 sessions)
5. Practical Aspects of GSTR 9 & 9C (2 sessions)

However, everyone could not attend them all. Consolidated charges for these events were ₹ 2,450 + GST. So GSTPAM has launched Access to Video Recordings of Workshops Series on Google Drive valid upto 31st October, 2021 at a nominal price of ₹ 825/- plus GST (for members) & ₹ 1200/- plus GST (for non members)

Link for payment: http://bit.ly/accessvideos-workshops

Do avail of this opportunity, if you have missed these workshops and enhance and refresh your knowledge on the above topics.

8. For the information of members

Due to this pandemic situation, GSTPAM has joined hands with The Cosmos Co-operative Bank Ltd for the Scheme of "Cosmos Professional Comfort Loan" @ 8.90% interest rate p.a. *

For Individual Professional Loan up to ₹ 5 Lakhs (Unsecured)	For Individual Professional Loan up to ₹ 25 Lakhs (No Collateral Security)	For Enterprise of Professional Loan upto ₹ 50 Lakhs (No Collateral Security)	For Enterprise of Professional Loan upto ₹ 1 Crore (Collateral Security)

* Subject to the conditions & CIBIL Score applies*

Many professionals must be facing the financial crunches & difficulties in paying Salary, Operating Expenses in these months, so to overcome the financial difficulties, any member can approach to the COSMOS Bank branches respectively.

Contact Details: Phone number: 18002330234; email id: retailloans@cosmosbank.in

Our Publications Available for Sale

Sr. No.	Name	Price (₹)
1	Maharashtra GST Act with Rules & Case Laws Digest	575/-
2	21st NNRC Book	100/-
3	22nd NNRC Book	225/-
4	Export of Goods and Services & Supplies to & form Special economic zones under the GST Laws	60/-
5	Import of Goods and Services under the Goods & Services Tax Laws	50/-
6	Transitional Provision	50/-
7	43rd RRC Book	250/-
8	Seminar Booklet 29.06.2018	100/-
9	MSTT Case Law Digest 2009-14	400/-
10	GST Acts with Rules & Forms (BARE ACT)	610/-
11	44th RRC Book	200/-
13	Seminar Booklet 14.02.2020	125/-
14	Pocket Diary 2020-21	100/-

Please Note: News Bulletin for the month of July 2021 is available on the website of GSTPAM.

ANNOUNCEMENT

i) All members are requested to renew their Membership for the period from April 2021 to March 2022. Renewal forms are available on our website www.gstpam.org and Mazgaon Library.

ii) Subscribers are requested to renew subscription of GST Review for the period from April 2021 to March 2022. Subscription forms are available on our website www.gstpam.org and Mazgaon Library.

Online payment links of GSTPAM REFERENCER FOR YEAR 2021-22

Book Referencer at rate of ₹ 700/- on by making payment on following link :
https://www.stpam.org/node/55252

RENEWAL OF MEMBERSHIP & SUBSCRIPTION FOR YEAR 2021-22

Payment can be made on following link for renewal of membership & subscription:
https://www.stpam.org/payonline/845

NEW MEMBERSHIP

Fees for new membership can be paid on following link: https://www.stpam.org/payonline/864
Please make use of above links for making respective payments to avoid further delay.

We have received complaints with regard to technical problem in making online payments towards membership fees, subscription charges and booking of referencers through the provided online payment links. Therefore, those who are facing problem in making said online payments, are requested to make payment in following respective Bank Accounts through NEFT and send the relevant information along with screen shot of payment made on email address of GSPTAM (i.e. "office@gstpam.org").

NEW MEMBERSHIP, RENEWAL OF MEMBERSHIP & SUBSCRIPTION FOR YEAR 2021-22

The Goods & Services Tax Practitioners Association of Maharashtra
Bank Name: Bank of India, Mazgaon Branch
Account No: 007020100001816
IFSC Code: BKID0000070

REFERENCER FOR YEAR 2021-22

The Goods & Services Tax Practitioners Association of Maharashtra
Bank Name: Bank of India, Mazgaon Branch
Account No : 007020100001817
IFSC Code : BKID0000070

Report of the Chief Election Officer and declare the result of the Elections of 2021-22

The Chief Election Officer Mr. J. D. Rawal, thanked the Association for appointing him as the Chief Election Officer of the Association for the elections for the year 2021-22. He also thanked the members of the Election Committee for their support, guidance & suggestions. He stated that since requisite number of nomination forms were received, elections were not required.

He announced the results of election for the year 2021-2022 which were as under: -

1.	Shri. Mehta Aalok K	President
2.	Shri. Khushalani Sunil G	Vice President
3.	Shri. Shinde Pravin V	Hon. Treasurer
4.	Shri. Madkholkar Mahesh K	Hon. Jt. Secretary
5.	Shri. Badheka Parth R.	Hon. Jt. Secretary

Managing Committee Members

1.	Aditya Seema Pradeep	Member
2.	Baheti Manekchand	Member
3.	Bhatt Monarch	Member
4.	Chheda Jatin	Member
5.	Chhugani Haresh	Member
6.	Gandhi Premal	Member
7.	Jadhav Pravin	Member
8.	Mane Amol	Member
9.	Mhaske Vinod	Member
10.	Nathani Dilip	Member
11.	Shah Sejal	Member
12.	Talati Umang	Member
13.	Thakar Rahul	Member
14.	Talreja Ajay	Member
15.	Vakharia Anvesh	Member

GST Digest

Dinesh Tambde,
Advocate

23 Input Tax Credit

The situations as set out for disallowance of ITC in clause (h) of Section 17(5) of CGST Act indicates loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself and not covered in clause (h) of Section 17(5). Therefore, ITC cannot be apportioned for loss of material during the process of manufacturing.

The petitioners were engaged in the manufacture of MS Billets and Ingots. MS scrap was an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There was a loss of a small portion of the inputs, inherent to the manufacturing process. The impugned orders sought to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act.

As regards the Legislative history of this provision, the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') contained an equivalent provision in Section 19 thereof, which deals with various situations arising from the grant and reversal of ITC. Section 19 (1) grants eligibility to ITC of the amount of tax paid under the TNVAT Act by a registered dealer. It sets out situations where such ITC shall be denied as well.

The impugned assessment orders reject a portion of ITC claimed, invoking the provisions of clause (h) extracted above. That was related to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. Hon'ble High Court observes that, the loss occasioned by the process of manufacture cannot be equated to any of the instances set out in clause (h). The situations as set out above in clause (h) indicated loss of inputs that were quantifiable, and involve external factors or compulsions. A loss that was occasioned by consumption in the process of manufacture was one which was inherent to the process of manufacture itself.

In the light of the discussion as above, it was held that, the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which was inherent to manufacturing loss is misconceived, as such loss was not contemplated or covered by the situations adumbrated under section 17(5)(h).

ARS Steels & Alloy International (P.) Ltd. vs. State Tax Officer, Group-I, Chennai. W.P. NOS.2885, 2888, 2890, 3930, 3933 AND 3936 OF 2020

WMP NOS.3341, 3336, 3345, 4656, 4661 AND 4664 OF 2020 JUNE 24. [2021] 127 taxmann. com 787 (Madras) HIGH COURT OF MADRAS

24 Interest u/s 50 of CGST Act

Interest u/s 50 r.w. Section 42 cannot be levied once the respective return is rectified.

The challenge in the present case was with respect to levy of interest under Section 50 of the CGST Act relating to mismatch of ITC resulting into additional liability. In the present case the petitioner had rectified respective return in response intimation for miss-match received from the department and paid the additional liability accordingly. The revenue wanted to levy interest under Section 50 r.w. Section 42 of CGST Act. Hon'ble High Court observed that, the provisions of Section 42 was not relevant, insofar as the impugned order itself recorded that the assessee had, on receipt of intimation of the wrongful claim of input tax credit (ITC), accepted the error in claim and had reversed ITC, both attributable to CGST and SGST through voluntary payment of tax in Form GST DRC-03.

Further, it was observed that the provisions of Section 42 can only be invoked in a situation where the mismatch is on account of the error in the database of the revenue or a mistake that has been occasioned at the end of the revenue. In a case where the claim of ITC by an assessee is erroneous, as in this case, then the question of Section 42 does not arise at all, since it is not the case of mismatch, one of wrongful claim of ITC.

M/S. F1 Auto Components P Ltd Vs. The State Tax Officer, Chennai, W.P. No.6631 of 2021 And WMP No.7188 of 2021 [2021 (7) TMI 600 - MADRAS HIGH COURT]

[Contd. from Page No. 73]

7. That unsigned notice issued u/s 148 is invalid and nullity therefore provisions of section 292BB are of no help and cooperation given by assessee in assessment proceedings would no in way waive the legal requirement accordingly assessment order was quashed.

   (Yeshoda Electricals vs. ACIT – ITA NO. 1175/BANG/ 2016 Dt. 03-02-2021)

8. That Education cess is allowable as deduction u/s 37(1) because it is not covered by section 40(a)(ii), this section applies only to taxes.

   (DCIT vs. Century Plyboards (P) Ltd. – 187 ITD 35 – KOL ITAT Dt. 04-11-2020)

9. Further in following cases also Education cess was allowed in appeals which were filed late, as an additional ground, being legal in nature, were admitted in course of hearing.

   (a) ITC Infotech India Ltd. – 114 taxmann.com 181 – KOL ITAT –Delay of 1535 days condoned;

   (b) DCIT vs. Tega Ind. Ltd. – 112 taxman.com 259 – KOL ITAT – Delay of 598 days condoned when cross objection was filed belatedly.

10. That assessee has entered into Development Agreement and accordingly had parted with possession of site, but on account of failure of developer to carry out development, assessee was not liable for capital gains and site was repossessed by assessee.

    (Santosh Kumar Subbani vs. ITO – 186 ITD 217 – Hyd. ITAT Dt. 13-11-2020)

11. That there would be no disallowance u/s 40A(3) on payment made by assessee's debtor to his creditor directly, in true settlement of accounts of all 3 parties, through banking channels because transaction is indisputably genuine, verifiable with availability of audit trail and there is no evasion of tax.

    (M/s Lion Mercantile P Ltd vs. ITO – ITAT Mumbai, ITA NO. 5998/MUM/2014 Dt. 27-06-2018)

From the Courts

CA Mayur R. Parekh

9 a) Whether the order of cancellation cancelling the assessee's registration could have been made and sustained by the appellate authority and the Tribunal on grounds different from those disclosed in the show cause notice under the Provisions of U.P.VAT Act ?

b) Whether in registration of the assessee could have been cancelled with retrospective effect?

Held : No

The admitted facts of the case are that the assessee was registered under the U.P. Value Added Tax Act, 2008, under Section 17 (11) of the Act. A show cause notice was issued to the assessee by the Assistant Commissioner proposing to cancel its registration. Perusal of the notice reveals that it was issued on three points:

(i) records revealed that the assessee was engaged in purchasing and selling goods to the same seller/ purchaser. Thus, it was alleged that the assessee was engaged in bogus sales. Relevant to the present revision, it may be noted that details of such other dealer/s was not disclosed in the notice. However, it was informed that the assesse was engaged in trading with bogus firms.

(ii) the assessee was engaged in purchasing and selling goods with firms that stood closed, only for the purpose illegally obtaining Input Tax Credit (I.T.C.). Again the names and other details of the dealer/s with whom assessee was alleged to be involved in such bogus transactions were not disclosed.

(iii) It was alleged that in the survey conducted by the Special Investigation Branch of the Commercial Tax department dated 19.10.2016, no trading activity was found to be observed.

4. In response to the above notice, the assessee appears to have filed a reply dated 28.10.2016 to the general allegations made in the notice dated 24.10.2016. Considering the aforesaid reply, the assessing authority vide order dated 18.11.2016 cancelled the assessee's registration from the date of service of the notice dated 24.10.2016.

5. Against the above order, asseessee preferred a first appeal. That was rejected and the second appeal filed therefrom has also been rejected.

The assessee submits that under Section 17 (11) opportunity of hearing is a mandatory condition to be fulfilled before any registration may be cancelled. For an adequate opportunity of hearing, it is necessary that the assessee be confronted with the exact charge levelled

against him and also with the adverse material relied against him. Neither the exact charge was disclosed to the assessee vide notice dated 24.10.2016 nor the adverse material was disclosed to the assessee. Referring to the order dated 18.11.2016, it has been submitted that it for the first time disclosed the names of the other dealers M/S Shiva Traders & Contractors, M/S Ashoka Elignce Amantran, M/S A.K. Contraction Company and M/S Mithlesh Enterprises with whom the assessee is alleged to have performed bogus transactions. Again for the first time, by means of the order dated 18.11.2016 it was disclosed that M/S Mithilesh Enterprises was closed with effect from 31.10.2015. Thus, it has been submitted that the assessee's fundamental right to do business has been illegally infringed inasmuch as the registration has been cancelled in violation of provisions of Section 17 of the Act.

The Revenue would submit that the assessee's registration has been rightly cancelled inasmuch as it has not been denied that the assessee had purchased and sold goods from the same firms and had also developed a business practice of bogus sales with firms that were closed from before. As to the violation of the principles of the justice, revenue would submit that the assessee declined the opportunity to explain the adverse circumstances cited against him. At the stage of appeal, since the assessee failed to offer any explanation in the appeal proceedings, the cancellation of registration is in order.

However, the Court Observed that there can be no dispute that before cancellation of registration, a reasonable opportunity of hearing has to be afforded to the affected dealer. In the present case, the notice does not disclose the exact nature of the charge leveled against the assessee inasmuch as it does not disclose the names of the other dealers with whom the asessee is alleged to have entered into fake and bogus transitions. Neither the show cause notice disclosed the exact nature of such transactions, nor the volume of such transactions nor the name of the dealer with whom asseessee is alleged to have traded in goods after cancellation of the registration of the other dealers or after closure of business by the other dealer. Unless the aforesaid facts were clearly adverted to in that notice and unless the adverse material relied against the assessee had been disclosed to him, the same could not have been read against him, in evidence. In absence of such disclosure contained in the show cause notice dated 24.10.2016, it is difficult to contemplate how a person in the shoes of present assessee could have responded to the show cause notice and defended the proceedings for cancellation of his registration. Unless the assessee had been confronted with the names of the dealers with whom it was alleged to have entered into bogus transactions and unless the details of such transactions had been disclosed in the notice itself and unless similar details of other dealers, who are alleged to have closed their business been disclosed the assessee could never have effectively responded to the charge/s leveled against him of having engaged in bogus transactions only for the purpose of availing I.T.C. Cancellation of registration is a very serious proceeding. It takes away the right of an assessee to do business. Therefore such a proceeding should be approached with that much more seriousness and case by the assessing authority. In the first place, the charge must be such as may clearly fall within one of qualifying events specified under section 17 (11) of the Act. Then a clear narration of the fact allegations leading to such charge specification must be contained in the notice itself. The notice must also disclose the nature and details of documents that are to be relied against the assessee. Also, the assessee must be confronted with that averse material during the course of the proceedings and he must be afforded reasonable opportunity to rebut the same before final order may be passed.

Finally, the Court held that at present the assessing authority appears to have passed a wholly ex parte order inasmuch as in first

place it had not disclosed to the assessee the exact nature of the charge leveled against him or the facts and circumstances in which his registration was being cancelled and in any case material that formed the basis of the charge was completely cancealed from the assessee. The appellate authority and the Tribunal have erred in not correcting the mistake thus committed by the assessing authority. The first question of law is thus answered in the negative i.e. in favour of the asseessee and against the revenue. In view of the above, the second question does not require to be answered in the present case. At the same time, keeping in mind the nature of allegation leveled against the assessee, the proceeding cannot be allowed rest here. It is then provided that the assessing authority shall issue a fresh notice in terms of the order dated 18.11.2016 and proceed in accordance with law.

[M/s Annapurna Trading Co. vs The Commissioner Commercial Tax (2021-VIL-457-ALH)

10 Whether reversal of Input Tax Credit is contemplated in relation to loss arising from manufacturing process by invoking provisions of Section 17(5)(h) of the GST Act ?

Held : No

The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There is a loss of a small portion of the inputs, inherent to the manufacturing process. The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act. The impugned assessment orders reject a portion of ITC claimed, invoking the provisions of clause (h) extracted above. This relates to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. As per the Petitioner the loss that is occasioned by the process of manufacture cannot be equated to any of the instances set out in clause (h) above. The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.

However, the Court refer the case of *Rupa & Co. Ltd. vs. Cestat, Chennai (2015 (324) ELT 295 - 2015-VIL-373-MAD-CE)*, a Division Bench of this Court which decided a question of law in regard to the entitlement to Cenvat credit involving the measure of inputs used in the manufacturing process, in terms of the provisions of Section 9A and 2(g) of the CENVAT Credit Rules, 2002. In that case, a certain amount of input had been utilised by the assessee, whereas the input in the finished product was marginally less. The department proceeded to reverse the cenvat credit on the difference between the original quantity of input and the input in the finished product. The Bench, noticing at paragraph 13 that some amount of consumption of the input was inevitable in the manufacturing process, held that cenvat credit should be granted on the original amount of input used notwithstanding that the entire amount of input would not figure in the finished product. They state at paragraph 13 as follows:

> *13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the*

fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'

Finally, the Court held that the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h). The impugned orders to the above extent are set aside.

[M/s ARS Steels & Alloy International Pvt Ltd vs. The State Tax Officer, Group – I, Inspection, Intelligence – I, Chennai (2021-VIL-484-MAD)]

11 Whether the entire contribution exceeding Rs. 7500/- is liable to GST or whether the exemption under Notification 12/17-Central Tax (Rate) dated 28.06.2017 would be available upto to a sum of Rs.7,500/- and only the difference (excess) is exigible to tax ?

Held : Only excess amount is exible to Tax

The petitioner in W.P.No.27100 of 2019 challenges an order of the Authority for Advance Ruling (AAR) levying tax on the entirety of the contribution by him to a RWA and the petitioners in W.P.Nos.5518 and 1555 of 2020 and 30004 of 2019 challenge Circular No.109/28/2019 dated 22.07.2019, also on the same issue. With the onset of GST, various services in respect of which GST was to be levied and collected came under the scanner. Exemptions were granted under Notification 12/17-CT dated 28.06.2017.

Thus, an exemption was granted to contributions made to RWA upto an amount of Rs.7,500/- per month per member for sourcing of goods and services from a third person for the common use of the members of RWA, i.e., housing complexes or residential complexes. Since contributions solicited from members of RWA were on some occasions more than Rs.7,500/- as well, one of the questions that arose was whether, in a case where the contribution exceeded the amount of Rs.7,500/-, the resident in that RWA would lose the entitlement to exemption altogether, as a result that the entire contribution would be liable to GST or whether the exemption would still continue to be available upto to a sum of Rs.7,500/- and only the difference (excess) becoming exigible to tax.

In the early years of GST, The Goods and Services Tax Department issued a clarification in the case of Co-operative Housing Societies, wherein they categorically stated that GST would be applicable only on the amount in excess of Rs.7,500/-. The fliers covers all Co-operative Housing Societies, in essence, RWAs, Housing Societies or Societies in residential complexes. Thus and since this clarification had been issued, this was the methodology that was followed by all RWAs consistently in the collection of contributions and levy of GST thereupon.While this is so and this method was being followed from 2017 till 2019, one of the petitioners, approached the AAR seeking clarification in regard to this issue. The AAR, by impugned order dated 21.06.2019 - 2019-VIL-221-AAR, held adverse to it stating that the grant of exemption was conditional upon the contribution being an amount of Rs.7,500/- or less. If the contribution exceeded the sum of Rs.7,500/-, then the very entitlement of that RWA to exemption would stand defeated and the entirety of the amount collected would have to be brought to tax.

The relevant portion of the ruling of the AAR is as follows:

RULING

If a service by the applicant, a registered housing society/resident welfare association to its members by way of reimbursement of charges or share of contribution for sourcing of goods or services from a third person for the common use of its members, is such that it is above 7500 rupees per month effective from 25.01.2018 (5000 rupees before), it is not eligible S No 77 (c) of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 as amended for CGST and of SI No 77 (c) of Notification No.11(2)/ CTR/532(d-15)/2017 vide G.O. (Ms) No. 73 dated 29.06.2017 as amended for SGST. COST and SGST at appropriate rates are to be paid by the members on the full amount of reimbursement of charges or share of contribution,

8. Taking inspiration from this position, the impugned Circular has come to be passed toeing the line of the AAR. The question and answer relating to this issue is extracted below:

Circular No.109/28/2019-GST
F. No.332/04/2017-TRIJ
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
*****
New Delhi, the 22nd July, 2019

To,

The Principal Chief Commissioner/Chief Commissioners/Principal

Commissioner/Commissioner of Central Tax (All)/ The Principal Director

Generals/Director Generals (All)

Madam Sir,

Subject: Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members – reg.

Sl. No.	***Issue***	***Clarification***
1.	……..	
5.	*How should the RWA calculate GST payable where the maintenance charges exceed Rs.7500/- per month per member? Is the GST payable only on the amount exceeding Rs.7500/- or on the entire amount of maintenance charges?*	*The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs.7500/- per month per member. In case the charges exceed Rs.7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs.9000/- per month per member, GST @ 18% shall be payable on the entire amount of Rs.9000/- and not on (Rs.9000- Rs.7500) = Rs.1500/-*

The petitioner would argue that this interpretation is contrary to the express language as well as the intendment of the exemption granted. They take me through various instances of grant of exemption under different Indirect Tax enactments, to illustrate the difference in language used and the meaning conveyed. Emphasis is placed on the use of the phrase 'upto' in the relevant Entry stating that the grant of exemption was for contribution upto Rs.7,500/- and this entitlement remained constant notwithstanding any change in the amount of contribution. Attention is drawn to Article 13(3) of the Constitution of India, as per which 'law' would include any Ordinance or Bye law, Rule, Regulation, Notification, custom or usage, excluding Circulars. Thus the withdrawal of a statutory exemption by way of a Circular is contrary to the provisions of the Constitution. Based on the aforesaid clarification initially issued by

the Department, the petitioner RWAs have been collecting tax only on that component of the contribution that exceeds Rs.7,500/-. They urge that if a contrary view were to be taken at this juncture, it would be impossible for the Associations to collect the shortfall as there would have been several changes in ownership of the property, in the interim.

The revenue would stress on the provisions of Section 15 of the GST Act, as per which, it is the transaction value that is liable to GST. The transaction value in this case is represented by the contribution made and it should, in entirety, be taken into account for the purpose of levying tax. The Revenue points out that the exemption is intended for the middle class and not for luxury apartments/their owners.Revenue relies on the judgment of the Constitutional Bench of the Supreme Court in the case of Commissioner of Customs Import, Mumbai V. Dilip Kumar & Company (361 ELT 577 - 2018-VIL-23-SC-CU-CB), wherein the Supreme Court dealing with the grant of exemption from duty under the Customs Act, 1962, holding that, in the case of ambiguity in interpretation of a tax exemption provision or Notification in regard to its applicability qua entitlement or rate of tax to be applied, the interpretation should be strict and the burden of proving applicability would fall on the assessee. In this case as well the exemption provision must be construed strictly and the petitioners are thus not entitled to seek beneficial treatment.

To summaries, the revenue submission is that while a contribution of Rs.7,500/- or less would entitle the concerned assessee to the grant of exemption, if the contribution exceeded Rs.7,500/-, there was an automatic disentitlement.

However, the Court observed that there is no ambiguity in the language of the exemption provision in this case and thus the judgment of the Supreme Court in Dilip Kumar (supra) would not be applicable to the facts and circumstances of this case. The ratio of that decision would apply only in a case where the provisions granting exemptions are ambiguous, whereas, in the present case, the Entry is clear and hence it is only a question of interpreting the same.

The term 'upto' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of Rs.7,500/- would exempt for the purposes of GST.

Finally, the Court held that the conclusion of the AAR as well as the Circular to the effect that any contribution above Rs.7,500/- would disentitle the RWA to exemption, is contrary to the express language of the Entry in question and both stand quashed. To clarify, it is only contributions to RWA in excess of Rs.7,500/- that would be taxable under GST Act.

[Greenwood Owners Association, Oceanic Owners Association, M/s TVH Lumbini Square Owners Association, Sanjay Kumar Gupta vs. The Union Of India, Represented By Secretary To Government, Department Of Revenue, Ministry Of Finance, New Delhi (2021-VIL-523-MAD)]

Gist of Advance Rulings

CA Ashit Shah

13 Taxability of Second hand goods – Gold Jewelry

Facts of the matter

The Applicant is a Private Limited company engaged in the business of buying and selling of second hand gold jewelry from unregistered persons who are not dealers registered under GST. The Applicant states that they sell the used / second hand gold jewelry which has been purchased from unregistered persons, 'as such', without making any further processing. In other words, the used gold ornaments are sold in the same form in which they are originally purchased, to another registered person (buyer) after minor processing such as cleaning and polishing but without altering the nature of the ornament / jewelry. At present, applicant is discharging GST liability @ 3% on sale of such used / second hand jewelry. The applicant has sought advance ruling in respect of the following question:

Whether GST is to be paid only on the difference between the selling price and purchase price as stipulated under Rule 32(5) of CGST Rules, 2017, if applicant purchases used/ second hand gold jewellery from individuals who are not dealers under the GST and at the time of sale there is no change in the form / nature of goods?

Contention of the appellant

The Applicant states that as per Rule 32(5) of the CGST Rules, 2017, the value of supply shall be the difference between selling price and purchase price. Further, if the said difference is negative, then GST is not applicable on such transaction. Moreover, purchase of used/ second hand gold from unregistered persons, therefore, there is no question of claiming any input tax credit on purchase of such goods. Applicant is of the opinion that margin scheme is applicable and GST shall be payable only on the profit element being selling price minus purchase price. The Applicant states that this issue is already heard in the following cases.

1. Attica Gold (P) Limited by the Advance Ruling Authority, Karnataka.
2. Safest Agencies (P) Limited by the Advance Ruling Authority, Maharashtra.

Observations of the Authority

Rule 32 (5) stipulates the method of working of the taxable value of a supply and is applicable if the following conditions are satisfied:

(a) The supply made by the supplier must be a taxable supply

(b) The supplier shall be a person dealing in buying and selling of second-hand goods, that means (i) Used goods as such or after such minor processing which does not change the nature of the goods; and (ii) Where no input tax credit has been availed on the purchase of such goods.

In the instant case, the supplier, i.e., the applicant is effecting the supply of second-hand

jewelry which is taxable under the GST Act as it is covered under entry no.13 of Schedule V to the Notification No.01/2017-Central Tax (Rate) dated 28th June, 2017 which is taxable at 1.5% under the CGST Act and similarly taxable under the KGST Act, 2017 also at 1.5%. Hence, the supplier satisfies the condition that the supply made by him must be a taxable supply.

Regarding the next condition, the supplier must be a person dealing in buying and selling of second-hand goods. It is seen that the applicant has admitted that he is purchasing used gold jewelry from individuals and selling the same, after cleaning and polishing them. The applicant has also admitted that he is not availing any input tax credit on the purchase of such goods and the goods so purchased are supplied 'as such'. The applicant has stated that he is not melting the jewelry to convert it into bullion and then remaking it to new jewelry but only cleaning the old jewelry and polishing it without changing the nature and form of the jewelry so purchased. These goods are then supplied to other persons. Further, the applicant admits that they are invoicing the goods as "used gold ornaments". Hence, the applicant satisfies the second condition also.

Ruling

In view of the applicant satisfying both the aforesaid conditions, the valuation of the supply of second hand jewelry may be made as prescribed in sub-rule (5) of rule 32 of the Central Goods and Services Tax Rules, 2017 and levy tax on the margin only.

[Aadhya Gold Private Limited – GST AAR Karnataka – Order No. KAR/ADRG/35/2021, dated 09-07-2021]

14 Taxability of maintenance charges of Co. Op. Housing Society

Facts of the matter

Applicant is a Co-operative Housing Society (CHS). It looks after the upkeep of the society and its members. The CHS provides services to its members in the form of facilities or benefits like security, cleaning, repairs, water, common electricity etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc. CHS is raising monthly bills on its members which consist of 2 parts, one is property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged.

Applicant seek opinion on the chargeability of GST on maintenance charges as there could be no sale by the Co-operative Housing Societies to their own permanent members, for doctrine of mutuality would come into play.

Contention of the jurisdictional officer

CHS are covered by the definition of business as given under the provisions of the GST Act; transaction of supply of services by a CHS to its members is Covered by transaction taking place between "related persons" as provided in Section 15 of GST Act ; if supply of service or goods takes place in case of related persons or distinct persons, then such activity is 'supply' even if it is not accompanied by "consideration". A member of cooperative society and the cooperative housing society itself are separate and distinct entities under the MGST and CGST Act by virtue of the provisions of the Section 15. i.e. related person.

Observations

We observe that there were a lot of litigations and disputes by clubs/associations/ societies on this issue, earlier. However the said issue, with respect to Goods and Services Tax has been sought to be addressed by way of the proposed amendment made to Section 7 of the GST Act in the finance Budget, 2021, which have been inserted w.e.f. 1st July 2017, as under -

Vide clause 99, an amendment was proposed in the CGST Act, 2017. whereby, in section 7, in sub-section (1), after clause (a), the

following clause was to be inserted and deemed to have been inserted with effect from the 1st day of July 2017, namely :

> "(aa) the activities or transactions, by a person, other than an individual, to their members or constituents or vice versa, for cash, deferred payment or other valuable consideration. Explanation,- for the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and their members or constituents shall be deemed to be two separate persons and the supply of 77 activities or transactions inter se shall be deemed to take place from one such person to another;".

The amendment mentioned above has received the assent of the President of India on the 28th March, 2021 and in view of the same the issue of principles of mutuality in the case of cooperative societies like the applicant has been settled.

Therefore, in view of the amended Section 7 of the CGST Act, 2017, we find that the applicant society and its members are distinct persons and the amounts received by the applicant, against maintenance charges, from its members are nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that GST is not leviable on the maintenance charges collected by them from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received against maintenance charges, from its members.

Ruling

The applicant is liable to pay GST on maintenance charges (by whatever name called) collected from its members, if the monthly subscription or contribution charged from the members is more than Rs. 7,500/- per month.

[Emerald Court CHS Ltd. – GST AAR Maharashtra – Order No. GST/ARA-113/2019-2020/B-29, dated 13-07-2021]

15 Taxability of landscaping & gardening work provided to Government Departments

Facts of the matter

The applicant is engaged in the landscaping and gardening work provided to government departments like Nagarasabha Karyalaya Chintamani, Nagarasabha Karyalaya Bhadravathi, Tumakuru Mahanagara Palike, Nagarasabha Raichur, Purasabha Karyalaya Devanahalli, Mahanagara Palike Shivamogga. The applicant is executing Cleaning, Lower area Soil filling, and land levelling, designing and creating soil moulds, supply and spreading of red soil and sand at required place of the park. They are also installing children's playing equipment at required area of the park. They are planting herbal and medicinal plants, performing maintenance and watering and weed remover activities. The applicant submitted that nature of work executed and awarded by the government departments are:

a) Procurement of plant and planting at municipal jurisdiction area of Devanahalli for the purpose of afforestation and incorporation of tree guard for plants which were planted.

b) Maintenance of Park at jurisdictional area of Tumakuru Mahanagara Palike and Increasing the height of the compound at Azad park.

c) Development of Park with incorporation of children friendly components at (Balanagamma Colony Park) in Raichur City.

d) Development of Park at Ward number 32 of Jayanagar East, Tumakuru.

The applicant has sought advance ruling in respect of the landscaping and gardening work provided to government departments are exempt from payment of GST?

Observations

The transaction in question is examined and it is found that the applicant is executing two types of works, wherein in one set of cases the applicant is making supply of pure services without it being a works contract services or composite supply and in the second category of supply, the applicant is providing composite supply of both goods and services. The first set of activities is covered under entry no.3 of the N. No. 12/2017 – CTR and the same is clarified as exempt in the advance ruling in the matter of M/s The Nursery Men Co-operative Society - KAR ADRG 18/2018 dated 06.08.2018.

The second tranche of activity of the applicant in relation to the supplies which are involving goods either as a works contract or as a composite supply involving supplies of goods also, the activity gets exempted as per entry 3A of N. No. 12/2017 – CTR and amended from time to time,

(a) That the value of supply of goods should not constitute more than 25% of the value of the said composite supply;

(b) The supply is to the Central Government, State Government or Union Territory or a local authority or a Governmental Authority or a Government Entity;

(c) The activity entrusted must be in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

Since all these conditions are satisfied by the applicant, applicant is eligible for exemption under Entry 3A of N. No. 12/2017 – CTR.

Ruling:

The landscaping and gardening work provided to Government Departments is exempted under entry 3A of the N. No. 12/2017 – CTR provided that the value of goods supplied is not more than 25% of the total contract value and the recipients of services arc Central or State Government Departments or a local authority or a Government Entity or Authority as per the definitions provided in the concerned notifications.

[Narayanappa Ramesh – GST AAR – Karnataka – Order No. KAR ADRG 32/2021, dated 09-07-2021]

16 Rate of tax on Banana / Jackfruit / Tapioca chips

Facts of the matter

The applicant is an unregistered person. The Applicant is in the process of setting up a unit to carry on the business as manufacturer of banana chips, jack fruit chips, jaggery coated banana chips (sarakaraupperi in Malayalam), masala kadala (masala coated fried groundnut). The applicant submits that they intend to use the brand name "AYYAPPA" without taking registration of the brand under the Trade Marks Act, 1999 for conducting the business of banana chips, jack fruit chips, jaggery coated banana chips (sarakaraupperi in Malayalam), masala kadala (masala coated fried groundnut). The brand name shall be printed only on the retail packs though supply is intended to be made to wholesalers also. The applicant also submits that they do not wish to raise any actionable claim on the above brand name "AYYAPPA". The Applicant was informed that there is confusion regarding the classification

as well as the rate of GST applicable on the above products. While most of the dealers are paying GST at the rate of 5%, it is learnt that some departmental officers have contacted a few dealers and insisted for payment of tax at the rate of 12%. In the circumstances there is uncertainty in the market regarding the classification and rate of tax applicable on the above products. Hence the applicant wishes to start the business after getting the correct information regarding the classification and rate of tax applicable on the above products. Accordingly, applicant seeks ruling on the applicable rate of taxes on the Banana / Jackfruit / Tapioca chips.

Contention of the applicant

The applicant is of the view that the Tapioca Chips are taxable at 5% as it falls under SI.No.98 of Schedule I of N. No. 01/2017 – CTR under the Chapter Heading 1903. Alternatively, the applicant is of the view that the Tapioca Chips, Banana Chips and Jackfruit Chips are taxable at the rate of 5% as it would fall under 51 No. 101A of the 1st Schedule to the N. No. 01/2017 – CTR as inserted by N. No. No. 34/2017 – CTR.

The applicant submits that according to their view Banana Chips, Jackfruit Chips and Tapioca Chips would clearly fall in the category of namkeens. The word "namkeen" is a Hindi word which means salty. Therefore, any food product which is salty would be prima facie classifiable as namkeen. The banana chips is basically a salty product and therefore classifiable as namkeen. Most of the leading dealers in namkeens in the Hindi speaking areas have classified and identified banana chips as namkeens. Banana Chips are exhibited in their websites under the head "namkeens". For example, Chheddas, a leading dealer in namkeens have classified banana chips under the head namkeens. The classification under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (which is the basic law relating to the supply of food) Banana Chips, Jackfruit Chips and Tapioca Chips have been grouped along with namkeens such as mixture, bhujia, chabena etc).

Jaggery coated banana chips are sweet in taste and sweetness predominates. Therefore, the applicant is of the view that jaggery coated banana chips squarely falls in the category of "Sweetmeats" under Serial No.101 in Schedule I of the Notification No. 01/2017 CT(Rate) dated 28.06.2017 and is liable to tax at the rate of 5%. The term "sweetmeat" means food rich in sugar and prepared with sugar. Jaggery is made out of sugarcane and sugar is obtained on further crystallising and refining sugarcane. Sweetness is the predominant distinguishing feature of Jaggery Coated Banana Chips and the common man would identify them as Sweetmeat. The Hon'ble CESTAT in Hindustan Lever Ltd Vs CCE, Mumbai [2005 (189) E.L.T (Tr- Mumbai)] observed that; "Thereafter by going through the meaning of "Sweet meat" in various dictionaries, it was found that products rich in sugar, prepared with sugar is called as sweet meats…….. ." The observation was subsequently followed in MTR Foods Ltd Vs CCE, Bangalore [2010 (252) E.L.T 580 (Tri – Bangalore)] and Shaiq Iqbal Vs CCE [2019 (25) G.S.T.L 545 (Tri- Hyd)].

Observations by AAR

The products included in Chapter 19 of the Customs Tariff are preparations of cereals, flour, starch or milk and pastrycooks' products. The products falling under Tariff Item 1903 00 00 are Tapioca and substitutes therefor prepared from starch in the form of flakes, grains, pearls, siftings or in similar forms. The

Tariff Item only covers Tapioca products in the form of flakes, grains, pearls, siftings or similar forms not fried products and hence Tapioca Chips does not qualify to be classified under the Tariff Item.

Chapter 21 of the Customs Tariff covers "Miscellaneous edible preparations". The Heading 2106 of the Chapter 21 covers food preparations not elsewhere specified or included. Those food preparations not specified or included elsewhere in the tariff being preparations for use either directly or after processing for human consumption are to be classified under this head. Therefore, it is evident that the entry is a residuary entry in respect of edible preparations and hence the edible preparations shall be classified under this entry only if the same are not classifiable under any of the other specific entries for edible preparations.

Rules for interpretation of the First Schedule of the Customs Tariff Act, 1975 including the Section and Chapter Notes and the General Explanatory Notes are applicable for interpretation of the GST Tariff / Rate Schedule. Accordingly, applying the principles of interpretation in Rule 2 of the General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 the Banana Chips, Jackfruit Chips, Tapioca Chips and Jaggery Coated Banana Chips are classifiable under Tariff Heading 2008 19 40 of the Customs Tariff Act, 1975. The products falling under this Heading 2008 may be sweetened by adding sweetening agents or other substances like starch may also be added to the products. However, they do not alter the essential character of the product and they continue to be classifiable under Chapter Heading 2008. "Sweetmeat" means food rich in sugar or made of or covered in sugar or any sweet food or delicacy prepared with sugar. Therefore, sugar is one of the essential ingredients for classification of any sweet food item as sweetmeat. The findings in the decisions quoted by the applicant are also on the same lines that sweetmeats are sweet edible preparations rich in sugar or prepared with sugar. Therefore, only sweet edible preparations containing sugar can be considered as sweetmeats. The product in dispute in the case of Hindustan Lever Ltd Vs CCE, Mumbai [2005 (189) E.L.T (Tr- Mumbai)] contained 23% sugar and hence it was classified as "sweetmeat" whereas it is an admitted fact that the Jaggery Coated Banana Chips do not contain any sugar and it is neither known in commercial or common parlance as a sweet edible preparation containing sugar. Hence Jaggery Coated Banana Chips do not merit classification as "Sweetmeat". The contention of the applicant is that both jaggery and sugar are manufactured from sugarcane and the initial process for manufacture of both is the same and therefore the jaggery coated banana chips is to be considered as sweetmeat. On a plain reading of the above entry it is evident that all the products that fall under Chapter Heading 2008 of the Customs Tariff Act, 1975 attract GST at the rate of 12 % [6% CGST + 6% SGST].

Ruling

Banana / Jackfruit / Tapioca chips are classifiable under Custom Tariff Heading 2008 19 40 and is liable to tax @ 12% as per Entry at S. No. 40 of Schedule II of N. No. 1/2017 – CTR.

[Aswath Manhoran – GST AAR Kerala – Order No. KER/120/2021, dated 31-05-2021]

DGFT Update

CA Ashit Shah

20 Import of Polytetrafluoroethylene

Anti-dumping Duty (ADD) has been extended on the import of 'Polytetrafluoroethylene', originating in or exported from Russia, imposed vide N. No. 23/2016 – Customs (ADD), dated 6th June, 2016 shall be extended and shall be remain in force up to and inclusive of 31st October, 2021.

[N. No. 32/2021 – Customs (ADD), dated 03-06-2021]

21 Import of Phenol:

Anti-dumping Duty (ADD) on imports of 'Phenol' originating in or exported from European Union and Singapore, imposed vide N. No. 6/2016-Customs (ADD), dated the 8th March, 2016, shall be extended and shall be remain in force up to and inclusive of 31st October, 2021.

[N. No. 33/2021 – Customs (ADD), dated 03-06-2021]

22 Import of Vitrified tiles

Anti-dumping Duty (ADD) on imports of "Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption" falling under headings 6907 or 6914 of the First Schedule to the Customs Tariff Act, originating in or exported from China PR, imposed vide N. No. 29/2017-Customs (ADD), dated the 14th June, 2017, shall be extended and shall be remain in force up to and inclusive of 31st December, 2021.

[N. No. 34/2021 – Customs (ADD), dated 28-06-2021]

23 Import of Tyre Curing Press

Anti-dumping Duty (ADD) on imports of "Tyre Curing Presses also known as Tyre Vulcanisers or Rubber Processing Machineries for tyres, excluding Six Day Light Curing Press for curing bi-cycle tyres" falling under 8477 51 00 of the First Schedule to the Customs Tariff Act, originating in or exported from Peoples' Republic of China, imposed vide N. No. 11/2016-Customs (ADD), dated the 29th March, 2016, shall be extended and shall be remain in force up to and inclusive of 30th November, 2021.

[N. No. 35/2021 – Customs (ADD), dated 29-06-2021]

24 Import of Alloy or Steel

Anti-dumping Duty (ADD) on imports of 'Hot-rolled flat products of alloy or non-alloy steel' falling under Chapter headings 7208, 7211, 7225 or 7226 of the First Schedule to the Customs Tariff Act, originating in or exported from China PR, Japan, Korea RP, Russia, Brazil or Indonesia, imposed vide N. No. 17/2017-Customs (ADD), dated 11th May, 2017, shall be extended and shall be remain in force up to and inclusive of 15th December, 2021.

[N. No. 36/2021 – Customs (ADD), dated 29-06-2021]

25 Import of Alloy

Anti-dumping Duty (ADD) on imports of 'Cold-Rolled flat products of alloy or non-alloy steel' falling under chapter headings 7209, 7211, 7225 or 7226 of the First Schedule to the Customs Tariff Act, originating in or exported from China PR, Japan, Korea RP or Ukraine, imposed vide N. No. 18/2017-Customs (ADD), dated the 12th May, 2017, shall be extended and shall be remain in force up to and inclusive of 15th December, 2021.

[N. No. 37/2021 – Customs (ADD), dated 29-06-2021]

26 Import of PVC Flex Films

Anti-dumping Duty (ADD) on imports of 'PVC Flex Film', originating in or exported from China PR, imposed vide N. No. 42/2016 - Customs (ADD), dated the 8th August, 2016, shall be extended and shall be remain in force up to and inclusive of 31st January, 2022.

[N. No. 38/2021 – Customs (ADD), dated 30-06-2021]

27 Import of Viscose Staple Fibre

Anti-dumping Duty (ADD) on imports of "Viscose Staple Fibre (VSF) excluding Bamboo Fibre, Dyed Fibre, Modal Fibre & Fire-retardant Fibre", originating in or exported from China PR and Indonesia, imposed vide N. No. 43/2016 - Customs(ADD), dated 8th August, 2016, shall be extended and shall be remain in force up to and inclusive of 31st October, 2021.

[N. No. 39/2021 – Customs (ADD), dated 30-06-2021]

28 Import of Fibre Board

Anti-dumping Duty (ADD) on imports of 'Plain Medium Density Fibre Board (MDF) having thickness of 6mm and above' falling under tariff items 4411 13 00 or 44 11 14 00 of the First Schedule to the Customs Tariff Act, originating in or exported from Vietnam, imposed vide N. No. 34/2016 - Customs (ADD), dated 14th July 2016, shall be extended and shall be remain in force up to and inclusive of 13th March, 2022.

[N. No. 40/2021 – Customs (ADD), dated 30-06-2021]

29 Up-dation of Import Export Code (IEC)

Period of modification of IEC is extended for the year 2021 – 2022 to 31st July 2021 and no fees charged for modification carried out in IEC during the period up to 31st July 2021.

[N. No. 11/2015 – 2020 – DGFT, dated 01-07-2021]

"Your best teacher is your last mistake."

– Dr. A.P.J. Abdul Kalam

Recent Amendments

CGST NOTIFICATION AND CIRCULARS

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 28/2021 – Central Tax New Delhi, the 30th June, 2021

G.S.R……(E).- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 89/2020 – Central Tax, dated the 29th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 745(E), dated the 29th November, 2020, except as respects things done or omitted to be done before such supersession, hereby waives the amount of penalty payable by any registered person under section 125 of the said Act for non-compliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 197(E), dated the 21st March, 2020, between the period from the 1st day of December, 2020 to the 30th day of September, 2021.

[F. No. CBEC 20/16/38/2020-GST Part I]

(Rajeev Ranjan)
Under Secretary to the Government of India

Circular no. 156/12/2021-GST New Delhi, dated the 21st June, 2021
CBEC-20/16/38/2020 -GST

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: **Subject: Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.**

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, **w.e.f. 01.12.2020.** Further, vide notification No. 06/2021-Central Tax, dated 30th March 2021, penalty has been waived for non-compliance of the provisions of notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 30th June, 2021, subject to the condition that the said person complies with the provisions of the said notification from 1st July, 2021. Further, various issues on Dynamic QR Code have been clarified vide Circular No. 146/2/2021-GST, dated 23.02.2021.

2. Various references have been received from trade and industry seeking clarification on applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices and compliance of notification 14/2020-Central Tax, dated 21st March, 2020 as amended. The issues have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017, hereby clarifies the issues in the table below:

1.	Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017?	Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017, is not a "registered person" as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.
2.	UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?	Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.
3.	In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?	Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.
4.	In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

5.	In some instances of retail sales over the counter, the payment from the customer in received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.	In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.
6.	When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for "invoice value"?	The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value". The details of total invoice value, along with details/ cross reference of the part- payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

3. Circular No. 146/2/2021-GST, dated 23.02.2021 stands modified to this extent.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Commissioner (GST)

Circular No. 157/13/2021-GST New Delhi, Dated the 20th July, 2021
File No: CBIC-20006/10/2021

To,
The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject : Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

The Government has issued notifications under Section 168A of the CGST Act, 2017, wherein the time limit for completion of various actions, by any authority or by any person, under the CGST Act, which falls during the specified period, has been extended up to a specific date, subject to some exceptions as specified in the said notifications. In this context, various representations have been received seeking clarification regarding the cognizance for extension of limitation in terms of Hon'ble Supreme Court Order dated 27.04.2021 in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020under the GST law. The issues have been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder: 2.1 The extract of the Hon'ble Supreme order dated 27th April 2021 is reproduced below for reference:

"We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."

2.2 The matter of extension of period of limitation under Section 168A of the CGST Act, 2017 was deliberated in the 43rd Meeting of GST Council. Council, while providing various relaxations in the compliances for taxpayers, also recommended that wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply.

3. Accordingly, legal opinion was solicited regarding applicability of the order of the Hon'ble Supreme Court to the limitations of time lines under GST Law. The matter has been examined on the basis of the legal opinion received in the matter. The following is observed as per the legal opinion:-

(i) The extension granted by Hon'ble Supreme Court order applies only to quasi-judicial and judicial matters relating to petitions/ applications/ suits/ appeals/ all other proceedings. All other proceedings should be understood in the nature of the earlier used expressions but can be quasi-judicial proceedings. Hon'ble Supreme Court has stepped into to grant extensions only with reference to judicial and quasi-judicial proceedings in the nature of appeals/ suits/ petitions etc. and has not extended it to every action or proceeding under the CGST Act.

(ii) For the purpose of counting the period(s) of limitation for filing of appeals before any appellate authority under the GST Law, the limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) 3 of 2020 vide order dated 27th April 2021.

Thus, as on date, the Orders of the Hon'ble Supreme Court apply to appeals, reviews, revisions etc., and not to original adjudication.

(iii) Various Orders and extensions passed by the Hon'ble Supreme Court would apply only to acts and actions which are in nature of judicial, including quasi-judicial exercise of power and discretion. Even under this category, Hon'ble Supreme Court Order, applies only to a lis which needs to be pursued within a time frame fixed by the respective statutes.

(iv) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, cannot come to a standstill by virtue of these extension orders. Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.

(v) The following actions such as scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with GST law would not be covered by the judgment of the Hon'ble Supreme Court.

(vi) As regards issuance of show cause notice, granting time for replies and passing orders, the present Orders of the Hon'ble Supreme Court may not cover them even though they are quasi-judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/ suits, etc.

4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows: -

(a) **Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-** These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

(b) **Quasi-Judicial proceedings by tax authorities:-**

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may interalia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

(c) **Appeals by taxpayers/ tax authorities against any quasi- judicial order**:- Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Pr. Commissioner (GST)

SGST NOTIFICATION AND CIRCULARS

FINANCE DEPARTMENT
Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 8th July 2021.

NOTIFICATION

Notification No. 28/2021 – State Tax

MAHARASHTRA GOODS AND SERVICES TAX ACT, 2017.

No. GST.1021 / C.R. 66 / Taxation-1.—In exercise of the powers conferred by section 128 of the Maharashtra Goods and Services Tax Act, 2017 (Mah. XLIII of 2017) (hereinafter in this notification referred to as the "said Act"), the Government of Maharashtra, on the recommendations of the Council, and in supersession of the Government Notification of the Finance Department No. GST-1020/C.R. 107/Taxation-1. [Notification No. 89/2020–State Tax], dated the 7th December 2020, published in the *Maharashtra Government Gazette*, Part-IV-B, Extraordinary No. 301, dated the 7th December 2020, except as respects things done or omitted to be done before such supersession, hereby waives the amount of penalty payable by any registered person under section 125 of the said Act for non-compliance of the provisions of Government Notification of Finance Department No. GST-1020/C.R. 37C/Taxation-1. [Notification No. 14/2020–State Tax], dated the 30th March 2020, published in the *Maharashtra Government Gazette*, Part-IV-B, Extraordinary No. 100, dated the 30th March 2020, between the period from the 1st day of December, 2020 to the 30th day of September 2021.

MANDAR KELKAR,
Deputy Secretary to Government.

No. JC (HQ-I)/GST/2021/ADM-8 date: 2nd July 2021

Trade Circular No. 12T of 2021.

Subject: Clarification regarding applicability of GST on supply of food in Anganwadis and Schools.

Ref: Circular No. 149/05/2021-GST dated the 17th June. 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *Mutatis mutandis*. in implementation of the MGST Act. 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this, Circular may be brought to the notice of the office of the Commissioner of State Tax. Maharashrra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 149/05/2021-GST dated the 17th June. 2021 issued by the CBIC please refer GST Review June 2021.

No. JC(HQ)-1 GST 2021/ADM-8 date: 2nd July 2021

Trade Circular No. 13T of 2021.

Subject: Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)

Ref: Circular No. 150/06/2021-GST dated the 17th June. 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable. *Mutatis mutandis*. in implementation of the MGST Act, 2()17. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax. Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 150/06/2021-GST dated the 17th June. 2021 issued by the CBIC please refer GST Review June 2021.

No. JC(HQ)-1/GST/2021/ADM-8 date: 2nd July 2021

Trade Circular No. 14T of 2021.

Subject: Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)

Ref: Circular No. 151/07/2021-GST dated the 17th June, 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *Mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 151/07/2021-GST dated the 17th June, 2021 issued by the CBIC please refer GST Review June 2021.

No. JC (HQ)-1/GST/2021/ADM-8 date: 2nd July 2021

Trade Circular No. 15T of 2021.

Subject: Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis

Ref: Circular No. 152/08/2021-GST dated the 17th June. 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MOST Act, 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 152/08/2021-GST dated the 17th June. 2021 issued by the CBIC please refer GST Review June 2021.

No. JC (HQ)-1/GST/2021/ADM-8 date: 2nd July 2021

Trade Circular No. 16T of 2021.

Subject: GST on milling or wheat into flour paddy into rice for distribution by State Governments under PDS

Ref: Circular No. 153/09/2021-GST dated the 17th June. 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 153/09/2021-GST dated the 17th June. 2021 issued by the CBIC please refer GST Review June 2021.

No. JC (HO)-1/GST/2021/ADM-8 date: 2nd July 2021

Trade Circular No. 17T of 2021.

Subject: GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them

Ref: Circular No. 154/10/2021-GST dated the 17th June, 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 154/10/2021-GST dated the 17th June, 2021 issued by the CBIC please refer GST Review June 2021.

No. JC (HO)-1/GST/2021/ADM-8 date: 2nd July 2021

Trade Circular No. 18T of 2021.

Subject: Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System

Ref: Circular No. 155/11/2021-GST dated the 17th June, 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBlC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 155/11/2021-GST dated the 17th June, 2021 issued by the CBIC please refer GST Review June 2021.

No. JC (HQ)-1/GST/2021/ADM-8/170 date: 9th July 2021

Trade Circular No. 19T of 2021.

Subject: Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- State Tax dated 30th March, 2020

Ref: Circular No. 156/12/2021-GST dated the 21st June, 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 156/12/2021-GST dated the 21st June, 2021 issued by the CBIC please refer GST Review July 2021.

No. JC (HQ)-1/GST/2021/ADM-8/172 date: 9th July 2021

Trade Circular No. 20T of 2021.

Subject: Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017 - regarding.

Ref: Circular No. 145/01/2021-GST dated the 11th February, 2021 issued by the CBIC

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours Faithfully

(Rajeev Kumar Mittal)
Commissioner of State Tax
Maharashtra State, Mumbai.

Note : For Circular No. 145/01/2021-GST dated the 11th February, 2021 issued by the CBIC please refer GST Review February 2021.

Directions of Hon'ble Supreme Court of India in the matter of 'Period of Limitation' considering extraordinary situation caused by the sudden and second outburst of COVID-19 Virus.

Government of Maharashtra
Law and Judiciary Department
Government Circular No. 143-2021/Misc/E
Hutatma Rajguru Chowk, Madam Cama Road, Mantralaya, Mumbai-400 032.
Date: 27th May, 2021

Ref: Communication dated 7th May, 2021 received from the Registrar (Legal & Research), High Court, Appellate Side, Bombay.

Please Read: Order dated 27th April, 2021 passed by the Hon'ble Supreme Court of India in Misc. Application No. 665/2021 in Suo Motu Writ Petition (Civil) No. 3/2020

CIRCULAR

Hon'ble the Supreme Court had taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that could be faced by the litigants across country in Suo Motu Writ Petition (Civil) No. 3/2021. In view of the same, Hon'ble Supreme Court vide its order dated 23rd March, 2020 directed that the period of limitation in filing petitions/applications/ Suits/appeals/ all other proceedings, irrespective of the period of limitation under the general or special laws, shall stand extended with effect from 15th March, 2020 till further orders.

Later, noticing that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end by Hon'ble the Supreme Court vide order dated 8th March, 2021.

Now, vide order dated 27th April, 2021, Hon'ble the Supreme Court has considered the extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, and restored the order dated 23rd March, 2020 considering that the situation requires extraordinary measures to minimize the hardship of litigant-public in all states. Hon'ble Supreme Court while restoring the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 passed certain directions in the matter. Relevant portion of the order reproduced below:-

....We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

It is further clarified that the period from 14th March,2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29Aof the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.

In view of the above, all the concerned are requested to take note of the directions of the Hon'ble Supreme Court of India. The aforesaid directions be also brought to the notice of the offices under the administrative control of all the concerned.

This Government Circular of Maharashtra Government is available at the website www.maharashtra.gov.in. Reference no. for this is 202105281400279512. This order has been signed digitally.

By order and in the name of Governor of Maharashtra.

(Bushra Zia Sayyed)
Solicitor-cum Joint Secretary to
Government of Maharashtra

5 DAYS VIRTUAL WORKSHOP ON GST IN GUJARATI Jointly with AIFTP (WZ), SGCTBA, CGCTC & MCTC held on 14th June, 2021

Day 5, 19/06/2021

Adv. C. B. Thakar, Keynote, addressing members on the topic of "Inspection, Search, Seizure and Arrest"

Adv. Uchit Sheth, Speaker, addressing members on the topic of "Inspection, Search, Seizure and Arrest"

Fitness Session organized on the occasion of International Yoga Day on Virtual Platform held on 21st June, 2021

Mr. Sai Sukhathankar, Yoga Instructor, conducting Yoga Fitness session.

Webinar jointly with AIFTP(WZ), TBA Pune on the topic "Legal Issues in Eway Bill Provisions" held on 20th June 2021

Seen from L to R on E Platform in the First Row: Adv. Sejal Shah, Managing Committee Member; Shri. Raj Shah, President & Shri Pravin Shah, Past President & Chairman – AIFTP (WZ); Adv. Milind Bhonde, Moderator.

Seen from L to R on E Platform in the Second Row: CA Aalok Mehta, Vice President; Adv. Sujit Ghosh, Faculty; CA Aditya Seema Pradeep, Managing Committee Member.

Organised Lecture on YouTube Virtual Platform jointly with ITAT, AIFTP, BCAS and CTC on the topic "Constitutionality of Tax Laws" held on 25th June 2021.

Speaker: Mr. Harish Salve, Senior Advocate

Webinar organised jointly with AIFTP & MCTC held on 2nd July, 2021 on the topic of "Practice Development Strategies - Networking, Specialisation, Technology

Seen from L to R on E Platform in the First Row: CA Priti Savla, Panel Moderator & Past Chairperson, WIRC of ICAI, CA Ashit Shah, Panelists, Partner, Mehta & Shah; CA Adarsh Madrecha, Panelists, Founder – Jamku, Practice Managing Solution.

Seen from L to R on E Platform in the Second Row: Shri. M. D. Prajapati, President, MCTC; Shri. Raj Shah, President; CA Janak Vaghani, Member.

Seen from on E Platform in the Third Row: CA Himanshu Kishnadwala, Panelists, Partner, CNK & Associates LLP

70th Annual General Meeting held on 16th July, 2021 at GSTPAM Tower office

Shri. Janak D. Rawal,
Chief Election Officer,
declaring the Election Result

Incoming President Shri Aalok Mehta presenting memento to Outgoing President Shri. Raj Shah

Shri. Pravin Shinde, Hon. Treasurer; Shri Aalok Mehta, Incoming President; Shri. Sunil Khushalani, Vice President; Shri Mahesh Madkholkar, Hon. Jt. Secretary; Shri. Parth Badheka, Hon. Jt. Secretary; Outgoing President Shri. Raj Shah by offering a flower bouquet.

Outgoing President
Shri. Raj Shah
addressing members.

Incoming President
Shri. Aalok Mehta
addressing members.

New Office Bearers 2021-22

New Managing Committee Member 2021-22

Aditya Seema
Pradeep

Shah Sejal

Bhatt
Monarch

Gandhi
Premal

Chhugani
Haresh

Chheda
Jatin

Jadhav
Pravin

Mane Amol

Thakar
Rahul

Nathani
Dilip

Baheti
Manekchand

Vakharia
Anvesh

Talreja
Ajay

Mhaske
Vinod

Talati
Umang

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Know Your Candidates meeting held on 3rd July, 2021

Seen from L to R on E Platform in the First Row: Shri. Ashvin Acharya, Election Committee Member; Shri. J. D. Rawal, Chairman – Election Committee; Shri. Ramesh Gandhi, Election Committee Member.

Seen from L to R on E Platform in the Second Row: Shri. Aditya Seema Pradeep, candidate; Shri. Raj Shah, President; Shri. K. M. Shah, Election Committee Member.

To

Printed and Published by Advocate, Dinesh M. Tambde, on behalf of The Goods & Services Tax Practitioners' Association of Maharashtra, and printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai – 400 013 and Published at 8 & 9, Mazgaon Tower, 21, Mhatar Pakhadi Road, Mazgaon, Mumbai – 400 010

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