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ASSOCIATION OF MAHARASHTRA

Established : 1951

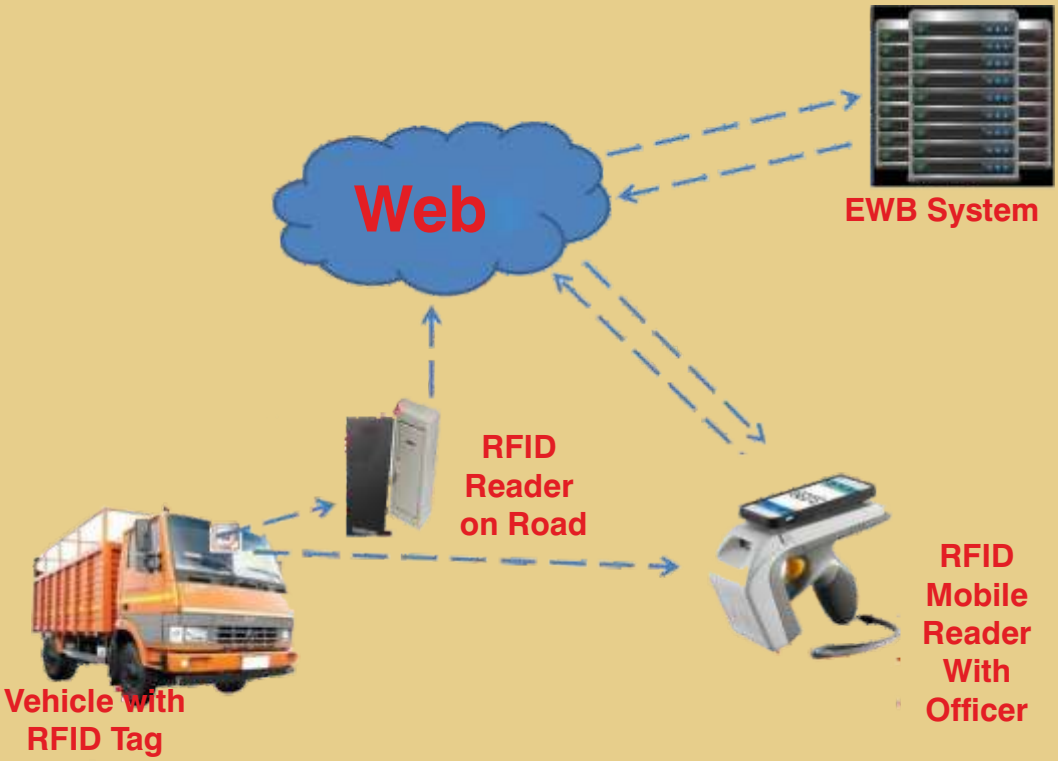
GSTPAM

GSTREVIEW

Your Guide to Indirect Taxes

Vol. 3 No. 9 | May, 2021

RFID in EWB System



"Ante Dating & Exparte orders are set aside & Quashed".

Writ Petition (Stamp) no 92630 of 2020 dt 30th April'21, Greatship (India) Ltd vs. State of Maharashtra & others (BHC).

Please refer to the page No. 83 for the gist of decision

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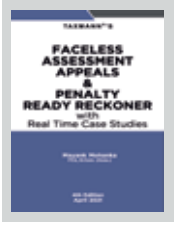

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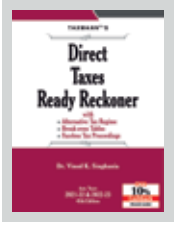

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Established : 1951
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SUBSCRIPTION RATES

Type of Membership	Membership Fees incl. GST	Admission Fees Incl. GST	Subscription Charges for GST Review	Total
New Membership Application				
Donor Member	24,780.00	–	600.00	25,380.00
Patron Member	17,700.00	–	600.00	18,300.00
Life Member	11,800.00	944.00	600.00	13,344.00
Life Member (Conversion from Ordinary)	11,800.00	590.00	600.00	12,990.00
Ordinary Local Member	1,770.00	590.00	–	2,360.00
Ordinary Outstation Member	1,475.00	590.00	–	2,065.00
New Membership Application (Firm/LLP)				
Ordinary Local Member	1,770.00	944.00	0	2,714.00
Ordinary Outstation Member	1,475.00	944.00	0	2,419.00
Patron Member	17,700.00	0	600.00	18,300.00
Donor Member	24,780.00	0	600.00	25,380.00
Advance Membership/ Subscription charges for subsequent two years 2022-23 & 2023-24 (Non-Refundable)				
Ordinary Local Member	3,186.00	–	–	3,186.00
Ordinary Outstation Member	2,655.00	–	–	2,655.00
Life Member (Individual/Firm/LLP)	0	–	1,200.00	1,200.00
Patron Member	0	–	1,200.00	1,200.00
Donor Member	0	–	1,200.00	1,200.00
Subscription for GST Review for F.Y. 2021-22 by Non-Members				
Subscription fees for GST	–	–	1,000.00	1,000.00
Advance Membership / Subscription charges for subsequent two years 2022-23 & 2023-24 (Non-Refundable)				
Subscription Fees - GST	0	–	2,000.00	2,000.00

Editorial

Dhaval Talati

At the beginning of the year 2021 especially in the month of January and February, we started thinking that we have almost defeated Corona virus. The pandemic had locked down the world in 2020 a world which is dependent on idea of free flow, movement, contact & interaction. The COVID-19 crisis has threatened our basic human need to connect with each other. The most common emotion faced by all of us was fear which led to anxiety, panic & stress. With the improving situation in beginning of 2021, our mind which was suppressed of fulfilling any of its desires from a very long time started getting restless. It started ruling on our intellect & probably we lost the battle of staying at home and taking all possible precautions. Everything started opening up & we started neglecting all the public health guidelines, norms & principles. The result was a catastrophe. Beginning March, 2nd wave of COVID-19 pandemic begun in India and the situation worsened with each passing day, with people running helter skelter from pillar to post for medicines, oxygen supply, hospital beds & medical advice. Our health care system almost crumbled. Many families lost their loved ones because they were not able to get timely help. A lesson needs to be learnt from this destructive 2nd wave. Till 17th May, cumulative vaccinations (1st and 2nd doses) have crossed 18.21 crores. Considering the total population till now, the process of vaccination is progressing at a slow pace for want of vaccines. Hopefully vaccination momentum will be accelerated, and more and more population will be covered. Till then, we all as responsible citizens need to control our desires, restrict our movements and see to it that we limit the 3rd wave as, if the 3rd wave occurs the carnage, it may cause will be immeasurable.

GST exemption for Covid Drugs

The Centre is right in turning down the request to exempt covid vaccines & covid drugs produced indigenously from Goods & Services Tax (GST). Looking to the scheme of the Act, the decision by the Centre sounds logical. Exemption breaks the chain of Input Tax Credit for all the taxes paid on inputs. In short if the manufacturers cannot offset the taxes that they pay on inputs used to make final product, it will result in adding to their cost, which is ultimately recovered from the consumers. So instead of reducing the burden on end consumer, the cost will go up.

However, if the Centre is serious in giving exemption, then they should come out with notification allowing to treat such vaccines & drugs as "zero rated sales", whereby chain of input tax credit is not broken & the real benefit of tax can be passed on to the end consumers.

Haryana is the first state who have volunteered by allowing reimbursement of goods & service tax paid by companies, non-governmental organisations & individuals on purchase of covid vaccines, remdesivir injections, covid related drugs, ventilators & oxygen cylinders that they have donated free of cost to the state government or state-run hospitals. Notification giving relief is issued by State Government.

Statistics shows that government loses out 2% of GDP on tax exemptions. So best way in my view under present scenario, covid vaccines & covid drugs be classified as "zero rated sales" or notification be issued like notification issued by state of Haryana.

Integration of E way bill with Fast Tag & RFID

In my last communication I have touched upon the above issue where I have stated that system is getting integrated with Fast Tag. Now system is integrated & E waybill be tracked with the help of Fast Tag & RFID. I am sure this facility will be useful in weeding out sham transactions from the system. Officers will be equipped with such information live.

Controversy put to rest

By amendment to rule 90(3) & 90(5), CBIC has put rest to the controversy by providing that the time period from the date of filing of original refund application till the time the deficiency letter is issued, will be excluded for determining the two-year period. Also refund provisions are rationalised including giving option to taxpayers to withdraw the application. This is a well come amendment whereby there is clear guidance now both to tax payers & revenue department. This clarification by way of amendment to rule was necessitated as in several instances, though the refund application was filed within the time limit of 2 years, the department (revenue) has considered the date of rectified application as relevant date resulting in rejections on the ground of limitation of time. Several appeals are now being filed, pending disposals. Hope, department (revenue) will take this amendment in right spirit & admit such refund application & heard them on merits.

Various relief granted due to second wave of Covid-19

By issue of notification 8 to 14 dt 01/05/2021, CBIC has granted relief in granting extension in filing GSTR 1, relief in late fee & interest for the periods as provided in the notification. I am not here to make any comment whether relief granted is small or big but observe that why Maharashtra government is silent on this though timely representation is made. I would say why wait for representation, Government should on their own have come out with notification granting relief by extending due dates for filing returns under MVAT Act, CST Act & under PT Act. Maharashtra is the most effected state during second wave of Covid-19. Better late than never, government must come out with relief at an earliest opportunity.

I thank CA Abhay Desai (Baroda) & CA Harshal Fifadra (Mumbai) to accept our invitation to contribute article for our journal. Their articles are published in this edition of GST Review. Hope readers will like their articles. We look forward for more such articles from them in future as well.

Due to lockdown, there is many folds increase in cases where people are suffering from psychological disorders due to stress & anxiety. Spirituality & practice of meditation help us to take charge of our mind, to train it & empower it to live life, which is peaceful, mindful & joyful. Practice it religiously, you will find great positivity in your family life as well as professional life. Here, I would like to quote verse 6.6 from Bhagwat Geeta which conveys a very important message. "For one who conquers the mind, the mind is the best friend, but for one who has failed to do so, it remains the greatest enemy". Thus, in this difficult time, we have to be consciously vigilant & see to it that our intellect is never defeated by our mind.

Namaskar.

D. B. Talati

DHAVAL TALATI

Editor

From the President

"President Message"

Raj Shah

"There's one issue that will define the contours of this century more dramatically than any other, and that is the urgent and growing threat of a changing climate."

- Former U.S President, Barack Obama at the 2014 U.N Climate Summit

One of the most urgent concerns of our time is the real and pressing threat posed by climate change. Climate change is caused in large part due to global warming. Global warming is rise in temperatures caused by increased emissions of greenhouse gases such as carbon dioxide. This increase in temperatures has far reaching and disastrous impact across the globe. The consequences of drastically altered climate and weather patterns across the world include (but are not limited to) destruction of various ecosystems, dramatic changes in seasonal weather patterns, especially rainfall, rise in sea levels owing to the rapid melting of ice caps and glaciers, climate fuelled migration and the endangering of various species. Climate change has already begun to shake the foundations of the world as we have known it and now, more than ever, it is important to understand and identify the problem, in order to better address it.

In India, if we reflect on the changes we have witnessed in our own lifetimes, we will see the ways in which climate change has affected our lives and the threat it poses to future generations. As a simple experiment, think back to your childhoods or your experiences in your native places and/or vacations as a child. How many of us remember needing fans, much less, air-conditioners throughout the year? In several mountainous and hilly parts of India, fans and air-conditioners were unheard of, even in the summers. Temperatures never went above a certain point and generations lived without ever facing the need to find artificial cooling solutions. Nowadays, there is hardly any household that doesn't have a fan atleast. Regions that were perennially cool and pleasant now have raging forest fires in the summer months. The state of Uttarakhand, which is mostly mountainous, with over 65% forest cover, has experienced several heat waves in the last decade. The disastrous forest fires and heat wave in the state caused devastation of several hectares of land. While areas that were traditionally cool are seeing unseasonal, uncharacteristic spikes in temperatures, other regions are bearing the brunt of excessive rainfall. Since 2012, the Brahmaputra river has flooded almost every year, owing to excessive rainfall in the region. In July 2020, Assam was yet again affected by excessive rainfall and flooding, causing extensive damage to life and property in the state. The locusts swarm that wreaked havoc last summer is also caused by increasing heat waves, forcing swarms of locusts to change their movement patterns.

For a country like India, where more than half the population is still involved in agriculture, where several coastal communities are dependent on fishing, and where many communities have traditionally lived and earned their livelihoods from the forests and other ecosystems, the implications of climate change are manifold. Changes in climate, especially rainfall and increased temperatures are a death knell to traditional options of livelihood that are often dependent on climate conditions. It in turn affects the lives and livelihoods also of all those associated with these occupations. The rise in sea levels, coupled with tropical cyclones, also places many of our cities and towns in grave danger. Unless we take decisive action now, these fears may soon become reality and not the hypothetical future scenarios we imagine them as today.

The fight against climate change is the fight to bring back the world from the edge of destruction. It is a fight that can only be won if we recognize its potential in destroying the world we live in and unite in our efforts to fight it. In this moment, it is important for all of us to unite and work collectively to save the only home we have from irreparable harm - to ensure that we leave a world to our children that nourishes life and does not destroy it.

Key achievements

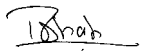
We had organised Mock Tribunal under the auspices of J. H. Baheti Fund primarily for the students of Coaching Class. I am sure it would certainly help students develop confidence in climbing greater heights in their professional career.

5-sessions Workshop on GST Refund was organised jointly with leading tax organisations viz. AIFTP (WZ), BCAS, CTC, MCTC and WIRC with a record and humongous registration of 400 delegates.

For the first time in the history of our Association, we have joined hands with MMK College to offer Certificate Course on GST. Here the intent is to tap the students at a very nascent stage and encourage them to pursue a career in GST practice.

I would like to appeal to all the readers to please renew their membership / subscription so as to enjoy uninterrupted supply of services. Your timely renewal also helps Association in meeting its financial obligations towards various strata of the society.

Jai Hind. Jai Maharashtra.



RAJ SHAH
President

GST Updates

CA Deepali Mehta

GST Notifications

Particulars	Period	Return	Due Date	Benefit Given	Notification No.
Aggregate Turnover > 5Cr or upto 5 Cr opted for Monthly Filing	April	GSTR1	11/05/2021	Due date extended to 26/05/2021	12/2021- Central tax dated 01/05/2021
Aggregate Turnover up to 5Cr and opted for QRMP Scheme	April	IFF	13/05/2021	Due Date extended to 28/05/2021	13/2021- Central tax dated 01/05/2021
Aggregate Turnover above 5 Cr	March	GSTR3B	20/04/2021	No late fee up to 05/05/2021 & Interest @9% up to 05/05/2021	8/2021 for Interest & 9/2021 for Late Fee dated 01/05/2021
Aggregate Turnover above 5 Cr	April	GSTR3B	20/05/2021	No late fee up to 04/06/2021 & Interest @9% up to 04/06/2021	8/2021 for Interest & 9/2021 for Late Fee dated 01/05/2021
Aggregate Turnover up to 5 CR and not opted for QRMP Scheme	April	GSTR3B	20/05/2021	Due date extended to 04/06/2021. No late fee till 19/06/2021 & Interest @ 9% from 04/06/2021 to 19/06/2021	8/2021 for Interest & 9/2021 for Late Fee dated 01/05/2021
Aggregate Turnover up to 5Cr and opted for QRMP Scheme	April	Payment	25/05/2021	NA	NA

Particulars	Period	Return	Due Date	Benefit Given	Notification No.
Composition Scheme dealers	FY 2020-21	GSTR4	30/04/2021	31/05/2021	10/2021-Central tax dated 01/05/2021
Nonresident dealers	April 2021	GSTR5	20/04/2021	31/05/2021	14/2021-Central tax dated 01/05/2021
ISD Filers	April 2021	GSTR6	13/05/2021	31/05/2021	14/2021-Central tax dated 01/05/2021
TDS return Filers	April 2021	GSTR7	10/05/2021	31/05/2021	14/2021-Central tax dated 01/05/2021
TCS Return Filers	April 2021	GSTR8	10/05/2021	31/05/2021	14/2021-Central tax dated 01/05/2021
Return filed by Principal for Goods sent/received to Jobworker	QE March 2021	ITC-04	25/04/2021	31/05/2021	11/2021-Centra Tax dated 01/05/2021

Notification No 13/2021-Central tax dated 01/05/2021: Proviso is inserted in Rule 36(4) providing relief to tax payers to apply the condition of restriction of ITC to what is reflected in GSTR2B plus 5% cumulatively while filing the GSTR3B for the Month of May 2021. Thus in April 2021, Tax payers are free to take ITC as per their convenience.

Custom:

Instruction No 10/2021 dated 13/05/2021: This instruction is issued by the CBIC-Customs for announcing Special refund and Drawback disposal drive from 15/05/2021 till 31/05/2021. Instructions are being provided to dispose of all pending refunds till 14/05/2021. This is a special measure undertaken in these difficult times for the benefit of MFME sector whose refunds and drawback are stuck up.

Following key points to be noted:

i. Refund will be granted after due diligence

ii. All Laws, sections, circulars and instructions will be followed before granting the refund.

iii. Appeal to trade associations connected to exporters to help make the drive a success

iv. Appeal to exporters to submit documents if refund is pending due to insufficient documents

v. Communication with exporters through emails.

vi. Special instructions to officer to make all possible special efforts to make this drive a success.

Notification No 15/2021 dated 18.05.2021: Seeks to make fourth amendment (2021) to CGST Rules, 2017. Following rules are amended:

Rule 23 which is for revocation of cancellation of registration is amended to bring in line with amended section 30 where

in the time period of 30 days to apply for revocation can be extended by the Additional Commissioner or the Joint Commissioner or the Commissioner.

Rule 90: Proviso is inserted in sub rule (3) to exclude the time period from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

Sub Rule 5 is added which allows to withdraw refund application in form RFD-01W before issuance of RFD-04 0r RFD-05 or RFD-06.

Sub Rule 6 is inserted which states that once the withdrawal for refund application is filed then any amount debited from Electronic Credit Ledger will be re-credited.

Rule 92: Form RFD-07 has been changed and thus the changes in Rule 92. Sub rule (1) is omitted and in sub rule (2) substitute Part B for Part A. Proviso is inserted in sub rule (2) that if the officer is satisfied that refund should no longer be withheld, he may pass the order for release of withheld refund in part B of RFD-07.

Rule 96: Part A shall be substituted for Part B in sub rule (6) which is for release of withheld IGST refund by customs.

Sub rule (7) is amended to by correcting that withheld refund shall be released "by passing of order in RFD-06" instead of earlier words "after passing of order in RFD-06".

Form REG-21 is changed in line with changes in Rule 23.

Rule 138E: which is for Restriction on furnishing of information in PART A of FORM GST EWB-01 is corrected by substituting the words in respect of a registered person, whether as a supplier or a recipient by "in respect of any outward movement of goods of a registered person"

Circular No. 148/04/2021-CGST is issued on 18.05.2021 for Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017. Key points:

- Rule 23 and Form reg-21 is changed in lines with amended section 30.
- If revocation is not applied within 30 days but before 60 days or from 60 days to 90 days, then person may request, through letter or e-mail, for extension of time limit to apply for revocation of cancellation of registration to the proper officer by providing the grounds on which such extension is sought.
- The proper officer shall forward the request to the jurisdictional Joint/ Additional Commissioner for decision on the request for extension of time limit.
- The Joint/Additional Commissioner, on examination of the request filed may extend the time limit to apply for revocation of cancellation of registration.
- However, in case the concerned Joint/ Additional Commissioner, is not satisfied with the grounds on which such extension is sought, an opportunity of personal hearing may be granted to the person before taking decision in the matter.
- On receipt of the decision of the Joint/ Additional Commissioner on request for extension of time limit for applying for revocation of cancellation of registration, the proper officer shall process the application for revocation of cancellation of registration according to the law and procedure laid down in this regard.
- The circular shall cease to have effect once the independent functionality for extension of time limit for applying in FORM GST REG-21 is developed on the GSTN portal.

Locus Standi

Vinayak Patkar,
Advocate

Hon'ble High Court at Bombay in the Writ Petition No. (L) 5172 of 2021 decided on February 26, 2021, filed by The Goods and Service Tax Practitioners' Association of Maharashtra (GSTPAM), has questioned the locus standi of associations filing writ petitions to extend the date of returns etc. The Association had filed the petition for extension of date of filing of the Annual Return. The Court dismissed the petition. While dismissing the same, amongst other reasons, the Court also stated that a professional body like GSTPAM was before them and an individual tax payer was not expressing any difficulty in filing the Annual Return within the prescribed time or already extended time. In other words, one of the reasons for rejecting the petition was that the GSTPAM had no "locus standi" to file Writ Petition in the court for extension of the prescribed date.

Naturally, there was an uproar throughout India in the tax professionals fraternity. Bombay High Court is one of the premier Courts of India. Any observation of their Lordships of this Court is read and followed with utmost respect throughout India. Normally, the Trade Organisations avoid to approach the court in tax related matters. They have their vested interests. However, such job of compiling the annual return etc. is done by the tax professionals and if they don't get sufficient time to carefully examine the claims and compile them, there is a possibility of loss of revenue on either side and for which the professionals are at the end of the day blamed by the clients as well as the Government.

In fact, nowadays even tax professionals are being penalised or prosecuted for mis-statements in returns and audit reports, however innocent be such mistakes. For this reason, the associations of tax professionals file writ petitions when the time for completing the compliances is not sufficient. This will of course collaterally benefit the traders, but the same is also essential for safe-guarding the interests of the tax professionals and not just the interests of the traders. Now there is a fear that such associations of tax professional won't be able to approach the Courts of law and equity for any such causes in future. The fraternity had expected the GSTPAM to approach the Supreme Court and get that observation removed. However, since the due date for filing itself was extended thereafter due to executive mercy, the GSTPAM chose not to challenge the judgment in the Supreme Court.

The author is of the firm opinion that these observations of the Bombay High Court, with due respect, are incorrect. Those were also unwarranted. Just prior to the pronouncement of judgment in this case i.e. on January 15, 2021, the same Bench in the case of *CVO Chartered and Cost*

Accountants' Association vs. UOI had declined to give extension. However, the Court had not questioned the locus standi of that association.

What then is the correct position of law? What is "locus standi"? Whether this judgment of the Bombay High Court will affect the right of the tax professionals to move the Court in similar situations?

The expression "locus standi" has been lucidly explained by the Constitution Bench of the Hon'ble Supreme Court, consisting seven judges, in the year 1981 itself. In that case an individual, namely, Mr. S.P. Gupta had filed PIL (Public Interest Litigation) in the Supreme Court questioning the appointment and the tenure of judges. See what the Court says:

S.P. GUPTA vs. UNION OF INDIA (1981) Supreme Court Cases 87

Per Bhagwati, J.

> *"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under article 226 and in case of breach of any fundamental right of such person or a determinate class of persons, in the Supreme Court under article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. (Para 17).*

> *……. the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or some other oblique consideration, the court should not allow itself to be activised at the instance of such person and must reject his application at the threshold..*
>
> *(Para 24).*

> *Yet again, whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives the standing to any member of the public who is not a mere busybody or a meddlesome interloper but one who has sufficient interest in the proceeding. In the absence of a machinery to effectively represent the public interest generally in courts, it is necessary to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the Constitution or the law by allowing public minded persons and organisations to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is only by liberalising the rule of locus standi that it is possible to effectively police the corridors of power and prevent violations of law. The operation might be financial, commercial, corporate or governmental." (Paras 18 and 20). (Underlining by us).*

The GSTPAM is a registered tax payer. No doubt, it represents the tax professionals, however, it also approached the Court in its own right. Therefore, the Court was not correct in raising the issue of locus standi. It seems, this particular fact was not brought to the notice of the Court. Even otherwise, the GSTPAM had every right to approach the Court for the redressal of the injury which was being caused to the members.

The due date for filing annual return as per the GST Act is 31st December of next year. So for the period 2019-20 is concerned, it is 31st December 2020. But the utility thereof was made available for the first time in December 2020 itself. Therefore the department extended it to 28th February, 2021. Further due date for filing income tax return for the year 2019-20 was extended to 15th January 2021 and without finalisation and audit of accounts it was not possible to furnish annual return. It was a most difficult task to compile the requirements of the return, irrespective of whether it was done by the dealer himself or by the tax professionals.

The Supreme Court has stated above that the rule of "locus standi" is required to be liberalised and the persons who have sufficient interest in the proceeding should be permitted to approach the Court. Unfortunately, the Bombay High Court was not able to appreciate the injury which was being caused. Probably the same was not properly put before the Court.

Kindly now see another judgment on the subject, popularly known as Indian Banks Association's case. This case is under the Interest Act, 1974. The interest tax Act was enacted by Parliament with effect from 1.8. 1974 with an object of imposing tax on the total amount of interest received by scheduled banks/ credit institutions on loans and advances. RBI by its circular letter dated 2.9.1991 advised all the scheduled commercial banks that the incidence of interest tax should pro rata be passed on to borrowers wherefore a uniform practice should be followed in consultation with the Indian Banks Association (IBA). The IBA purporting to be acting pursuant to or in furtherance of the said circular as also with a view to formulate a structure of uniform interest rate chargeable after including the interest tax payable, which was passed on to the borrower's by the banks concerned, and advised them that the rate of interest will be loaded with the interest tax of 3% and rounded up to the next higher 0.25%. Such rounding up was found necessary allegedly on account of the grossing -up involved in calculating the incidence of tax. RBI purportedly gave its approval to the proposal of the IBA in terms of its letter dated 22.4.1993. The aforementioned action on the part of the IBA came to be questioned by the respondents in a public interest litigation filed before the High Court, inter alia, on the ground that such purported rounding up was illegal and without jurisdiction as there by the tax element came to be increased and as a result thereof the banks concerned had collected additional sum of Rs. 7 23.79 crores annually. The High Court found the action on the part of the IBA illegal, arbitrary and untenable. A command was issued interalia to all the banks to submit an account of the excess interest collected by them from the borrowers and deposit the same with RBI to be debited in the account of the Union Bank of India. The appellants i.e. the IBA approached the Supreme Court by way of special leave petition against the said order. The first objection was about the locus standi of the petitioner before the High Court, the petitioner being a Chartered Accountant's Firm. The observations of the Supreme Court on this issue in the impugned case are interesting and are directly applicable to the GSTPAM case.

INDIAN BANKS' ASSOCIATION, BOMBAY AND OTHERS vs. DEVKALA CONSULTANCY SERVICE AND OTHERS

(2004) 11 Supreme Court Cases

'The writ petitioner before the High Court was a firm of Chartered Accountants. As an expert in accountancy and auditing, it must have come across several cases where its client had to pay a higher amount of interest to the banks pursuant to and in furtherance of the impugned action of the appellants. By reason of such action on the part of the appellants and also RBI the citizens of India had to pay a higher amount of tax as also a higher amount of interest for no fault on their part. The same had been recovered from them without any authority of law.' (Para 32)

'In an appropriate case, where the petitioner might have moved a court in his private interest and for redressal of his personal grievance, the court in furtherance of public interest may treat it as a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case.' (Para 34) (Underlining Supplied).

There are many decisions on the subject. All those decisions need not be cited. These two judgments are sufficient to say that even if the Bombay High Court felt that the GSTPAM case was a private interest case, they could have treated it as public interest case. However, they chose not to do so. Reasons are not known. Possibly, the precedential law was not brought to the notice of the court. In fact, Bombay High Court always welcomed the associations. When the author was arguing Abicor's case, it was a private case, however, Hon'ble Justice Dharmadhikari himself invited the GSTPAM to put forth it's grievances.

Lastly, to avoid such verdicts, we suggest the following:

- The petition itself should in clear words bring out the relationship of the petitioner with the cause of action and the sufficiency of the interest of the petitioner in the proceedings;
- The injury which is being caused by the act or omission of the State should be clearly brought out in the petition;
- Most importantly, the court should not get the impression that the petitioner has approached the court for his personal gain or private profit. Personal gain or private profit need not be in terms of money. If the Court suspects that the petition has been filed for self-emulation, it will reject the petition at the threshold.
- Many a times the Court gives indication if they were to decide against the petitioner. In such circumstances, it is prudent to withdraw the case, unless the petitioner is ready to approach the higher court.
- Such judgments should necessarily be challenged in Supreme Court otherwise those become a hurdle for others.

To conclude, the Bombay High Court judgment in the case of GSTPAM is not a correct judgment so far it relates to locus standi. In my view, on future occasions, the other associations should request the Bombay High Court to revisit its views on the basis of the law declared by the Supreme Court. However, suggestions made above should also be scrupulously followed.

Incisive Analysis of the new Condition for the entitlement of ITC

CA Abhay Desai

1. Introduction

1.1. Dawn of GST started with a proposed system of undertaking transaction-level matching in the form of GSTR 1, 2 & 3 to check the claim of input tax credits (ITC). Further, the provisions in the law were also drafted keeping the proposed system in mind. However, due to the reasons best known to the Government, the proposed system in its full glory did not see the light of the day. Instead, a stop-gap arrangement in the form of GSTR 1 (statement of outward supplies) coupled with GSTR 3B (return) was made operational with the hope of someday returning to the originally proposed system. Alas, the stop-gap arrangement started to become a permanent feature. In the meanwhile, the menace of fake invoicing became rampant with the media covering the scandals running into crores of rupees on regular basis. Also, the Government was firm in reintroducing the matching of the ITC perhaps in a new avatar. Clearly, something had to be done. It was then proposed in the 27th GST Council meeting (held in May 2018) to introduce a new return filing system (going by acronym ANX & RET) which essentially was a modified version of GSTR 1, 2 & 3 in terms of allowing only the unidirectional flow of data while permitting the ITC on missed invoices in the initial phase. Law was also amended by way of introducing Sec. 43A to the CGST Act, 2017 to cater to the new system.

1.2. However, in the 42nd GST Council Meeting, the thinking of the Government again changed. In the press release issued post the given meeting, it was stated that the Council approved the future roadmap by making several enhancements in the present system of GSTR 1 coupled with GSTR 3B to provide for auto-population of data (liability as well as ITC) in times to come. In the meanwhile, a new form GSTR 2B was introduced to facilitate static viewing of the details of outward supplies declared by the vendors. Hence in a nutshell the original system (GSTR 1, 2 & 3) and the new system (ANX & RET) were effectively scrapped.

1.3. It was hence decided to continue with the stop-gap arrangement (GSTR 1 coupled with GSTR 3B) with suitable modifications as we go ahead. It is in light of the said decision that a new clause (aa) has been added to Sec. 16(2) of the CGST Act, 2017 to provide for a new condition to determine the eligibility of ITC.

1.4. However, the provisions of law as of date are still not completely harmonized with the given decision. The same also does not seem to consider the interest of the genuine recipients. Hence we at many places are seeing a conflict inter-se between the provisions. Further, the

conflict also exists between the provisions and the Constitutional framework within which the former ought to have complied. In the present paper, we shall discuss the given conflicts that have arisen on account of the introduction of a new condition for determining the eligibility of ITC. The present paper is written with a view to urge the lawmakers to harmonize the provisions in accordance with the intent or else we shall see a spate of litigation in coming times. The paper is also written with a view to urge the lawmakers to protest the interest of the genuine recipients. The harmonization and at the same time protection of the interest of the genuine recipients shall result in reducing the litigation and shall also bring certainty in the minds of the taxpayer as well as the revenue. Certainty is, without doubt, the most important pillar of any good tax system in the world.

1.5. Now before we discuss the issues, let us first see the text of the provision under deliberation. Vide the Finance Act, 2021 the following clause has been added to Sec. 16(2) of the CGST Act, 2017:

"(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;"

1.6. Although the aforesaid clause is yet to be notified, it shall be worthwhile to appreciate several issues arising therefrom. Now before adverting to the issues, it is important to understand the background which leads to the aforesaid amendment.

1.7. The aforesaid amendment was first put before the GST Council at their 39th Meeting as part of the agenda[i]. The referred agenda item was also discussed at the given meeting (para 13.7 of the minutes) wherein as it was explained to the GST Council to insert an explicit condition in Section 16 to the effect that ITC on the invoices or debit notes may be availed only when the details of such invoices have been furnished by the concerned suppliers. It was also explained that the proposed amendment u/s 75(12) shall permit recovery of the tax liability declared in GSTR 1 in situations where GSTR 3B is not filed. It was also further discussed the suggested amendments shall encourage the filing of GSTR 1 since it has also been proposed to link GSTR 1 with GSTR 3B.

1.8. Now seen in the above light we can deduce that the basis for the amendment is to (a) encourage the filing of GSTR 1 and recovery of tax basis thereon if GSTR 3B is not filed and (b) check the fraud of fake invoices.

1.9. With the above background let us now examine the issues emanating from the amendment in question.

2. Validity of Rule 36(4) – pre-notification of clause (aa)

2.1. It is a settled law that the rules cannot be formulated in excess of the provisions of the Act or contrary to the Act. One may refer to the leading decision of the Hon'ble Supreme Court in the case of *Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd.*[ii] wherein it has been held as under:

"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law, if not in conformity with the statute in order to give effect to the statutory provision the Rule

or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

2.2. The aforesaid principle was reiterated in *CIT v. S. Chenniappa Mudaliar*[iii] holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act. Further, it is also an established principle as held in *CIT, Andhra Pradesh v. Taj Mahal Hotel*[iv] that "the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect." One may also refer to the decision in the case of *Union of India v. Intercontinental Consultants and Technocrafts Pvt. Ltd.*[v] to the same effect.

2.3. Now Sec. 164 of the CGST Act, 2017 deals with the power of the Government to make the rules. Sec. 164(1) of the said Act grants power to the Government to make the rules for carrying out the provisions of the Act. Further Sec. 164(2) of the Act grants power to make the rules for all or any of the matters which are by the provisions of Act are required to be prescribed or are to be made by rules. Now in purported exercise of the said powers that the Government issued Notification No. 49/2019 – Central Tax dt. 09.10.2019 inserting Rule 36(4) which presently reads as under:

"Rule 36(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility], shall not exceed [5 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility].]"

2.4. It may be noted that the aforesaid rule provides for the cap of 5% for the registered person to avail the ITC in respect of which the details have not been furnished by the vendors. In other words, the rule presumes that the availment of the ITC is based on the condition of furnishing the details by the vendors and hence provides for the cap of 5% in this regard for the missing invoices (i.e. invoices for which details have not been furnished by the vendors).

2.5. Now based on the earlier discussion, the aforesaid Rule can be considered to be valid only if the provisions of the Act envisages such restriction. Sec. 16(2) of the CGST Act, 2017 as presently applicable provides that a registered person shall not be entitled to ITC unless he satisfies the given four conditions. A perusal of the said provisions shall reveal that none of the conditions provides for the furnishing of the details of the invoice in GSTR 1 by the vendors. It may be noted that the actual payment condition under clause (c) cannot be inferred to include the condition of the furnishing of the details in GSTR 1. It is for the simple reason that the furnishing of the details of outward supplies is u/s 37 of the CGST Act, 2017 which is distinct and at present legally not linked with the furnishing of the return and payment of tax u/s 39 of the said Act. In fact, an amendment made u/s 75 by virtue of Finance Act, 2021 to the effect that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39 and shall permit the direct recovery of the said tax so declared also confirms that the declaration of the details u/s 37 in GSTR 1 do not confirm the payment of tax. Hence it can be stated that in absence of any provisions in the Act enabling the

formulation of Rule 36(4), the same has to be declared as invalid.

2.6. The aforesaid view has also been recognized as evident from the rationale for the amendment under discussion (i.e. clause (aa)) as expressly stated in the minutes of the GST Council meeting. The agenda note (supra) clearly has recognized the said gap between the Act and the Rule by stating that the proposed amendment is aimed to "to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in FORM GSTR-3B to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule 36(4)".

2.7. Hence the amendment by way of clause (aa) leads to a conclusion that the provisions of Rule 36(4) shall not be valid till the said clause is notified.

2.8. Without prejudice to the above, the provisions of Rule 36(4) can also be tested against Article 14 of the Constitution which provides for equality before the law. The agenda of the 39th GST Council Meeting as discussed earlier refers to the need for the amendment by way of clause (aa) to encourage the filing of GSTR 1 as well as to curb the menace of fake invoicing. Clearly, the intent behind encouraging the filing of GSTR 1 is intending to weed out fake invoicing. The press note issued by the GST Council dated 23.12.2020 also clearly states that the rationale for further curtailing the limits of Rule 36(4) to 5% is with an aim for curbing fake invoicing. Hence we submit that the rigours of Rule 36(4) need to differentiate between a genuine transaction and a fraudulent transaction. Both the transactions cannot meet the same fate on mismatch as that would be a violation of Article 14 by way of creating discrimination. Further Courts in the pre-GST era have read down a similar restriction with regard to the actual payment condition by virtue of Article 14 so as to apply it only if the department disputes the genuineness of the transaction and not otherwise. Hence we submit that even on this ground the provisions of Rule 36(4) shall not be valid.

3. Validity of clause (aa) after its notification

3.1. Post the notification of clause (aa) one may have to still consider whether the said condition can be held to be valid considering the provisions contained in the Constitution of India.

3.2. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Courts have applied the said Article with mainly two perspectives viz. (a) whether the classification made in the Statute is reasonable or not so as to avoid discrimination and ensure equality and (b) whether the provisions of the Statute are manifestly arbitrary. Let us apply the said two perspectives in the context of clause (aa).

3.3. Provisions in the Statutes can be struck down by applying Article 14 if the given provisions make an unreasonable classification or fail to make a reasonable classification where warranted. Hon'ble Supreme Court in the case of *K.T. Moopil Nair v. State of Kerala*[vi] was faced with a situation where an absence of classification led to a violation of Article 14 of the Constitution. The statute under challenge was the Travancore Cochin Land Tax Act, 1955 ('TCLT Act'). Section 4 of the TCLT Act laid down that a uniform rate of tax would be levied on all lands in the State "of whatever description and held under whatever tenure", i.e. Rs. 2

per acre per annum. This uniform rate of tax was challenged on the ground that all lands in the State did not have the same productivity quality; some were wastelands and others were in varying degree of fertility. The tax, therefore, weighed more heavily on owners of wastelands than the owners of fertile lands. The Court concluded by a majority of 4:1 that the failure to make a classification between a productive and non-productive land for the purposes levy of such tax rendered the statute unconstitutional.

3.4. Similarly Hon'ble Supreme Court in the case *State of Kerala v. Haji and Haji*[vii] held that mere adoption of the floor area of the building as the basis of tax irrespective of all other considerations shall not be a rational classification and hence shall be violative of Article 14.

3.5. It may be noted that the vendor may (a) purposefully not furnish the details to avoid the liability or (b) face technical issues in furnishing the details (GSTIN wrongly cancelled, etc.) or (c) avoids furnishing the details despite the acknowledgement of the liability on the invoice by way of charging and recovering the tax from the recipient on account of financial crises or genuine business failure. Now in such circumstances, the provisions of clause (aa) will apply with equal rigour if the same is not read down to apply only in situations of type (a). Hence even on the said basis, it can be contended that in absence of any reasonable classification under Article 14, the provisions in clause (aa) will be up for the challenge.

3.6. Let us now look at the issue from the perspective of manifest arbitrariness. Application of the doctrine of arbitrariness to invalidate a Statute in the context of Article 14 was first propounded in the case *E P Royappa v. State of Tamil Nadu*[viii] wherein it was held as under:

"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits...equality is antithetic to arbitrariness...Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14."

3.7. In the aforesaid case, therefore, it has been reasoned that arbitrariness is the enemy of equality under Article 14 and hence the provisions of the Statute if found to be arbitrary can be declared as invalid. Much judicial history has thereafter evolved on the said doctrine. One school of thought suggests that the doctrine of arbitrariness has no role to play since it deals with the motives of the legislators and the judiciary cannot attribute to the legislators that the laws made are without reason. Therefore the Statute can be struck down in the context of Article 14 only based on the test of discriminatory classification or unreasonable non-classification. Another school of thought suggests that the principle of arbitrariness stands included in Article 14 and hence a Statute if found to be arbitrary will not promote equality and hence can be liable to be struck down. In the case of *Shayara Bano v. Union of India*[ix] the said principle has been evolved by holding that the Statute can be declared as invalid if the same is "manifestly arbitrary" as under:

"The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when

something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

3.8. Recently Hon'ble Supreme Court in the case of *Deputy Commissioner of Income Tax v. Pepsi Foods Ltd.*[x] upheld the Hon'ble Delhi High Court's verdict of partially striking down the third proviso to Section 254(2A) of the Income Tax Act, 1961 which did not permit extension of a stay on tax assessment beyond 365 days even if the assessee is not responsible for delay in hearing of appeals by terming it as "arbitrary and discriminatory".

3.9. Hence we need to now consider whether the provisions of clause (aa) can be said to be irrational or excessive and disproportionate or said to be lacking adequate determining principle so as to be declared as arbitrary.

3.10. In the above context, one may also refer to the decision of Punjab and Haryana High Court in the case of *Gheru Lal Bal Chand v. State of Haryana*[xi] wherein it has been held that recovery of the tax from the registered purchasing dealers in absence of fraud, collusion or connivance will not do justice to the parties nor will it achieve the purpose of the Act i.e. realization of tax by the revenue by legitimate methods.

3.11. One may also refer to the recent decision of Hon'ble Madras High Court in the case of D*Y Beathel Enterprises v. State Tax Officer*[xii] wherein it has been held that the ITC cannot straight away be recovered from the recipient on failure in paying the tax by the supplier without (a) allowing the recipient to examine the supplier as a witness and (b) initiating recovery action against the said supplier.

3.12. Now Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Hence not only the levy but even the collection of the tax shall be only by authority of law.

3.13. Now as per Sec. 9(1) of the CGST Act, 2017 provides as under:

"Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."

3.14. The above provisions, therefore, provides that the tax levied on the supply of goods or services or both shall be paid by the "taxable person". The term "taxable person" has been defined under clause (107) to Sec. 2 of the said Act as under:

""taxable person" means a person who is registered or liable to be registered under section 22 or section 24;"

3.15. Hence the term "taxable person" does not refer to the fact as to whether the said person who has made the supply has furnished GSTR 1 or not. It merely refers to the person who is registered or liable to be registered. In other words, the tax can be collected only from the vendors in question. In such a situation, it shall not be just to deny the ITC on the failure to furnish the details.

3.16. Further clause (aa) does not take into consideration situations wherein the

Government eventually recovers the tax from the vendors even in absence of vendors furnishing the details in GSTR 1.

3.17. Therefore it can be contended that the provisions of clause (aa) are irrational, excessive and disproportionate as it does not seek to do justice to the genuine recipients. It can also be contended that the same also lacks clear determination principles as it does not provide for a remedy for the genuine recipients in cases where the tax stands eventually collected from the given vendors.

3.18. The aforesaid stand can also be considered from another perspective. Now clause (aa) seeks to make the furnishing of the invoice details by the vendors a mandatory condition to enable the recipient to avail of the ITC. On the other hand Sec. 38(1) of the CGST Act, 2017 provides as under:

"SECTION 38. Furnishing details of inward supplies. – (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37."

3.19. Therefore the aforesaid provisions mandate for filing of GSTR 2 by incorporating the details of the invoices not declared by the vendors. Further, the ITC so declared is required to be matched and confirmed as per provisions of Sec. 42 and 43 of the CGST Act, 2017. Hence we submit that on one hand the law allows the recipient to even claim ITC in respect of the invoices for which the details have not been furnished by the vendors. On the other hand Rule 60 of the CGST Rules, 2017 which deals with the procedure for filing of GSTR 2 in fact does not provide for its filing at all but only provides for the auto-population of the data filed by the vendors in GSTR 2A/2B. The same therefore clearly runs contrary to Sec. 38 discussed above.

3.20. Now the newly inserted clause (aa) providing for the condition of furnishing of the details by the vendors as the basis for determining the eligibility of the ITC clearly runs contrary to the express provisions of Sec. 38 by permitting the genuine recipients to declare the missing invoices and claim the ITC thereof. Further the conditions stipulated u/s 16(2) override only provisions of Sec. 16 by virtue of non-obstante clause but do not override the provisions of Sec. 38.

3.21. Hon'ble Supreme Court in plethora of cases[xiii] has applied the following principle of harmonious construction in case of conflict between two provisions of the Act:

"Interpretation of Statutes -- Harmonious construction.--When there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction". The Courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction. To harmonise is not to destroy any statutory provision or to render it construction."

3.22. We hence submit that a harmonious interpretation shall be to allow the genuine recipients to avail the ITC in

respect of missing invoices as per Sec. 38 and apply the provisions of clause (aa) only in situations where the transactions are fraudulent and the concerned vendors do not admit and discharge the liability. Therefore even on this ground the provisions of clause (aa) is required to be read down.

4. The doctrine of supervening impossibility

4.1. There is a well-known legal maxim "Lex non cogit ad impossibilia", which means that law cannot compel a man to do what he cannot possibly do. Supreme Court of India recognized the said principle in the case of *Cochin State Power & Light Corporation Ltd. v. The State of Kerala*[xiv] wherein it has been held as under:

> *"The performance of this impossible duty must be excused in accordance with the maxim, lex non cogitate ad impossible (the law does not compel the doing of impossibilities)"*

4.2. Further Hon'ble Gujarat High Court in the case of *State of Gujarat v. S. A. Himnani Distributors Pvt. Ltd.*[xv] applied the said principle to allow the ITC under the VAT Law in respect of goods destroyed in flood by holding that the ITC cannot be denied for the want of the disposal of the said goods by way of sale or otherwise as the dealer couldn't do so on account of the destruction.

4.3. As stated before, Sec. 38(1) of the CGST Act, 2017 permits the recipient to declare the details of the missing invoices in GSTR 2 and claim the ITC thereof subject to eventual matching. Clause (aa) on the other hand seeks to allow the ITC only if the details are furnished by the vendors. Hence it can be contended that the law is asking the recipient to do the impossible by (a) not making the provisional claim of ITC by filing GSTR 2 and asking the vendors to accept the liability and (b) determining the eligibility solely based on filings done by the said vendors which are not in the control of the recipient. Hence it can be contended based on the doctrine of supervening impossibility that the ITC of the genuine recipient cannot be denied by virtue of the provisions of clause (aa).

5. The interplay between clause (aa) and clause (c)

5.1. Post the notification of the clause (aa) one has to also consider an interesting interplay between the said clause and clause (c) which deals with the actual payment condition.

5.2. Normally vendors shall first furnish the details of the outward supplies and then file their return by making the payment of tax. Now conjoint reading of clause (aa) and clause (c) shall suggest that the recipient shall be entitled to ITC only if the concerned vendors have declared the supplies and have also paid the tax thereof. In fact addition of an Explanation to Sec. 75 vide Finance Act, 2021 to the effect that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39 shall permit the direct recovery of the said tax declared. Now conjoint reading of clause (aa) with Explanation to Sec. 75 shall suggest that the recovery of the unpaid tax in respect of the declared supplies in GSTR 1 can be made from the concerned vendors. In such a situation will it be just to deny the ITC to the recipient if the vendors have furnished the details but have not paid the tax?

5.3. We submit that the arguments discussed earlier in the context of Article 14 shall apply to resolve the issue and a view can be taken that the ITC cannot be denied on

the failure in making the payment of the tax as long as the details of the supplies have been declared by the vendors in their GSTR 1. One may also refer to the decision of Hon'ble Delhi High Court in the case of *Arise India Limited and others vs. Commissioner of Trade & Taxes, Delhi and others*[xvi] wherein it has been held in the context of similar conditions in the DVAT Act, 2004 that such payment condition for determining the eligibility of ITC is required to be read down and the same can be applied only if the transactions are not genuine. One may also appreciate that in the facts of petitioner 'Arise India Limited', the department had not questioned the genuineness of the transaction but had denied the ITC merely on the non-payment of tax by the vendors. Hence in the case of the given petitioner, the department filed an SLP before the Hon'ble Supreme Court which came to be dismissed[xvii]. A similar view has also been taken by Hon'ble Rajasthan High Court in the case of *R.S. Infra-Transmission Ltd vs. State of Rajasthan*[xviii]. Hence we can submit that the actual payment condition in clause (c) shall have to be applied only in situations where the bonafide of the transaction are questioned by the department on cogent grounds.

6. The interplay between clause (aa) and Rule 36(4) – post notification

6.1. As discussed earlier, the insertion of clause (aa) is aimed to complete the gap which currently exists between the provisions of the Act and Rule 36(4). Therefore post the notification of the said clause it is to be seen whether (a) the validity of the Rule can still be challenged and (b) how shall the said rule operate. Let us examine both issues.

6.2. Post the notification of clause (aa), questioning the validity of Rule 36(4) may get difficult but not impossible. This is so because now the Act itself shall provide the factum of the furnishing of the details of the invoice by the vendors as a condition to determine the eligibility of ITC. Hence unless clause (aa) is held to be invalid, challenging the validity of the Rule may get difficult. Generally in the context of fiscal statutes dealing with complex economic issues, the policymakers have the liberty to take a generalized approach and the Courts shall adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions.

6.3. However one will notice that provisions of a Statute or a Rule can be challenged under Article 14 on the grounds of an unreasonable classification or arbitrariness. Supreme Court as seen earlier has held that a classification made without considering the relevant factors shall not be a reasonable classification (see *K.T. Moopil Nair v. State of Kerala*). Further, although the Supreme Court has applied a broad test to determine the arbitrariness it broadly consists of situations where the rule makers have formulated the rule without regard to rationality or proportionality. It may be noted that the artificial cap of 5% does not consider other legitimate factors such as (timing differences, technical issues, relative quantum between a small taxpayer and a large taxpayer, etc.) which should have been taken into account to achieve the object. It can hence be contended that the artificial capping of the ITC in respect of missed invoices to 20% at the point of inserting the Rule and then reducing it to 5% may speak of an unreasonable classification as well as irrationality.

6.4. Another issue to consider is whether Rule 36(4) shall become redundant post the notification of clause (aa). The agenda note

of the GST Council Meeting states that the insertion of the said clause is "to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in FORM GSTR-3B to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule 36(4).". Therefore it appears that the benefit by way of allowing an additional claim up to 5% in respect of missed invoices shall continue even after the notification of clause (aa). However the same is with a caveat that the eventual intention seems to be is to phase out even the 5% benefit by auto-populating the ITC claim only based on the furnishing of the details of the outward supplies by the vendors.

6.5. The aforesaid issue may lead to an additional issue as to whether clause (aa) and Rule 36(4) can work harmoniously or not? It may appear that post the notification of clause (aa) the legislators have given no room to the executive to formulate Rule 36(4) and allow the ITC in respect of missed invoices even up to 5%. This is more so as Sec. 16(2) in which clause (aa) has been inserted starts with the "notwithstanding" phrase overriding all other provisions of Sec. 16. Perhaps and as discussed later, the conditions dealing with the matching of the claims (i.e. acceptance of liability as a condition for taking the ITC) under Sec. 16(2) are to be viewed as even permitting a post availment compliance. Hence it appears that Rule 36(4) can be operative at the stage of allowing provisional ITC and may not be in direct conflict with Sec. 16(2). However only time can tell how the same will operate post the notification of clause (aa). Perhaps the legislators must contemplate amendments in Sec. 43A (envisaged to be made operational under the new return filing scheme (ANX & RET) which may not see the light of the day) to gear it for the compliance under evolving GSTR 3B regime with the unidirectional matching as envisaged in clause (aa). The same shall also solve the issues about the conflict with Sec. 41, 42 & 43 (matching mechanism in the present Act) as Sec. 43A overrides the original filing scheme of GSTR 1, 2 & 3.

7. ITC covered under clause (aa)

7.1. For ready reference clause (aa) is again reproduced below:

> *"(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;"*

7.2. The said clause, therefore, states that it shall apply to the invoice or debit notes referred to in clause (a). Now clause (a) reads as under:

> *"(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;"*

7.3. Conjoint reading shall therefore suggest that the condition under clause (aa) shall apply only to the tax invoice or debit note issued by the supplier and not to other documents. Hence the said clause shall clearly not apply to the self-invoices issued under RCM in the case of receipt of supplies from unregistered vendors. This is logical also as the details of the said self-invoice are not furnished u/s 37 of the CGST Act, 2017 for communication to the counterparty.

8. Timing aspect

8.1. Another issue to also examine is the point in time at which the recipient is required to comply with the requirements of clause (aa). It may so happen that the concerned vendors may not have furnished the details by the time at which the recipient avails the ITC and furnishes the return in GSTR 3B. However post the said date, the concerned vendors furnish the details and the same are hence communicated to the recipient in GSTR 2A/2B. In such a situation can it still be said that the recipient has not validly availed of the ITC. We presume that the ITC availed by the recipient is otherwise in compliance with Rule 36(4) (i.e. with 5% tolerance for the mismatch).

8.2. Sec. 16(2) of the CGST Act, 2017 provides that "no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless …." such person satisfies the conditions including the conditions inserted in clause (aa). One will therefore observe that the said provisions have been negatively worded. In other words, instead of saying that the person shall be entitled to ITC only if the given conditions are satisfied, it says that the person shall not be entitled to ITC unless he satisfies the given conditions. It may also be noted that the word used in Sec. 16(2) is "entitled to". Now one has to understand the scheme of the Act to appreciate the meaning of the term "entitled to" in the context of Sec. 16(2).

8.3. Sec. 41 of the CGST Act, 2017 provides that a registered person is entitled to take the ITC and the same shall be credited on a provisional basis. Thereafter Sec. 42 and 43 envisaged the matching of the said claim with the corresponding declaration of liability by the vendors to confirm the entitlement. It is in the said context that the conditions in clause (c) and (d) of Sec. 16(2) have been mandated. Now the condition in clause (aa) can also be said to be in the said context of matching only as it deals with the furnishing of the details of the outward supplies by the vendors. Hence it can be said that the recipient can avail of the ITC u/s 41 based on the invoice (subject to the receipt of goods/ services) and it is only for determining the eventual entitlement that the conditions of clause (aa) are to be seen. One may also refer to the decision of the Hon'ble Supreme Court in the case of *K. R. C. S. Balakrishna Chetty & Sons v. State of Madras*[xix] wherein it has been held in the context of conditions imposed by law that the intention of the legislator must be appreciated and accordingly the benefit granted must be allowed which may be conditional on the eventual fulfilment of the requirements. One may also apply the analogy prevalent under the CST Act, 1956 wherein the benefit of reduced rate of tax was conditional upon the submission of declaration forms.

8.4. Said view also finds support from the fact that Rule 36(4) provides for taking the ITC on missed invoices with a cap of 5%. Hence if the condition in clause (aa) is seen to be applicable before taking the ITC then even the application of Rule 36(4) becomes redundant. Such cannot be the interpretation and hence we submit that even if the details are furnished by the vendors after the provisional availment of ITC by the recipient, it shall tantamount to compliance with the requirements of clause (aa). Therefore the availment of ITC cannot be denied for the belated furnishing of the details of the outward supplies by the vendors.

8.5. One more issue may arise in the context of timing in respect of inward supplies received from the vendors opting for the

QRMP scheme and using the IFF (invoice furnishing facility) to furnish the details of outward supplies for the first two months of a given quarter. Clause (aa) states that the entitlement of the ITC of the recipient shall be based on the "the details…. furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient…. in the manner specified under section 37". Hence someone may take a myopic view to suggest that since the IFF is not a statement of outward supplies (which is only GSTR 1), the details furnished in IFF shall not be a sufficient compliance under clause (aa) and hence the ITC cannot be availed based thereon but can only be availed when the given vendor files quarterly GSTR 1. We think that the said view is not sustainable. Rule 59 of the CGST Rules, 2017 clearly provides that the statement of outward supplies is required to be furnished in GSTR 1 (for normal taxpayers) and IFF + GSTR 1 for QRMP opted taxpayers. It also provides that the details furnished in IFF are not to be included in GSTR 1. Also, the IFF looked from the structure is part of GSTR 1. Hence we submit that furnishing the details in IFF shall be sufficient compliance in respect of clause (aa) for the recipient to determine the entitlement. We may also add that the use of the word "furnish" in clause (aa) and similar amendment in Rule 36(4) w.e.f. 01.01.2021 in the context of the QRMP scheme is aligned with the aforesaid view.

9. Conclusion

Readers will appreciate the fact that the aforesaid issues have arisen on account of a lack of efforts in comprehensively harmonizing the provisions of law with the intended system of return filing. Issues have also arisen on account of not considering the rights of genuine recipients and painting all the infractions with the same brush. It is hoped that the issues discussed fall on the right ears to mend the ways in the interest of trade and industry.

Endnotes

i. LAW AMENDMENT PROPOSALS – CGST Act, 2017

Sl. No.	Section	Gist of issue	Proposal	Suggested formulation	Consequential changes
1.	16	1. One of the key objectives of the GSTR-1/2/3 system was to provide for matching of invoices between the supplier and the recipient i.e. there shall be no credit existing in the system which has not been declared in the respective returns of the supplier and recipient as per section 16 (2) c and 16(2) d of the CGST Act 2017.	The Law Committee examined the matter and felt that credit may be allowed that reasonable restriction may be imposed on self-assessed input tax credit availed in FORM GSTR-3B on the basis of credit	16. "(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-- (a) he is in possession of a tax	

Sl. No.	Section	Gist of issue	Proposal	Suggested formulation	Consequential changes
		2. Available data suggests that the percentage of filing of return in FORM GSTR-1 (details of outward supplies) is far lesser as compared to filing of return in FORM GSTR-3B, through which input tax credit is availed. Further, due to poor filing of FORM GSTR-1, there are large gaps between credit available under FORM GSTR-2A and self-assessed credit under FORM GSTR-3B. 3. A number of cases have been booked by the Central / State authorities where high amount of input tax credit is pumped into the system through fake invoices and the same being availed by many taxpayers. 4. It may be noted that in the 38th GSTC meeting, a one-time amnesty for filing of FORM GSTR-1 was given in order to encourage taxpayers to file their missing FORM GSTR-1s. 5. It is proposed that reasonable restriction may be imposed on self-assessed input tax credit availed in FORM GSTR-3B on the basis of credit reflected in FORM GSTR-2A. Further, Rule 36(4) was notified which stated that credit availed in GSTR3B cannot exceed the credit reflected in GSTR-2A by 20%, from the months of October onwards; and which was further reduced to 10% from December 2019 onwards.	reflected in FORM GSTR-2A. Accordingly, the Law Committee recommended to amend the provisions of section 16(2)(a) to mandate that ITC on invoices or debit notes may be availed only when the details of such invoices are specified in the details of outward supplies by the supplier.	invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed and the details of such invoices or debit note in respect of such supplies have been furnished by the supplier in the statement of outward supplies as specified under section 37; "	

Sl. No.	Section	Gist of issue	Proposal	Suggested formulation	Consequential changes
		6. Section 16 of the CGST Act provides for conditions and restrictions subject to which the input tax credit shall be credited to the electronic credit ledger. It would be logical to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in FORM GSTR-3B to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule 36(4).			

ii. (1984) 2 SCC 50

iii. (1969) 74 ITR 41

iv. (1971) 82 ITR 44

v. 2018 (10) G.S.T.L. 401 (S.C.)

vi. 1961 AIR 552

vii. 1969 AIR 378

viii. (1974) 4 SCC 3 [85]

ix. 2017 (9) SCALE 178

x. Civil Appeal Nos. 1106 to 1139 of 2021 decided on April 6, 2021

xi. Civil Writ Petition No.6573 of 2007

xii. W.P. No. 2127 of 2021

xiii. *M. Pentiah vs. Veeramallappa Muddala AIR 1961 SC 1107; Gamman India Ltd. vs. Union of India AIR 1974 SC 960 = (1974) 1 SCC 596; Mysore State Road Transports Corporation vs. Mirza Khasim All Beg AIR 1977 SC 747; Vaddeboyina Tulsamme vs. Vaddeboyina Sesha Reddi AIR 1977 SC 1944 = (1977) 3 SCC 99; Punjab Beverages Avt. Ltd. vs. Suresh Chand AIR 1978 SC 995; Commissioner of Income-tax vs. National Tai Traders AIR 1980 SC 485; Calcutta Gas Co. (Proprietary) Ltd. vs. State of West Bengal AIR 1962 SC 1044; J.K. Cotton Spinning & Weaving Mills vs. State of U.P. AIR 1961 SC 1170*

xiv. *AIR 1965 SC 1688 and Sultana Begum vs Prem Chand Jain AIR 1997 SC 1006*

xv. (2014) (7) TMI 783 (Guj.)

xvi. TS-314-HC-2017(Del)-VAT

xvii. TS-2-SC-2018-VAT

xviii. D.B. Civil Writ Petition No. 12445/2016 (Raj.)

xix. (1961) AIR 1152

Governmental benefits – whether beneficial or taxable or both?

CA Harshal D.
Fifadra

➢ Introduction

In India, the government offers many incentives to various companies / industries. Do you know, why? By incentivizing the companies / industries, the government is committing to use / invest scarce public resources to make the private investments feasible. The incentives could be in the form of tax exemptions, tax incentives, subsidies, rebates or even government grants. As a quid pro quo, the government expects the companies / industries to give back in the form of economic impacts such as improved environment, securing the future, boost manufacturing in specific areas and generate employment opportunities. The incentives, which when received from the government should be dealt appropriately i.e. cost benefit analysis should be done from Income Tax and GST perspective. In the current article, the author discusses the impact on receipt of the government incentives / benefits from Income Tax and GST perspective.

➢ Basic concepts in Income Tax and GST

For better understanding, it would be relevant to refer to basic concepts under both Income Tax Act, 1961 (ITA) and Central Goods and Services Tax Act, 2017 (CGST Act).

- **Section 4 of ITA - Charge of Income Tax**

  Section 4 of the ITA provides that Income Tax shall be charged at such rates as may be prescribed for a particular assessment year in respect of total income of the previous year of every person.

- **Section 2(24) of ITA – Definition of Income**

  Section 2(24) of ITA has provided an inclusive definition of the term "income" which inter-alia includes profits and gains from business & profession, capital gains on sale of shares / property, income from salaries, income from other sources, assistance in the form of subsidy, grant or cash incentive from central government and state government, etc. Amongst the various sub-clauses of Section 2(24) of ITA, the most relevant clause for the purpose of this article is re-produced as under –

  "(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or in kind to the assessee other than –

  (a) The subsidy or grant or reimbursement which is taken on account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of Section 43; or

  (b) The subsidy or grant by the Central Government for the purpose of corpus

of a trust or institution established by the Central government or a State Government as the case maybe.

- **Section 9 of CGST Act – Levy and collection**

  Section 9 of CGST Act, 2017 provides that there shall be levied GST on supply of goods or services at such rates as may be prescribed and it shall be paid by the taxable person.

- **Section 7 of CGST Act – Scope of Supply**

  The term "supply" has been widely defined in the CGST Act to include all forms of supply of goods or services made or agreed to be made for a consideration by a person in the course of furtherance of business. It also includes import of services for a consideration and whether or not in the course of furtherance of business, activities specified in Schedule I made or agreed to be made without a consideration. Sub-section (2) of Section 7 also provides for the list of items / transactions which are neither to be treated as supply of goods or supply of services.

➢ Taxability of incentives / benefits – Income Tax and GST perspective

1. Duty credit scrips under MEIS / SEIS scheme

Meaning and nature of duty credit scrips

- The exports made by the exporter of goods / services helps the nation to earn foreign exchange and hence in return a benefit is passed on the exporters. The Central Government intends to provide benefits to the exporter of goods and services through the Foreign Trade Policy (FTP). Chapter 3.02 of the current FTP 2015-2020 provides that rewards in the form of "duty credit scrips" shall be granted under MEIS/SEIS scheme.

- Duty credit scrips in MEIS scheme is in the range of 2%-10% of FOB value of goods exported depending on the nature of goods. Similarly, the duty credit scrips in SEIS scheme is in the range of 3%-5% of the net foreign exchange earned depending on the Central Product Classification (CPC) code classification. The duty credit scrips are materialized on a piece of paper issued by the Directorate General Foreign Trade (DGFT) authorities of India entitling the exporter of goods / services for the reward amount mentioned therein.

- The duty credit scrips can be utilized for payment of basic custom duty, additional customs duty on import of goods, for payment of central excise duty on domestic procurement of inputs or goods. Further, the duty credit scrips are also transferable to another person bearing valid IEC. The record of transfer of duty credit scrips has to be recorded online on DGFT website.

Taxability under ITA and CGST Act

- Once the duty credit scrips are received by an exporter of goods / services, there are two options for the exporter –

  a) Self usage of the duty credit scrips against payment of basic custom duty on imports being made;

  b) Sale of duty credit scrips to another potential buyer.

- Under option a) mentioned above, the rewards obtained from the government are captively used and hence there is no income generated. Accordingly, the question of taxability under ITA and CGST Act does not arise. Also, the question of reversal of Input Tax Credit (ITC) under CGST Act does not arise.
- It is only under option b), there is a generation of income since the owner of scrips is transferring its beneficial right to another at an agreed consideration. Such receipt of consideration qualifies as an income as per the definition provided in Section 2(24) (xviii) of ITA. Also, the exclusions mentioned in Section 2(24) (xviii) of ITA does not cover within its ambit the consideration received for sale of scrips. Hence, such consideration is chargeable to Income Tax.
- Practically, on sale of duty credit scrips, the seller receives cash consideration in the range of 97%-99.5% of the amount mentioned in the scrip document. Such rate is subjective and is determined basis the demand and supply of the scrips and other market conditions. Under ITA, the seller of duty credit scrips has to recognize 100% of the amount mentioned in the scrip document as an income in its profit and loss account even though only 97%-99.5% of the amount is realized in cash since the beneficial rights are accrued to the owner at the value mentioned in the scrip document. The balance 0.5%-3% of the duty credit scrips which is not received by the seller has to be recognized as a loss in profit and loss account.
- Under CGST Act, the sale of beneficial rights in duty credit scrips by the owner to the recipient qualifies as a supply as per the scope of supply mentioned in Section 7 of CGST Act. Hence, it should be chargeable to GST, however, the Central Board of Indirect Taxes and Customs (CBIC) has exempted the supply of duty credit scrips from the levy of GST on a prospective basis vide Notification No. 35/2017 – Central Tax (Rate) dated 13 October 2017. Accordingly, the supply of duty credit scrips made prior to 13 October 2017 was chargeable to GST @5%.
- Given that the supply of duty credit scrips is an exempted supply, in author's view, the supplier of duty credit scrips is required to reverse proportionate ITC as per Section 17(2) of the CGST Act, 2017 i.e. ratio of exempted turnover to total turnover during the month has to be applied on the ITC for that month to calculate ITC reversal amount. The ITC to be reversed is allowable as a deduction under ITA, however, non-creditable under GST.
- A snapshot of the net cash benefit available to the seller of duty credit scrips is tabulated as under –

Particulars	Reference	Amount
Duty credit scrips amount	(A)	100
Less - Loss on sale of scrips @ say 2%	(B)	(2)
Net cash received on sale of scrips	C = A-B	98
Less - Consultant cost for scrips application and sale of scrips	D	(0.90)
Less - GST ITC reversal from Gross ITC	E	(4)
Add – GST ITC reversal deduction under ITA	F	4
Less - Income Tax on sale	G =	
(C-D-F)*31.2%	(29.10)	
Net cash benefits received on sale	**H = C-D-E+F-G**	**68**

- From the above table, it is clear that while the seller of duty credit scrips receives INR 98 as cash, however, after considering the tax costs, the net benefit achieved on sale of scrips is only INR 68 i.e. 30% becomes cost.

2. Duty Drawback on export of goods

Meaning and nature of duty drawback

- The benefit of duty drawback is available only on export of goods and not on export of services. Such benefit is prescribed in the following two sections of the Customs Act, 1962 –

a) Section 74 - Drawback allowable on re-export of duty paid goods

Under this section, a duty drawback (duty refund) of the customs duty paid at the time of import of goods into India is entitled to the exporter of goods provided the goods imported in India are re-exported outside India. The duty drawback receivable by the exporter of goods is up to 98% of the duty already paid depending on the time of usage of such imported goods in India. Practically, the maximum amount of duty drawback receivable by the exporter of goods is in the range of 60%-95%. Additionally, if the imported goods are used for more than 18 months and then re-exported then no duty drawback is allowable under this section.

b) Section 75 – Drawback on imported materials used in the manufacture of goods which are exported

The underlying rationale for availability of duty drawback under this section is that the imported goods / indigenous goods have lost their existence in manufacture of the exported goods. Accordingly, in order to offset the duty suffered in respect of the imported goods / indigenous goods, a drawback is provided to the exporter of goods. The duty drawback is available

at a fixed percentage of FOB value of goods exported to the exporter of goods.

- The duty drawback benefit is available as a cash benefit to the exporter of goods i.e. amount of duty drawback get immediately credited to the bank account of the exporter provided other compliances as prescribed in Customs Act, 1962 are fulfilled.
- Section 75A of the Customs Act, 1962 also provides for the interest on late payment of duty drawback either under Section 74 of under Section 75 of the Customs Act, 1962 by the Customs authorities i.e. after the expiry of one month from the date of filing the duty drawback claim.

Taxability under ITA and CGST Act

- Similar to duty credit scrips, the duty drawback received from the Customs authorities qualifies as an income as per the definition provided in Section 2(24) (xviii) of the ITA. Accordingly, duty drawback is a taxable income and chargeable to Income Tax @ 31.2% of the gross amount of drawback received reduced by consultant costs, if any. Similarly, the interest received on late receipt of duty drawback is chargeable to income tax and classifiable as "income from other sources".
- As mentioned earlier, under GST regime, GST is leviable under Section 9 of the CGST Act, 2017 only on supply of goods, services, or both and not otherwise. The receipt of duty drawback is in accordance with the provisions of Section 74 or Section 75 of the Customs Act, 1962 and not on account of supply of any goods or services. Accordingly, the question of levy of GST on receipt of duty drawback does not arise. While the definition of exempt supply provided in Section 2(47) of the CGST Act, 2017 includes a non-taxable supply within its meaning, however, the receipt of duty drawback is "not a supply in itself" and "not a non-taxable supply" as well. In effect, there is no requirement for reversal of proportionate ITC as per the provisions of Section 17(2) of the CGST Act.
- In case if the exporter of goods receives the duty drawback later than one month from the date of filing the claim, he is entitled to interest as per the provisions of Customs Act, 1962. In author's view, such interest is compensatory in nature and not on account of extending of loans and deposits for it to be exempted from levy of GST. Accordingly, in author's view, the receipt of interest on duty drawback is a taxable supply, which is neither exempted vide any notification nor Nil rated. Accordingly, it is chargeable to GST at generic rate of 18%. It should be noted that the exporter of goods is liable to pay GST @18% on the gross value of interest received. The exporter cannot collect GST from the government. In effect, it becomes a cost to the exporter of goods, which should be allowable as a deduction in ITA.

3. Sale and purchase of Priority sector lending certificates (PSLCs)

Meaning and nature of PSLCs

- In India, every bank (public or private or foreign bank) is required to lend a dedicated amount of money to the priority sectors. This is mandated by RBI. The objective of the RBI is to help certain sectors who are struggling or underperforming or which are benefitting the entire economy as a whole. RBI has mandated to lend a minimum of 40% of their loans to priority sectors such as agriculture, education, social housing and micro enterprises.
- Whenever a bank lends money to the priority sectors, a certificate is issued to them to the extent of loans disbursed. Now, given the market situation and market specialization of banks in disbursing loans to the priority sector, there is a possibility that some banks may over achieve their priority sector lending and some others may under achieve. In effect, the banks who have under achieved their targets are allowed to purchase PSLCs from the market i.e. CBS portal (e-Kuber portal) of RBI to meet their overall target. Both the buyer and seller of PSLCs are required to record the transaction of purchase and sale on such portal.
- Every PSLC is ascribed a nominal value equivalent of the priority sector lending. On sale of PSLC by the seller bank to the buyer bank, such nominal value gets deducted from the priority sector lending (PSL) portfolio of the seller bank and would get added to the PSL portfolio of the buyer bank. The buyer bank is required to pay a market determined fee to the seller bank.

Taxability under ITA and CGST Act

- Whenever a buyer bank purchases a PSLC from the foreign bank, a fee is paid by the buyer bank to the seller bank. Such fee is an allowable expense for the buyer bank and classifiable as an income for the seller bank as per the definition provided in Section 2(24) of the ITA. Such income is chargeable to Income Tax as per the applicable rates depending on the type of bank.
- The RBI in one of the FAQs related to PSLCs hosted on its website had clarified that PSLCs may be construed in the nature of goods, the dealing in which has been notified as a permissible activity under Section 6 (1) (o) of Banking Regulation Act vide the Government of India notification dated 4th May 2016.
- Given such FAQ, under GST, whenever there is sale of PSLC by the seller bank to the buyer bank, there is a taxable supply of PSLC (goods), which is neither exempted nor Nil rated. As per Schedule Entry No. 453 (Residual Entry) of Schedule III to the Notification No. 1/2017 – Central Tax (Rate) dated 28 June 2017, a view was considered that since such PSLCs are not classifiable elsewhere in other schedules, it is chargeable to standard rate of 18%. The CBIC had also issued a circular 34/8/2018-GST dated 1

March 2018 wherein the taxability of it was discussed.

- Several representations were filed by the industry players praying for a lower rate of tax. In effect, the CBIC again issued a Circular No. 62/36//2018-GST dated 12th September 2018 clarifying the following aspects –

  a) GST on sale of PSLCs would be paid by the seller bank on a forward charge basis;

  b) The seller would have to apply GST @ 12% for the period 1 July 2017 to 27 May 2018.

- At the same time, the CBIC had issued Notification No. 11/2018 – Central Tax (Rate) dated 28 May 2018 wherein it was notified that on sale of PSLCs by the seller bank, the buyer bank would have to pay tax under reverse charge mechanism (RCM) basis. Additionally, a Circular No. 93/12/2019-GST dated 8 March 2019 was issued by CBIC to clarify that supply of PSLCs between banks would be treated a supply in the course of inter-state trade or commerce. Accordingly, the buyer bank would have to pay IGST under RCM basis on purchase of PSLCs. In effect, wherever the banks had paid CGST and SGST under RCM basis during the period 28 May 2018 – 8 March 2019 then it would be deemed that IGST has been paid towards such supply and there is no requirement of pay IGST on it again.

4. Sale and purchase of renewable energy certificates (RECs)

Meaning and nature of RECs

- RECs are the certificates, which allow organizations to offset their carbon footprints without investing into generation capacities. It is one of the ways to 'Go Green'. RECs are issued to those organizations that generate electricity through renewable sources like solar, wind, biomass, small hydro, municipal solid waste, etc. The organization generating electricity through the renewable resources as mentioned above would receive a REC equivalent to the cost that would be incurred to generate electricity through non-renewable sources such as coal, petroleum, etc.

- REC is a mechanism to promote the usage of renewable resources. RECs are of a peculiar nature wherein the certificate can be bundled in two parts viz., electricity component and Green / Environmental component. One REC is created when one-megawatt hour of electricity is generated from an eligible renewable energy resource.

- States where renewable energy (RE) potential is high, there are avenues for harnessing the RE potential beyond the renewable purchase obligation level fixed. Therefore, RE deficient states can buy REC's from these states to fulfill their RPO's. There are two types of RECs viz, solar RECs and non-solar RECs.

Taxability under ITA and CGST Act

- The RECs are freely tradable certificates on which income can be generated by the generator of

REC. The receipts from sale of RECs qualifies as an income as per the definition provided in Section 2(24) of the ITA. Such receipt is chargeable to income tax at the applicable rates depending on the nature of company.

- The CBIC had vide its letter dated 4th January 2018 issued to Indian Energy Exchange Limited clarified the taxability of RECs under GST regime. Vide such letter, CBIC clarified that IEX is an exchange where the RECs are traded. The trading of RECs cannot be considered as sale or purchase of electricity. Given that the person buying the certificate is paying consideration for discharging its obligation of generating renewable energy, which could not be fulfilled by itself, the sale of RECs is subject to GST.

- In author's view, the activity of sale of REC is a taxable supply of tradable certificates (goods), which is neither exempted nor Nil rated. As per Schedule Entry No. 453 (Residual Entry) of Schedule III to the Notification No. 1/2017 – Central Tax (Rate) dated 28 June 2017, a view was considered that since such RECs are not classifiable elsewhere in other schedules, it is chargeable to standard rate of 18%. The CBIC had also issued a circular 34/8/2018-GST dated 1 March 2018 wherein the taxability of it was discussed.

- Later during the year 2018, another Circular No. 46/20/2018-GST dated 6 June 2018 was issued wherein it was clarified that GST @12% is applicable on supply of RECs, which are classifiable under heading 4907. Currently, unlike PSLCs, it is chargeable to tax under forward charge mechanism basis. Pursuant to issuance of such circular, several representations have been filed by the power sector players for exempting from levy of GST on sale of RECs since power is out of ambit of GST.

5. Sale of Carbon credits

Meaning and nature of carbon credits

- The manufacturing companies are engaged in manufacture of several products. Such products are manufactured in industrial areas and parks wherein several dangerous gases such as carbon dioxide and greenhouse gases and emissions are released in the atmosphere. With the increase in the presence of dangerous and green house gases in the atmosphere, a need was felt for reduction of the same. Accordingly, the concept of carbon credits was introduced in an international treaty signed way back in 1997, which was popularly known as 'Kyoto Protocol'.

- In line with the Kyoto Protocol, every company is required to maintain the carbon emissions limit, either by emitting less amount of gases in the atmosphere or by buying the carbon credits from the companies who have already fulfilled their carbon credit obligations. The reduction in emission of one metric ton of carbon dioxide is equivalent to one Carbon credit. Buying a carbon credit means the right to buy more carbon emissions.

Taxability under ITA and CGST Act

- The carbon credits are freely tradable. The receipts from sale of carbon credits qualifies as an income as per the definition provided in Section 2(24) of the ITA. Such receipts are chargeable to income tax at the applicable rates depending on the nature of company.
- There is no express provision or clarification, which provides for taxability of carbon credits. However, taking references from taxability of PSLCs and RECs, a view can be adopted that it is chargeable to GST @ 12%. Prior to GST regime, the taxability of carbon credits was discussed in the Notification No. 256/ CDVAT/2009/43 dated 13.01.2010 issued by the Commissioner, Trade and Taxes, Delhi VAT under section 85 of the Delhi VAT 2004. Vide such notification, the carbon credits were declared as goods under the DVAT law.
- Alternatively, a view is also being adopted that carbon credits are classifiable as securities and hence out of the ambit of GST. Under GST, the term 'securities' is defined as one, which is referred in Section 2 of Securities Contract (Regulation) Act, 1956. However, the author is of the view that carbon credits are similar to PSLCs and RECs having similar intrinsic and market values and hence taxability of it should be the same. All such certificates have a common objective i.e. fulfillment of a mandatory obligation to the extent of deficiency. If the CBIC has clarified the taxability of PSLCs and RECs vide various circulars then such clarification should be considered for carbon credits too. Additionally, the GST levied on supply of carbon credits is eligible as ITC to the recipient of carbon credits. In effect, there is no cost to the buyer of carbon credits.

6. Production linked incentives and state industrial policy incentives

Meaning and nature

- The Central Government and State Government both have been instrumental in introducing various incentive schemes to lure the investors and players in various industries. Examples of it are recently introduced production linked incentive (PLI) and state industrial policy incentives in textiles, pharma, technology and transportation sectors. The PLI is a scheme that aims to give companies incentives on incremental sales from products manufactured in domestic units. The scheme invites foreign companies to set up units in India, however, it also aims to encourage local companies to set up or expand existing manufacturing units and also to generate more employment and cut down the country's reliance on imports from other countries. It was launched in April 2020, for the Large Scale Electronics Manufacturing sector, but later towards the end of 2020 was introduced for 10 other sectors. This scheme was introduced in line with India's Atmanirbhar Bharat campaign.

Taxability under ITA and CGST Act

- In author's view, the incentive received from the central

government or state government whether in cash or in tradable form such as certificate or scrips qualifies as an income in the hands of the recipient in line with the definition provided in Section 2(24) of the ITA. Additionally, if the incentive is in the form of waiver or concession of any costs or taxes then such waiver or concession is also classifiable as an income in the hands of the recipient. Given this, it is clear that income tax is chargeable on the incentives received provided it does not get covered in the exclusions as provided in Section 2(24) (xviii) of ITA.

- If the answers to the following questions are in affirmative cumulatively then GST is applicable–

  a) Does the recipient of incentives make any supply of goods or services for receiving the incentive?

  b) Can the incentive be freely tradable in market?

The next important aspect is the determination of GST rate on trading of the incentives. If it is specifically classifiable under any of the schedules mentioned in the rate notification then respective rate of tax would apply, else it would be classifiable under generic heading and chargeable to tax @18%.

➢ Closing remarks

In author's view, the incentives received from the government are like beautiful red roses with visible thorns. If the thorns are not adequately dealt with then it may lead towards hatred of the rose itself. In author's view, whenever the incentives are received by an organization, the following actions should be undertaken meticulously –

- o All the conditions attached to the incentives should be duly fulfilled;
- o All the compliances related to the incentives should be adhered to and within the timelines prescribed;
- o Necessary documentation in relation to receipt of incentives should be maintained to avoid any complications that may arise due to pro-revenue nature of the government;
- o Record the provisions and entries in the books of accounts for receipt of incentives.
- o The Direct tax and Indirect Tax calculation, if any should be done in advance and at the correct rates to avoid any interest exposure and to avoid litigation;
- o The time limit within which the incentives are required to be utilized or sold should be strictly adhered to avoid loss of any incentives;
- o Adequate care should be taken so that there is no duplication of the incentive document issued to the recipient of the incentive. If the incentive documents are lost or stolen or destroyed due to unavoidable circumstances then the recipient should reach out to the issuing authority for seeking remedies related to it.

Disclaimer –

All the views expressed by the author in the article are personal in nature. The article is written in a personal capacity. It does not represent in any way the views of the organization where the author is employed/working.


CST Law Sheds the Concession Flab

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The Hon. Supreme Court, concurring with the consistent view taken by nine High Courts and rejection of a special leave petition earlier by it, and relying on the provisions of the Central Sales Tax Act, in a recent judgment in *Commissioner of Commercial Taxes & Anr. vs Ramco Cements Ltd.* Etc. (Appeal Number: Special Leave to Appeal (C) No(s). 15785-15788/2020 Date of Judgment/Order: 24/03/2021), has held that despite introduction of the Goods and Services Tax Act the respondents were liable to issue 'C' Forms in respect of the natural gas, a non-GST goods, purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. That the Company was entitled to purchase these non-GST goods in interstate trade against issue of declaration in Form 'C' and enjoy the concessional rate of 2% CST thereon.

In order set at naught the decision and the resultant loss of revenue the Union government, through the Finance Bill 2021, had proposed an amendment to the existing Section 8(3)(b) of the CST Act to be substituted with Clause 141 thereof.

After the amendment to Section 8(3) (b) it now reads as under:

"The goods referred to in sub-section (1) -

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing for sale of goods specified under clause (d) of Section 2."

The amendment is made effective from 1st July, 2021

In sum and substance, the above amendment-

A. disentitles the three enterprises namely, tele-communication network, Mining, and Electricity and Generation and Distribution units from buying any goods in interstate trade at the concessional rate of CST by issue of Declaration in Form "C". Most of these establishments are government instrumentalities and are in the red. The withdrawal of this concession would further render them uncompetitive with the private enterprises.

B. allows the registered dealers dealing in the re-sale or processing and manufacture of the non-GST goods specified in their registration certificate as enumerated in Section 2(d) of the Central Sales Tax Act, 1956 namely,

   i. High Speed Diesel

   ii. Aviation Turbine Fuel,

[Contd.... on Page No. 53]

Intermediary Service

CA Dharmen Shah

Under GST, taxpayers dealing in cross border transactions have been struggling with litigation on one major issue whether the services provided to overseas entities is an **"Intermediary service"** or **"Export of service."**

Concept of Intermediary

The intermediary has been defined under rule 2(13) as follows:

*"**intermediary**" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;*

Certain aspects observed in the definition are:

1. An intermediary is a person who only a facilitates goods and services. The person can be a broker or agent or any other person. The act of facilitation gives rise to intermediary supply i.e. supply of the intermediaries' services for a commission/ fee between principal and third party.

2. However, in the above case if the intermediary is supplying the goods/ services in his own name/title, then the status of 'intermediary' cannot be accrued to the agent.

Though the term 'broker' and 'agent' are fundamentally different; broker being a middleman whose job is only to facilitate whereas agent acts on behalf of the principal; yet under the Act these terms have been put together under one umbrella of '**intermediary**'.

Determining Place of Supply in case of intermediary services:

Section 13 of IGST Act determines the place of supply of services where either the **"location of supplier"** or the **"location of recipient"** is outside India. Section 13(2) provides that the **'place of supply'** shall be the 'location of the recipient' unless the services falls within the ambit of specified sections from 13(3) to 13(13) of the IGST Act.

According to Section 13(8)(b) of the IGST Act, the place of supply in case of the 'Intermediary services' shall be the **'location of the supplier of services'.**

Thus, for intermediary services, place of supply for the supplier located in India will be in India. Therefore, this transaction will not be covered within the definition of export of services (as provided in Section 2(6) of IGST Act) as it is not satisfying one of the conditions of place of supply being outside India. The conditions u/s 2(6) of IGST Act is as below:

(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 in Indian rupees wherever permitted by the Reserve Bank of India; and

(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;

Since, as per the above scenario, the place of supply is in India, it fails to meet all the conditions as stated in export of service. Therefore, going by the strict interpretation of Section 13(8) of IGST Act, **the supply of services by the Intermediaries to the recipients outside India are not export of services.**

FAQ supporting above analysis in Banking, Insurance and Stock Brokers Sector

In Entry No. 25 of the FAQ on Banking, Insurance and Stock Brokers Sector released by the Central Board of Indirect taxes and Customs, the query before department was whether the intermediary services provided by a banking company to its offshore account holders be treated as an intra-State supply or an inter-State supply for payment of GST?

The department answered citing Section 13(8)(b) of IGST Act and responded that "the place of supply of such services is the location of the provider of services. As the location of supplier and place of supply are in same State, such supplies will be treated as intra-State supply and Central tax and State tax or Union territory tax, as the case may be, will be payable."

The clarification of the department makes it amply clear that the intermediary services provided to an offshore account holder shall be treated to be intra-state supply where the place of supply shall be location of the service provider.

FACTORS AND JUDICIAL ANALYSIS TO ASSIST IN DETERMINING INTERMEDIARY

Why the agreement plays a pivotal role?

The agreement plays a pivotal role as it defines the nature of service and also determines the relationship between the company and the third party. The terms and conditions of the agreement are important in deciding whether the services are provided on the company's own account or not. It is also crucial in ascertaining other factors forming the basis of the relationship, for instance, whether the services are provided on a principal-to-principal basis or principal-to-agent basis or any other.

The terms of payment can help establish whether the relationship includes a commission to one party. A study of an agreement also brings to the fore, amongst other things, the very nature and consequent rights and obligations of the relationship such as that of independent contractors, principal-agent, and so on.

One of the Advance ruling under GST explaining the importance of Agreement is as below. In the below advance ruling remuneration was one of the deciding factor for determining Principal – Agent relationship.

Global Reach Education Services Pvt. Ltd (Promotional Services)	In this case, the applicant was promoting the foreign university and was helping them in enrolling Indian students. In providing the promotional services, the promotional company was charging commission/fee from the foreign university. If promotion of university courses were the principal supply, the applicant should have been remunerated for its promotional activity no matter whether it facilitates recruitment or not. If the Applicant

	receives 'commission' based on recruitment / enrolment through it, the principal supply is clearly facilitating the foreign university in recruitment/enrolment with promotional services ancillary to the principal supply. In this very case, the authorities found that the Indian representative was an intermediary acting as an independent representative. Citing Section 13(8)(b) of the IGST Act, the Hon'ble West Bengal Advance Ruling Authority ruled that the place of supply shall be the place of supplier of service and such intermediary services would not be termed as export of services.

Another ruling which created a major unrest among MNCs engaged in providing back office support services which brought them under fear of getting taxed @ 18%.

VSERVGLOBAL PRIVATE LIMITED **(Back-end office support services)**	The Maharashtra Appellate Advance Ruling Authority (AAAR) held that the Back-end office support services did not qualify as export of services and were in the nature of arranging or facilitating supply of goods or services between overseas companies and customers. The AAAR observed as below:- A sum of all activities indicate applicant as a person who arranges or facilitate supply of goods or services or both between the overseas client and customers of the overseas client, and therefore applicant is clearly covered and falls in the definition of an intermediary as defined under the IGST Act Hence, these services fall in the category of intermediary services and were liable to GST.

Another ruling which raised a question on Intermediary services: Whether same should be considered as intra-state supply or inter-state supply?

SABRE TRAVEL NETWORK INDIA PVT LTD Marketing, Promotion and Distribution services	The applicant is covered by the said definition of an intermediary because they are definitely acting as a broker/agent, etc and facilitating the process for sale of CRS Software belonging to their foreign parent company to the Indian subscribers because they identify such subscribers on their own in India. It is the sales team of the Applicant which approaches potential subscribers in India and further installs user interface support once software is activated. Thus from the above we find that first and foremost it is the job of the applicant to scout for subscribers in India. It is nowhere mentioned that the subscribers come on their own to the applicant. Thus the applicant explains and educates the subscriber about the software. Hence it is clear that the subscriber becomes aware of the software only after the applicant approaches them. It is also mentioned that the software does not belong to the applicant. Thus

	we find that the applicant actually acts as an Intermediary between the potential subscriber and Sabre APAC. It is very clear from the facts of transaction that the applicant is not providing services on their own account but on account of Sabre APAC, and thus it is very apparent that the applicant is providing Intermediary Services in the instant case.

This ruling explained Sec 8(2) and Sec 7(5)(c) of IGST Act and its applicability on intermediary services. The extract from Advance ruling is reproduced below:

"As per intra-state provisions contained in Section 8(2), the said provisions are subject to the provisions of section 12 of the IGST Act. As per section 12, the provisions of section 12 would be applicable only for determining the place of supply of service where the location of supplier of services and the location of recipient of the services is in India. When recipient is located outside India the said provisions of section 12 cannot be made applicable and since provisions of section 8(2) are inter-linked with provisions of section 12, the same cannot be made applicable in case the recipient of service is located outside India.

Thus we find that in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5) (c) shall be applicable and hence IGST is payable under such transaction."

Contrary to providing back-end support services, yet another advance ruling was issued classifying Services provided there in as Export of Services and not covered under "Intermediary". Few of them are as below:

ASAHI KASEI INDIA PRIVATE LIMITED Research Services	The services provided by the applicant in the nature of Research on the matter related to functioning of the holding of company such as corporate accounting, corporate finance, corporate personnel and labour relations, corporate research and development, quality assurance and corporate intellectual property, and provide Party with its report of the research thereon would fall under service code tariff 99859 as other support services nowhere elsewhere classified. The services provided by the applicant in the nature of Information on Market in the territory which includes Economic, industrial and technical information on the products falling under the category of the Products and their markets, trends and outlook together with similar information concerning such other industries in the Territory, To provide necessary assistance in business activities (including interpreting) to such representatives, To undertake market surveys of the Products in the Territory and report the results thereof to Party and Ancillary services to all above services, including, but not limited to, those services with regard to finance, accounting, and patent and legal matters would fall under service code tariff 99837 with service description market research services. The services supplied by the applicant under the Marketing Services Agreement would fall under Group 99837 as Market Research Services and the services provided by the Applicant is an export of services as defined under Section 2(6) of the Integrated Goods and Services Tax Act 2017

SRI. THOMAS JOSEPH NELLISSERY Management Consultancy Services	The services provided by the applicant appropriately falls under the SAC 9983 as management consultancy services as the applicant is directly providing service to his clients and is not engaged in facilitating or arranging the supply of goods or services or both between two or more persons as in the case of intermediary services.

CHALLENGING CONSTITUTIONAL VALIDITY of SEC 13(8)(b)

Another interesting petition was filed in Gujarat High Court in case of *Material Recycling Association Of India vs. Union Of India & 2 Others* where in petitioner prayed as below:

- to declare Section 13(8)(b) as null, void and ultra vires Article 14, 19, 265 and 286 of the Constitution of India;
- stay the implementation of the provision; and
- direct Revenue to refund IGST paid on services provided by it to clients located outside India.

The High Court while holding the provisions constitutional analysed the provision in below manner:

- The person who is intermediary cannot be considered as exporter of services because he is only a broker who arranges and facilitate the supply of goods or services or both. In such circumstances, the respondents have issued Circular No.20/2019 where exemption is granted in IGST rates from payment of IGST in respect of services provided by intermediary in case the goods are supplied in India.
- It therefore, appears that the basic logic or inception of section 13(8)(b) of the IGST Act, 2017 considering the place of supply in case of intermediary to be the location of supply of service is in order to levy CGST and SGST and such intermediary service therefore, would be out of the purview of IGST. There is no distinction between the intermediary services provided by a person in India or outside India. Only because, the invoices are raised on the person outside India with regard to the commission and foreign exchange is received in India, it would not qualify to be export of services, more particularly when the legislature has thought it fit to consider the place of supply of services as place of person who provides such service in India.
- The contention of the petitioner that it would amount to double taxation is also not tenable in eyes of law because the services provided by the petitioner as intermediary would not be taxable in the hands of the recipient of such service, but on the contrary a commission paid by the recipient of service outside India would be entitled to get deduction of such payment of commission by way of expenses and therefore, it would not be a case of double taxation
- In view of the foregoing provisions the provision of Section 13(8)(b) r/w Section 2(13) of the IGST Act, 2017 are not ultra vires or unconstitutional in any manner. While it is held that the provisions for intermediary services are constitutional, it would be open for the respondents to consider the re-presentation made by the petitioner to redress its grievance in suitable manner and in consonance with the GST provisions.

Thus, problems surrounding the concept in GST regime have arisen due to the lack of clarity on this issue by the government leading to litigations. Thus, much needed clarity on the topic is awaited to enable taxpayers to take decision correctly.

Additional Time granted under GST Law

Monarch Bhatt,
Advocate

Various GST related due dates and reliefs have been announced on 01.05.2021 for which notifications have been issued on 01.05.2021. The immediate reliefs related to GST considering the effect of second wave of COVID-19 are as follows:

1. Revocation of Cancellation of Registration
2. GSTR 3B Interest & Late Fees Waiver - March 2021 & April 2021 & January 2021 to March 2021
3. Deferment of ITC Restriction - April 2021
4. GSTR 1 Extension of Due Date – April 2021
5. GSTR 04 Extension of Due Date – April 2020 to March 2021
6. ITC 04 Extension of Due Date – January 2021 to March 2021
7. Other Due Dates Extensions

Each of these reliefs are discussed in detail below.

1. Revocation of Cancellation of Registration

Many tax payer's registration has been cancelled by proper officer as assessee did not filed their returns for a continuous period of six months or assessee has obtained voluntary registration but unable to commence his business within six months from the date of registration and so on. The ***Circular Number P/35/2021-ADC (RC AND M)-CCT-CTD dated 07.04.2021*** has been issued by the Principal Commissioner of Commercial Taxes directing all the Joint Commissioner to instruct the proper officer to follow the instruction of the said circular for revocation of cancelled registration.

As per the circular, while calculating the limitation period of 30 days for an application to be made by the assessee for revocation of registration shall exclude the period of 15.03.2020 to 14.03.2021 and accordingly registrations shall be revoked after considering the merits of the case. The circular also provides for the various other situation and asking the officer to consider and follow the order of the ***Hon'ble Supreme Court passed Suo-Motu in the Writ Petition (Civil) No. 3 of 2020 dated 08.03.2021***. It is also to be noted that thereafter again considering the second wave of COVID-19, Hon'ble Supreme Court has extended all the period of limitations ending on 14.03.2021 till further orders. However, since the said circular was issued prior to this second order of the Supreme Court, it is not discussing on it. However, assessee can take the shelter of this circular and apply even now for the revocation of their registration if 30 days from the cancellation are falling during the period 15.03.2020 to 14.03.2021.

2. GSTR 3B Interest & Late Fees Waiver - March 2021 & April 2021 & January 2021 To March 2021

In December 2018, notification number 76/2018-Central Tax dated 31.12.2018 was issued for reduction of late fees under GST. As per the notification, late fees for delayed filing of GSTR 3B was reduced to Rs. 25 per day, where there is a tax payment and in case tax payment is nil, late filing fees was reduced to Rs. 10 per day. Hence, effectively late fees are Rs. 50 (25 CGST + 25 SGST) where there is tax payment and Rs. 20 (10 CGST + 10 SGST) for nil tax payment.

On 03.04.2020 by issuance of notification number 32/2020-Central Tax, third proviso was added for conditional waiver of late fees for the period February 2020, March 2020 and April 2020, where waiver was granted based on the aggregate turnover of the previous year. Thereafter, again on 24.06.2020 notification number 52/2020-Central Tax was issued and third proviso to the original notification number 76/2018 substituted for the conditional waiver of late fees.

Now again, by issuance of Notification number 09/2021 – Central Tax dated 01.05.2021 the late fees have been waived for the limited period of 15 days for the month of March 2021 and April 2021 for the assessee whose aggregate turnover in the preceding financial year is above Rs. 5 Crore. The late fees have been waived for the limited period of 30 days for the month of March 2021 and April 2021 for the assessee whose aggregate turnover in the preceding financial year is upto Rs. 5 crore and not opted for the Quarterly Return Monthly Payment (QRMP) Scheme. The late fees have been waived for the limited period of 30 days for the quarter January 2021 to March 2021 for the assessee whose aggregate turnover in the preceding financial year is upto Rs. 5 crore and opted for the Quarterly Return Monthly Payment (QRMP) Scheme.

Similarly, for interest payment by notification number 08/2021-Central Tax dated 01.05.2021, interest has been waiver or reduced by insertion of new serial numbers 4 to 7 in first proviso of the notification.

Therefore, notification number 08/2021 and 09/2021 have been issued for waiver of Late fees and waiver or reduction of interest for the month of March 2021 and April 2021 and quarter January 2021 to March 2021. It is to be noted that due date has not been extended for the filing of GSTR 3B. The bifurcation has been made into three categories based on the aggregate turnover of previous year. The term "aggregate turnover" has not been defined under the notification and therefore same meaning shall be given as it has provided under section 2 (6) of CGST Act, 2017 which reads as under:

> *"2 (6) "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;"*

Hence, aggregate turnover is PAN India turnover of the assessee and includes all taxable supplies, exempt supplies, export of goods, export of service but excludes CGST, SGST, UTGST, IGST and Cess. It is to be noted that it includes PAN India turnover and not GSTIN wise turnover.

The three categories for which different conditions are provided for waiver of late fees and interest or reduced rate of interest is based on the aggregate turnover are as follows:

2.1 Tax payer having aggregate turnover of MORE THAN 5 CRORE in the preceding financial year

2.2 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial

year and opted for monthly filing of GSTR 3B

2.3 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial year and opted for Quarterly Return Monthly Payment Scheme (QRMP) for filing of GSTR 3B

It is necessary to discuss frequently asked questions with respect to the "aggregate turnover" considering the practical difficulties faced by the assessee.

Query 1: Company having presence across the country and their total turnover of all state cumulatively is exceeding INR 5 crore but individually in few states company's turnover is less than 5 crores.

Company is falling under which category?

Reply: As per the definition of aggregate turnover, PAN India turnover shall be taken into consideration and not the turnover as per GSTIN wise. Hence, in all the states for all GSTIN company shall follow the conditions of the assessee having turnover more than 5 crore.

Query 2: Total turnover of the company as per their financial is 4.50 crore but as per GST their turnover is INR 5.50 Crore which includes stock transfers and cross charge to a branch situated in other states.

Company is falling under which category?

Reply: The definition of aggregate turnover has been provided under CGST Act, 2017 which is applicable under GST and as per GST provisions branch transfer and cross charge is taxable supply. Hence, while determining the category in the present case turnover including the stock transfer and cross charge shall be taken into consideration which is more than 5 Crore. Therefore, company shall follow the conditions of the assessee having aggregate turnover more than 5 Crore.

Query 3: Company is having two business verticals in same state for which they are having two separate registrations as business verticals. The total turnover of one business vertical is INR 4 crore and the total turnover of other business vertical is INR 1.50 crore.

Company is falling under which category?

Reply: As per the definition of aggregate turnover PAN India turnover shall be taken into consideration and not the turnover as per GSTIN wise even when it is a separate business vertical. Hence, in the present case total turnover of the company including both the business vertical is more than 5 crore and therefore, company shall follow the conditions of the assessee having aggregate turnover more than 5 crore.

The conditional waiver of late fees and waiver of interest or reduced rate of interest as provided under all the three categories are as follows:

2.1 Tax payer having aggregate turnover of MORE THAN 5 CRORE in the preceding financial year

It is applicable for GSTR 3B to be filed for the month of March 2021 and April 2021. It is to be noted that due date for filing of GSTR 3B has not been extended only waiver from the levy of late fees has been provided, if return has been

filed within a period of 15 days from the original due dates. 100% relief has not been provided on the interest payment and only interest rates has been reduced which is at the rate of 9% for the delayed period of 15 days. After 15 days of delay, late fees will be leviable and interest will also be payable at the rate of 18% from the 16th day till the date of filing of return.

The same has been explained in the table below:

Month (1)	Due Date (2)	100% Interest Waiver (3)	9% rate of interest (4)	18% rate of interest (5)	100% waiver of late fees (6)
Mar 21	20.04.2021	N.A.	9% 21.04.21 to 05.05.21	18%06.05.21 till date of filing of return	05.05.2021
Apr 21	20.05.2021	N.A.	9% 21.05.21 to 04.06.21	18%05.06.21 till date of filing of return	04.06.2021

Frequently asked questions in respect of delay in compliances in various situations have been discussed below.

Query 1: What are the benefits or consequences, if company is filing GSTR 3B for the month of March 2021 on 05.05.2021?

Reply: In this case company is filing GSTR 3B within 15 days from the due date (20.04.2021) of filing of GSTR3B for the month of March 2021. Hence, interest will be payable at the rate of 9% instead of 18% on the delay of first 15 days on the net cash liability and 100% waiver is granted on the payment of late fees.

Query 2: What are the benefits or consequences, if company is filing GSTR 3B for the month of March 2021 on 06.05.2021?

Reply: In this case company is filing GSTR 3B on 16th day from the due date (06.04.2021) of filing of GSTR3B for the month of March 2021. Hence, company is entitled for concessional rate of interest at the rate of 9% for the first delay of 15 days and from 16th day interest will be payable at the rate of 18% for 1 day of delay. Further, as company is filing GSTR 3B after 05.05.2021, company will be liable for the payment of late fees for 1 day as 100% waiver on delayed filing of GSTR 3B is applicable only till 05.05.2021.

2.2 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial year and opted for monthly filing of GSTR 3B

It is applicable for GSTR 3B to be filed for the month of March 2021 and April 2021. It is to be noted that due date for filing of GSTR 3B has not been extended.

100% relief has been provided on the applicability of interest, if it is filed within the specified period of 15 days and thereafter for further period of 15 days interest is applicable at the rate of 9% and thereafter interest is applicable at the rate of 18%. Further, benefit of 100% waiver from late fees is eligible to the tax payer, if return has been filed within the period of 30 days from the original due dates.

Month (1)	Due Date (2)	100% Interest Waiver (3)	9% rate of interest (4)	18% rate of interest (5)	100% waiver of late fees (6)
Mar 21	20.04.2021	NIL 21.04.21 to 05.05.21	9% 06.05.21 to 20.05.21	18% 21.05.21 till date of filing of return	20.05.2021
Apr 21	20.05.2021	NIL 21.05.21 to 04.06.21	9% 05.06.21 to 19.06.21	18% 20.06.21 till date of filing of return	19.06.2021

2.3 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial year and opted for Quarterly Return Monthly Payment Scheme (QRMP) for filing of GSTR 3B

It is applicable for GSTR 3B to be filed for the quarter January 2021 to March 2021. It is to be noted that due date for filing of GSTR 3B has not been extended. 100% relief has been provided on the applicability of interest, if it is filed within the specified period of 15 days and thereafter for further period of 15 days interest is applicable at the rate of 9% and thereafter interest is applicable at the rate of 18%. Further, benefit of 100% waiver from late fees is eligible to the tax payer, if return has been filed within the period of 30 days from the original due dates.

The due dates for such tax payers have been announced in staggering manner.

Therefore, the same has been explained by way of two different table as per

the states.

CLASS 1 - Tax payer having an aggregate turnover of UPTO 5 CRORE in the preceding financial year and OPTED FOR QRMP SCHEME and whose principal place of business is in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh or Union territories of Daman & Diu & Dadra & Nagar Haveli, Puducherry, Andaman & Nicobar Islands and Lakshadweep.

Month (1)	Due Date (2)	100% Interest Waiver (3)	9% rate of interest (4)	18% rate of interest (5)	100% waiver of late fees (6)
Jan 21 to Mar 21	22.04.2021	NIL 23.04.21 to 07.05.21	9% 08.05.21 to 22.05.21	18% 23.05.21 till date of filing of return	22.05.2021

CLASS 2 - Tax payer having an aggregate turnover of UPTO 5 CRORE in the preceding financial year and OPTED FOR QRMP SCHEME and whose principal place of business is in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

Month (1)	Due Date (2)	100% Interest Waiver (3)	9% rate of interest (4)	18% rate of interest (5)	100% waiver of late fees (6)
Jan 21 to Mar 21	24.04.2021	NIL 25.04.21 to 09.05.21	9% 10.05.21 to 24.05.21	18% 25.05.21 till date of filing of return	24.05.2021

In view of the above, it is to be noted that due date for filing of GSTR 3B to be filed for the month of March 2021, April 2021 and for the quarter January 2021 to March 2021 has not been extended only late fees have been waived for a period of 15 days or 30 days, as the case may be. 100% waiver of interest is not applicable to the assessee having aggregate turnover of preceding financial year more than 5 crore and they are entitled for the only reduced rate of interest benefit for the first delay of 15 days. The assessee having aggregate turnover upto 5 Crore are entitled for the 100% waiver from the payment of interest for the first 15 days and thereafter for a further delay of 15 days at the rate of 9% and thereafter interest will be applicable at the rate of 18%.

(Reference Notification Number 08/2021-Central Tax dated 01.05.2021)

(Reference Notification Number 09/2021-Central Tax dated 01.05.2021)

3. Deferment of ITC Restriction - April 2021

As per Rule 36 (4) of CGST Rule, 2017 Input Tax Credit for availment of unmatched invoices / debit notes has been restricted and only 5% of ITC can be availed in excess of matched invoices / debit notes to the extent it has been unmatched. This is required to be done while availing the ITC on monthly basis.

The relief has been provided and this provision has been deferred for the month of April 2021. Therefore, relief has been provided from this provision for the month of April 2021 and assessee can avail the ITC available with him without matching it with GSTR 2A report while filing GSTR 3B for the month of April 2021. The ITC is required to be matched cumulatively while filing GSTR 3B for the month of May 2021.

In other words, while filing GSTR 3B of May 2021, assessee is required to match the ITC for the month of April 2021 and May 2021 with GSTR 2A and unmatched ITC needs to be reversed, if it goes beyond 5% of matched ITC of the said period.

(Reference Notification Number 13/2021-Central Tax dated 01.05.2021)

4. GSTR 1 Extension of Due Date – April 2021

The due date for filing of GSTR 1 for the month of April 2021 has been extended till 26.05.2021 for all the assessee who are filing GSTR 1 on monthly basis.

The assessee opted for QRMP Scheme and want to upload the invoices for the month of April 2021 availing the Invoice Furnishing Facility (IFF) can upload the same during the period 01.05.2021 to 28.05.2021.

(Reference Notification Number 12/2021-Central Tax dated 01.05.2021)

(Reference Notification Number 13/2021-Central Tax dated 01.05.2021)

5. GSTR 04 Extension of Due Date – April 2020 to March 2021

The annual return under form GSTR 04 is required to be filed by the Composition tax payers. The due date for filing of form GSTR 04 for the period April 2020 to March 2021 has been extended till 31.05.2021.

(Reference Notification Number 10/2021-Central Tax dated 01.05.2021)

6. ITC 04 Extension of Due Date – January 2021 to March 2021:

The return under form ITC 04 is required to filed for the inputs or capital goods sent to the job worker and received back from a job worker on quarterly basis. The due date for filing of form ITC 04 for the period January 2021 to March 2021 has been extended till 31.05.2021.

(Reference Notification Number 11/2021-Central Tax dated 01.05.2021)

7. Other Due Dates Extension:

7.1 Extension for submission of Appeal or Reply to Show Cause Notice and other Returns

Time limit for filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, which is required to be filed under GST provisions and such due date is falling during the period 15.04.2021 to 30.05.2021 has been extended upto 31.05.2021.

In view of the above, the time limit for submission of appeal or reply to Show Cause Notice which is due between the period 15.04.2021 to 30.05.2021 has been extended upto 31.05.2021.

In view of this, the due dates for other returns which is falling during the period 15.04.2021 to 30.05.2021 and not specifically provided has also been extended to 31.05.2021. For example, it is also applicable to the following returns.

Due Date	Return and Purpose
31.05.2021	GSTR 06 – Return to be filed by Input service Distributor
31.05.2021	GSTR 07 – Return for Tax Deducted at Source
31.05.2021	GSTR 08 – Return for Tax Collection at Source
31.05.2021	GSTR 05 - Return to be filed by Non-Resident Taxable Person

This extension is not applicable to-

- ❖ Time limit for issuance Tax invoice
- ❖ Registration
- ❖ Filing of GSTR 1 and GSTR 3B returns
- ❖ Levy & Late fees, Waiver of late fees
- ❖ E-way bills
- ❖ Interest, penalty & other amounts
- ❖ Power to arrest
- ❖ Detention, seizure and release of goods & conveyances in transit, etc.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

7.2 Extension of Due Dates for Authority or Commission or Tribunal

Time limit for completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the GST Act has been extended to 31.05.2021, if such due date is falling during the period 15.04.2021 to 30.05.2021.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

7.3 Extension of time for issuance of refund order and submission of reply

As per the GST provisions, officer shall issue refund order within a period of 60 days from the date of receipt of complete refund application. The cases where due dates are falling within the period 15.04.2021 to 30.05.2021, time for submission of reply to notices has been extended till 31.05.2021 and therefore, time for issuance of refund order by officer has also been

extended by 15 days after receipt of reply to notice or 31.05.2021 whichever is later.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

7.4 Extension of time for issuance of registration certificate and verification of application

As per Rule 9 of CGST Rules, 2017 the registration shall be granted within 7 working days from the date of submission of application. If there are any deficiency, officer shall issue notice to the applicant under form GST REG 03 within a period of 7 working days and thereafter applicant shall submit a reply under form GST REG 04 within 7 working days. The extension has been granted for this entire registration process which is falling during the period 01.05.2021 to 31.05.2021 and it can be completed within the extended period till 15.06.2021.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

Conclusion

Overall, these are the immediate reliefs, which has been announced considering the second wave of COVID-19. Isn't it unfair, if no reliefs are announced for the worst affected sectors such events & tour industry, Hospitality Industry and Restaurant Industry???

[Contd. from Page No. 40]

iii. Liquor for Human Consumption,

iv. Natural Gas,

v. Petroleum Crude and

vi. Motor Spirit (popularly known as Petrol)

Dealers dealing only in these six categories of goods could now issue the declaration in Form "C" and enjoy the concessional rate of CST provided they-

[a] re-sale the very goods. For example the oil companies could purchase the Diesel or petrol from other States for sale within the State to the Petrol Pumps or industries in the same form it is procured, and

[b] employ these six goods in the process or manufacture of the very same six goods. An example could be of an oil company purchasing Petroleum Crude from State A and refine it into motor spirit in its refinery in the State B where it is ultimately sold. Or these companies buying the Petrol and then mixing or processing it with ethanol or increasing the Octane number therein as allowed by law [In addition to catalytic processes, special additives are used to produce high-octane petrol]. This petrol is also sold as Premium or Speed petrol by the different oil companies.

In respect of the remaining four items it is difficult to visualize any possibility of them being processed further or being manufactured in any new product out of them. We are so far not aware of government prescribing any rules as laid down in the amendment i.e. –' *... subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing for sale of goods specified under clause (d) of Section 2..*' Perhaps we may know about the possibility of the said four goods being subjected to any process or manufacture only after such rules are formulated. Till then the processes as described by us above could reasonably be assumed to be covered by the amendment.


Income Tax Update
– Highlights on Recent Amendments

CA Sonakshi Jhunjhunwala &
CA Sunil Jhunjhunwala

1. CBDT relaxes conditions to be satisfied by pension fund to become eligible for exemption u/s 10(23FE): Notification No. 32/2021, dated 15th April, 2021

The Central Board of Direct Taxes (CBDT) vide Income-tax (20th amendment) Rules, 2020, dated 17-08-2020 had inserted new rules 2DB & 2DC to the Income-tax Rules, 1962. Rule 2DB prescribes conditions that are to be satisfied by the pension fund to become 'specified fund' eligible for exemption under section 10(23FE). Rule 2DC prescribes guidelines for notification of pension fund for Section 10(23FE). Form No. 10BBDA is also notified for making an application for notification as a pension fund under section 10(23FE).

In one of the prescribed conditions, sub-rule (iii) to Rule 2DB provides that earnings and assets of the pension fund are used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (ii). No portion of the earnings or assets of the pension fund inures any benefit to any other private person.

The CBDT has inserted a proviso to Rule 2DB(iii) to provide that the above provision shall not apply to any payment made to creditors or depositors for loan taken or borrowing for the purposes other than for making investment in India. Form No. 10BBDA is also amended to incorporate the new change.

2. Govt. notifies Norway based fund 'Norfund' as sovereign wealth fund for Sec. 10(23FE) exemption: Notification No. 33/2021, dated 19th April, 2021

The Central Government has specified the sovereign wealth fund, namely, the Norfund, Government of Norway as the specified person for the purposes of exemption under section 10(23FE). Investment made by Norfund during the period 19th April, 2021 to 31st April, 2024 shall be eligible for the exemption subject to conditions prescribed.

3. Cabinet gives post facto approval of the changes made to Finance Bill, 2021: Press Release, dated 20th April, 2021

The Union Cabinet has given ex-post facto approval for the Government amendments to the Finance Bill, 2021 which is enacted on 28-03-2021 as the Finance Act, 2021. These amendments were essential to clarify and rationalise the proposals further and address stakeholders concerns arising out of amendments proposed in the Finance Bill, 2021.

Amendments to the Finance Bill, 2021 are tax proposals that shall generate timely revenue for the Government and streamline existing provisions by addressing grievances of the taxpayers.

4. CBDT notifies format, procedure and guidelines for SFT submission for interest, dividend income: Notification No. 1 and 2 dated 20th April, 2021

CBDT notifies format, procedure and guidelines for submission of Statement of Financial Transactions (SFT) for interest and dividend income via Notification No. 1/2021 and 2/2021 issued by Directorate of Income Tax (Systems). It states that the reporting entities are required to prepare the data file in prescribed format from their internal system, using an excel based report preparation utility. It has suggests the reporting entities to provide information of interest/ dividend income, reported to Income Tax Department, to the account holder/ taxpayer which will enable them to reconcile the information displayed in Form 26AS. CBDT further specifies the class of persons required to furnish the statement. The SFT is required to be furnished on or before the 31st May, immediately following the financial year in which the transaction is registered or recorded. It states that any statement failing to meet the validation requirements shall be rejected and the reason for such rejection can be viewed by clicking Rejected link under the status column. CBDT provides procedure for correction or deletion of uploaded data.

5. CBDT notifies 'CPP Investment Board Private Holdings (4) Inc' & 'CPP Investment Board' for Sec. 10(23FE) exemption: Notification Nos. 34/2021 and 35/2021, dated 22nd April, 2021

The Central Government has specified the pension funds, namely, 'Canada Pension Plan Investment Board' and 'Canada Pension Plan Investment Board Private Holdings (4) Inc.' for the purpose of exemption under section 10(23FE).

Investments made by the above pension funds during the period 22-04-2021 to 31-03-2024 shall be eligible for the exemption subject to conditions prescribed.

6. CBDT further extends various due dates expiring on 30th April, 2021 by two months: Press Release, dated 24th April, 2021

To give relief from the compliance burden during the Covid-19 pandemic, the CBDT has given relaxation in various tax compliances. The Government vide *the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020* has extended various due dates of Income-tax compliances. The Act has also extended timelines for passing of order or issuance of notice, notifications, sanction or approval by the tax authorities.

The Government has decided to extend the various time barring dates, which were earlier extended to 30th April, 2021, by various notifications. It has been decided to extend due dates from 30th April 2021 to 30th June 2021 in the following cases:

Table of due dates including extension where given:

Section	Particulars	Original Due Date	Due date extended by the TLA 2020 read with previous notification[1]	New due dates
Section 139AA	Linking of Aadhaar number and PAN	31-03-2020	30-06-2021	30-06-2021[1]

1. Notification S.O. 1432(E), dated 31-03-2021

Section	Particulars	Original Due Date	Due date extended by the TLA 2020 read with previous notification[1]	New due dates
Section 139AA read with 114AAA	PAN to be treated as inoperative due to non-linking it with Aadhaar number	31-03-2020	31-03-2020	31-03-2020[2]
Direct Tax Vivad se Vishwas Act, 2020	Payment of tax without additional charge	-	30-04-2021[3]	30-06-2021
Direct Tax Vivad se Vishwas Act, 2020	Opting for Scheme		30-03-2021[3]	30-03-2021[4]
Section 153/153B	Passing of order for assessment or reassessment by AO			
	♦ Cases where on account of various extension notifications, the due date is getting expired on 31-03-2021.	-	30-04-2021	30-06-2021
	♦ Cases where due date is getting expired on 31-03-2021 without giving effect of any extension notification.	31-03-2021	30-09-2021[5]	30-09-2021
Section 148	Issuance of notice under section 148 for reopening the assessment where income has escaped assessment			
	♦ Cases where on account of various extension notifications, the due date is getting expired on 31-03-2021.	-	30-04-2021	30-06-2021
	♦ Cases where due date is getting expired on 31-03-2021 without giving effect of any extension notification.	31-03-2021	30-09-2021[5]	30-09-2021

2. The Govt. has extended the due date for linking of PAN with Aadhaar. However, no amendment has been made in Rule 114AAA which provides that if an assessee fails to link his PAN with Aadhaar by 31-03-2020, the PAN shall become inoperative.
3. Notification S.O. 964(E), dated 26-02-2021
4. Though the Govt. has extended the last date for making payment without additional charge under Vivad se Vishwas Scheme to 30-06-2021. However, no extension has been given in case of opting for such Scheme.
5. Notification No. S.O. 966(E), dated 27-02-2021

Section	Particulars	Original Due Date	Due date extended by the TLA 2020 read with previous notification[1]	New due dates
Section 144C(13)	Passing of order consequent to direction of DRP			
	(The extension has been given in those cases where the due date falls between 20-03-2020 to 31-03-2021)	-	30-04-2021	30-06-2021
Section 168 of the Finance Act 2016	Sending intimation of processing of Equalisation Levy			
	(The extension has been given in those cases where the due date falls between 20-03-2020 to 31-03-2021)	-	30-04-2021	30-06-2021
Chapter XXI of the Income-tax Act	Imposition of penalty			
	(The extension has been given in those cases where the due date falls between 20-03-2020 to 29-06-2021)	-	30-06-2021[5]	30-06-2021
Benami Act	Issue of notice or passing of any order under Benami Act			
	(The extension has been given in those cases where the due date falls between 20-03-2020 to 30-06-2021)	-	30-09-2021[5]	30-09-2021

The Hon'ble Supreme Court vide Order dated 27th April, 2021 has suo moto extended the time limit and has passed the following orders:

> "We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. 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."

7. OECD releases the first tax information exchange for twelve 'no or low tax' jurisdictions under the FHTP: Date 1st April, 2021

OECD reveals that the first tax information exchange under the Forum on Harmful Tax Practice's (FHTP) begins from March 31, 2021 for the twelve identified countries (Anguilla, the Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands, and the UAE) falling under the category of no or nominal tax jurisdictions. It clarifies that the global standard under the FHTP shall ensure no avoidance of taxes, by businesses which is mobile in nature, by parking business income in low tax jurisdictions without any actual business existing therein; Mr. Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, apprises, *"Today's first exchanges of information on the previously unknown operations of entities in low tax jurisdictions, are good news for tax administrations around the world, as they will now have regular access to information on the activities and income of entities in low tax jurisdictions that are held or controlled by their taxpayers."*

8. Singapore IRAS releases updated guidelines on Income Tax treatment of Forex gains and losses: Date 16th April, 2021

Singapore releases the fourth edition of e-Tax guide on Income Tax treatment of Foreign Exchange (FOREX) Gains or losses for businesses (banks and businesses other than banks) consolidating two e-Tax guides issued previously; The e-guide elucidates the tax treatment of forex differences (i) arising on capital and revenue transactions; (ii) Realized versus unrealized gains or losses, (iii) Translation foreign exchange differences; Further, discusses the accounting treatment in contrast with the tax treatment; Also highlights the difference in tax treatment of forex arising from the revaluation of foreign currency bank account depending on different type of account such as revenue designated a/c and mixed usage; Updates the FAQs on the designated bank account treatment and the application of the de-minimis limit (to allow businesses to treat foreign exchange differences on foreign currency bank accounts as revenue in nature when capital transactions are within the limit).

9. Mauritius: Country-by-country reporting deadline extended to 20th April 2021 (COVID-19)

The Mauritius Revenue Authority issued a release (26 March 2021) announcing that the due date for the submission of CbC reports and CbC notifications by entities having an accounting period ended 31 March 2020, has been extended to 20 April 2021.

10. CBDT notifies threshold limits for Significant Economic Presence under Sec. 9: Notification No. 41/2021, dated 03-05-2021

Section 9 of the Income-tax Act deals with the incomes which are deemed to accrue or arise in India. Section 9(1) creates a legal fiction to tax certain incomes by deeming them as accruing or arising in India. Section 9(1)(i) provides that income accruing or arising, whether directly or indirectly, through or from any business connection in India shall be deemed as income accrue or arise in India.

In respect to business connection, Explanation 2A to Section 9(1)(i) provides

that the 'Significant Economic Presence' of a non-resident in India shall constitute 'business connection'. Significant Economic Presence means:

(a) transaction in respect of any goods, services, or property carried out by a non-resident in India including the provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed;

(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users, as may be prescribed.

Now, the CBDT has inserted a new Rule 11UD to the Income-tax Rules, 1962 to prescribe the threshold limits for 'Significant Economic Presence'. Rule 11UD provides that for clause (a), the threshold limit shall be ₹ 2 crores. Whereas for clause (b), the threshold limit shall be 3 lakhs.

11. CBDT amends Rule 2B to provide exemption for cash allowance in lieu of LTC: Notification No. 50/2021, dated 05th May 2021

Where an employee receives Leave Travel Concession (LTC) from its employer for going on vacation in India, the amount so received shall be exempt from tax under Section 10(5), subject to certain conditions. However, due to the COVID-19 pandemic and the nationwide lockdown, employees had not been able to avail of Leave Travel Concession (LTC) in the current block of 2018-21.

Thus, to provide relief to such employees, the Finance Act, 2021 amended Section 10(5) to provide an exemption in respect of cash allowance received in lieu of LTC. The CBDT was empowered to prescribe the conditions subject to which such exemption can be claimed.

In exercise of such power, the CBDT has amended Rule 2B to provide that where the employee avails any cash allowance from his employer in lieu of any travel concession or assistance for the assessment year beginning on 01-04-2021, he shall be eligible to claim an exemption for an amount equals to lower of the following:

i) ₹ 36,000 per person for the individual and the member of his family; or

ii) 1/3rd of expenditure incurred by an individual or a member of his family.

However, the exemption can be claimed subject to fulfillment of the following conditions:

a) Such employee or his family members has incurred expenditure during the period commencing from 12-10-2020 and ending on 31-03-2021 on goods or services, which are liable to GST at an aggregate rate of 12% or above, and goods are purchased, or services are procured from GST registered vendors or service providers;

b) Such Employee exercises an option to claim an exemption for the deemed LTC fare in lieu of the applicable LTC in respect of one unutilized journey during the block of four calendar years commencing from the calendar year 2018;

c) The payment in respect of such expenditure is made by him or any member of his family to a registered person during the period commencing from 12-10-2020 and ending on 31-03-2021;

d) The payment in respect of such expenditure is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or other electronic mode specified under rule 6ABBA; and

e) The individual obtains a tax invoice in respect of such expenditure from the registered person referred.

12. 269ST Relaxation of cash payments of more than 2 lakhs in hospital: Notification No. 56: Dated 7th May, 2021 and corrigendum to Sec. 269ST notification to correct word 'payee' with 'payer': Notification No. 59/2021, dated 10th May 2021

Section 269ST of the Act restricts a person from receiving an amount of ₹ 2 lakh or more otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or other prescribed electronic modes. Any contravention of this provision attracts penalty under Section 271DA.

The CBDT exercises its powers u/s 269ST (iii) of the act notified that the provisions of section 269ST shall not apply to Hospitals, Dispensaries, Nursing Homes, Covid Care Centres, or similar other medical facilities providing Covid treatment to patients.

The exemption is applicable for payment received in cash from 01.04.2021 to 31.05.2021, on obtaining the PAN or AADHAAR of the patient and the payee and the relationship between the patient and the payee by such entities.

The notification inadvertently used the wording 'payee' instead of 'payer'. Thus, the board has issued a corrigendum to correct the word "payee" with "payer" in the context of furnishing PAN or AADHAAR and furnishing of the relationship between the patient and the payee.

13. NRs having income from transfer of capital asset referred to Sec. 47(viiab) exempt from obtaining PAN: CBDT: Notification No.42/2021, dated 4th May, 2021

Section 139A of the Income-tax Act contains the provision regarding the requirement to obtain and quote PAN. Section 206AA provides that if a deductee fails to furnish his PAN to the deductor, tax is required to be deducted at a higher rate. However, these sections empower the CBDT to make rules providing the class or classes of person to whom these sections shall not apply.

In exercise of such power CBDT inserted a new sub-rule Rule 114AAB vide Notification No. 58/2020, dated 10th August, 2020, wherein a non-resident investing in certain Category I or Category II AIFs were exempted from the application of provisions of these sections. Now, CBDT has amended Rule to further extend such exemption to non-residents investing in certain Category-III AIFs.

The board has notified that a non-resident, being an investor who operates in accordance with the SEBI, circular IMD/HO/FPIC/CIR/P/2017/003 dated 4th January, 2017, shall not be required to obtain and quote PAN on compliance of specified conditions.

14. CBDT notifies 4 more pension funds for Sec. 10(23FE) exemption: Notification Nos. 43, 44, 45, 46/2021, dated 4th May, 2021

The CBDT has notified following pensions funds for the purpose of Section 10(23FE) exemption:

- Caisse de dépôt et placement du Québec,
- CDPQ Infrastructures Asia III Inc,
- Ivanhoe Logistics India Inc,
- CDPQ Fixed Income XI Inc.,

for the purpose of exemption under section 10(23FE).

Investments made by the above pension funds during the period 22nd April, 2021 to 31st March 2024 shall be eligible for the exemption complying with the specified conditions.

15. Extensions of time limits of certain compliances: Circular No 9 od 2021 dated 20th May, 2021:

The Central Board of Direct Taxes (CBDT) in exercise of powers u/s 119 of the Income Tax Act, 1961 (the Act) provides relaxation in following compliances:

Sr. No.	Particulars	Section / Rules/ Form	Original due date	Extended due date
1	Statement of Financial transaction (SFT)	R - 114 E	31st May, 2021	30th June, 2021
2	Statement of Reportable Account	R- 114 G	31st May, 2021	30th June, 2021
3	Return of TDS for last Quarter of Financial Year 2020-21	R – 31A	31st May, 2021	30th June, 2021
4	Furnishing of TDS certificate to employees	Form 16	15th June, 2021	15th Jul, 2021
5	TDS / TCS book adjustment statement for the month of May 2021	Form 24 G: R-30 & 37CA	15th June, 2021	30th June, 2021
6	Statement of Deduction of tax from contribution paid by trustees of an approved superannuation fund	R-33	31st May, 2021	30th June, 2021
7	Statement of Income paid or credited by investment fund to unit holder	Form no 64 D R-12CB	15th June, 2021	30th June, 2021
8	Statement of Income paid or credited by investment fund to unit holder	Form no 64C R-12CB	30th June, 2021	15th July, 2021
9	Furnishing of Return of Income – non audit cases	139(1)	31st July, 2021	30th September, 2021
10	Furnishing of Report of Audit	44AB rws 139(1)	30th September, 2021	31st October, 2021
11	Furnishing of Report of Accountant – transfer pricing report	92E rws 139(1)	31st October, 2021	30th November, 2021
12	Furnishing of Return of Income – audit cases	139(1)	31st October, 2021	30th November, 2021
13	Furnishing of Return of Income – audit cases	139(1)	30th November, 2021	31st December, 2021
14	Furnishing of belated / revised Return of Income	139 (4) and (5)	31st December, 2021	31st January, 2022

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Do You Know?

Moti B. Totlani,
Advocate

1. It is well known that HUF is creature of Hindu Law and for its existence nucleus is not required. Originally it was uncodified law but some crucial aspects have been codified over a period of time by Parliament through various enactments to regulate the disposition of HUF property and iron out discrimination among family members.

2. That we all are aware that radical and far reaching beneficial amendment made by the Central Govt. through The Hindu Succession (Amendment) Act 1956 having effect from 09-09-2005 by substituting Section 6 of the said Act, which conferred equal rights to daughter in the Hindu Mitakshara coparcenary property as the son has.

3. That being a new provision, there were divergent views by various High Courts and Supreme Court as well. Most of these are fortunately, settled by Supreme Court through its latest judgment on 11-08-2020 as briefly brought out below.

4. That by virtue of above, gender equality was brought in and gender discrimination was removed and status of coparcener was conferred on a daughter born in the family.

5. That a daughter born before or after 09-09-2005 is conferred the status of a coparcener in her own right in the same manner as the son and also having same rights in the Coparcenary property as a son would have and of course as a corollary same liability as that of a son in the property.

6. That it is not necessary that the father coparcener Karta should be living on 09-09-2005 for the daughter to be a coparcener however the daughter should be living on 09-09-2005.

7. That the amendment is neither retrospective nor prospective but it is RETROACTIVE. "It operates in futuro" which means operation of the amended section is based on an antecedent event and the provision operates conferring claim in rights on and from the date of Amendment Act. (Para 56 of the Judgment)

8. That under Explanation to Section 6(5) a Deed of Partition is compulsorily required to be executed and registered under the Registration Act 1908, however in exceptional cases oral partition can be accepted provided it is supported by public documents and other genuine proof such as separate occupation of portions, appropriation of income, entry in revenue records etc. effected before 09-09-2005.

9. It was also observed that - "once the constitution of coparcenary changes by birth or death, shares have to be worked

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Speaker's Forum

CA D. J. Ruparelia &
CA Ashish Ruparelia

11th Virtual Study Circle Meeting of GSTPAM for the year 2020-21 was held on Saturday 15th May, 2021 at 11:00 am.

Speaker: Adv. C. B. Thakar, Past President, GSTPAM and S. T. Tribunal Bar Ass.

Subject: Recent Important AAR and AAAR Rulings

President Mr. Raj Shah welcomed the participants and informed that today we have veteran person Shri C. B. Thakar Saheb as the Speaker on one of the most important topics. There have been contradictory decisions being given by AARs, which he will discuss for our benefits.

Introduction

Joint Convener Advocate Parth Badheka briefly introduced the learned Speaker Adv. C. B. Thakar. He informed that the learned Speaker has been in practice for last three decades in VAT and GST. He was Past President of GSTPAM for the year 1995-96. He has had a varied representation in various professional associations and committees and has been actively presenting in the seminars and meetings at ICAI and GSTPAM.

Presentation by the Speaker

The Speaker began with informing the importance of Advance Rulings and Appellate proceedings for Advance Rulings. The study of these decisions becomes important because it renders an appropriate perspective considering the facts of the case and the legal provisions. Although the decisions, sometimes may sound to be not logical or contradictory, reading the AARs may provide immense benefits as to understanding of laws. He strongly believed that studying of AARs should be a basic exercise studying laws because of their very nature that they provide the practical aspects and application of laws in those cases. In case of High Courts and other Courts the matters pertain mainly to the Law and Constitutional interpretations which mostly are devoid of practical issues.

Shri Thakar Saheb also pointed out that Bombay High Court has held that as far as interpretation of law is concerned, the Appellate authorities for Advance Ruling should be final authority. The matters can be challenged further only if the decisions are perverse or are in breach of natural justice. Hence the Advance Rulings and decisions of Appellate Authority becomes an important reference point.

With this he discussed the following Advance Rulings.

Vadilal Industries Limited (AR. No. GUJ/GAAR/R/05/2021 dated 20.01.2021)

Issue

Whether flavoured milk manufactured and sold under a brand name would fall under the HSN heading 0402 (MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED

SUGAR OR OTHER SWEETENING MATTER) and Subheading 04029990?

Arguments

The applicant submitted the following arguments with regard to flavoured milk:

The process of the flavoured milk is standardization of fresh milk according to the fat contents and then heating at certain temperature followed by filtration, pasteurization, and homogenization and then mixing of sugar and various flavours and finally bottling.

Although the process involves the above operations it comes out that –

- adding flavours to milk does not change essential character of milk
- flavoured milk is a substitute for milk
- it is a simple preparation of milk with no manufacturing process involved nor composition of milk changes

It was argued that since Milk/ Milk products are enumerated in Chapter 4, tariff item 0402 9990 is correct subheading. It was pointed out that heading 0402 covered **"Milk containing added sugar"** and hence the product was covered by subheading 0402 9990 as **"other milk"**. The addition of sugar and permitted flavours is to improve shelf life and increase the taste. Position under Prevention of Food Adulteration Rules, 1955 was also cited by the applicant. Since there was no other specific entry for flavoured milk, heading 0402 and sub heading 0402 9990 is to be upheld.

In a similar Advance Ruling Application made by *M/s. Karnataka Co-operative Milk Producers' Federation Ltd., Bengaluru reported at 2019 (30) G.S.T.L. 350*, which has been decided by the Adjudicating Authority in Bangalore, it was held that the commodity **"flavoured milk"** is to be classified under the Tariff heading 04029990. The said Advance Ruling Authority has also taken note of the judgment rendered by Honourable Allahabad High Court in *Gujarat Co-operative Milk Marketing Federation Ltd. (2017(5) GSTL 351)*. The Honourable Allahabad High Court had specifically observed that "flavoured milk" is a form of milk, and it is neither a derivative of milk nor a milk product. The above referred Advance Ruling Authority has therefore held that the product "flavoured milk" was covered under "milk", and would therefore merit classification under Tariff heading 04029990.

Observations by Ld. AAR

The ld. AAR observed that In terms of explanation (iii) and (iv) to Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, tariff heading, sub-heading, heading and chapter shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 and the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applied for the interpretation and classification of goods.

Reference was made to Chapter Notes to 0402 and 0404. **Heading 0402** read as *'MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER'. Heading 0404 read as 'WHEY, WHETHER OR NOT CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER; PRODUCTS CONSISTING OF NATURAL MILK CONSTITUENTS, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER, NOT ELSEWHERE SPECIFIED OR INCLUDED'*

Reference was made to the Explanatory Notes under Heading 0402 and 0404. AAR also made reference to **Heading 2202** which covered *'BEVERAGES CONSISTING OF MILK FLAVOURED WITH COCOA OR OTHER SUBSTANCES'*

AAR on facts observed that the applicant's product consists of Milk 92% sweetened with around 8% sugar, colour, flavor in Kesar and Badam, Rose, Elaichi and supplied in Tetra pack/ bottles and marketed as **"Power Sip"** ready for consumption.

Conclusion

Due to the above facts, AAR held that the given product was more appropriately covered by Heading and Sub **heading 2202 9990** being beverages with milk as basis. The meaning of "beverages" was discussed along with the help of precedents and the Explanatory Notes to the Heading 2202. The citations given by the applicant were distinguished. The reliance on Prevention of Food Adulteration Rules was also held not correct as the purpose of that legislation was different.

AAR also noted that on approach by many dairy companies regarding classification of **"flavoured milk"**, the GST Council had this matter recorded in its agenda for 31st Council meeting dated 22-12-2018. It was clearly mentioned in the Agenda that **"flavoured milk" was covered under heading 2202 and not under 0402** and that the Fitment Committee did not consider it necessary to issue any clarification.

Hence AAR held that flavoured milk was classified under 2202 9990 as per Entry No. 50 in rate Schedule II of Notification 1/2017 liable to 12% GST and not under 4402 or 4404.

Observations of the Speaker

The Speaker opined that the AR appeared to be correctly classifying the product. The entry for Milk normally intends to cover milk in its natural meaning or day to day meaning. Milk has many uses including for drinking. The product in question had only one use i.e. drinking. In that sense it is a final product of milk. Thus the classification as not milk appears to be appropriate.

It is to be noted that while interpreting entry if any discussion is made in GST Council, it is required to be referred to.

Also with classification of items under GST regime linked to Customs Tariff Act, there is now more clarity in terms of proper classification as compared to the earlier VAT days where each State had separate laws.

I-tech Plast India Private Limited AR No. GUJ/GAAR/R/10/2021 dated 20.01.2021

In the opinion of the Speaker this AAR may have far reaching effects

Issue

There were two issues involved in this AAR. One was regarding determination of rate of GST on plastic toys. This was decided by holding the item as covered by Schedule II entry 228 liable to tax @ 12%.

The other issue was regarding eligibility of ITC vis-à-vis amendment to Section 16(4) of the CGST Act. This would have far reaching implications.

Discussions

For successful claim of ITC, the RTP is required to comply with certain conditions. One of such conditions is mentioned in Sec 16 (4).

Section 16 (4) before the amendment effective from 01.01.2021, read as under:

> *"(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September* ***following the end of financial year to which such invoice or invoice relating to such debit note*** *pertains or furnishing of the relevant annual return, whichever is earlier."*

An amendment in Sec 16 (4) made effective from 01.01.2021 vide Notification dated

22.12.2020. After amendment Sec 16 (4) reads as under:

> *'(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September* ***following the end of financial year to which such invoice or debit note pertains*** *or furnishing of the relevant annual return, whichever is earlier."*

Thus, the words "invoice relating to such" have been dropped in the amendment.

In applicant's case they had received goods in **FY 2018-19.** The debit notes for rate differences on the said inward supplies were passed in **FY 2020-21.**

As per original section 16(4), the applicant may not be eligible for availing ITC on debit notes as they are after September 2019 in relation to year 2018-2019. However, in view of amendment applicant argued that the debit notes received in 2020-2021 are separate from invoices and they should to be allowed in 2020-2021.

AAR made reference to scheme of Act relating to debit note in **section 34(3)** of GST Act.

Conclusion

AAR observed that there is no drastic change in relation to Section 16(4). On the contrary it observed that Section 34 (3) requires Debit Notes to mention the invoices in relation to which the debit notes are prepared.

Therefore, as per AAR, there is co-relation to Debit note with invoice and **it is not an independent document or invoice for purpose of ITC.** Therefore, it will go as per period of invoice. In other words, AAR held that the applicant can get ITC for inward supplies in 2018-2019, if the debit notes are issued till due date of filing September 2019 return. The AAR thus found no difference in position of Sec 16 (4) prior to and post amendment.

Observations of the Speaker

The Speaker opined that the above AR had created an adverse situation. It appears that the AAR has lost sight of the intention of bringing in amendment in section 16(4).

Shri Thakar Saheb referred to the **agenda note** about change in section 16 (4) reported in 38th GST Council meeting dated 18.12.2019 that read as under:

Gist of the Issue

1. Section 34 (3) allows issuance of debit note where "a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply". Moreover, as per section 16(4), a registered person is not entitled to take credit of a debit note beyond "the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier".

2. Plain reading of the provisions suggests that in case debit note relating to an invoice is issued **beyond September** of the next financial year, the same is barred from claiming ITC by the recipient. This is leading to a problem for sectors such as Automobiles, Heavy Engg. PSUs etc. where a price revision is inbuilt in the contract, and as per the provisions, in case of escalation on this account a debit note can be issued and corresponding tax shall be collected and deposited to the Government along with interest, but corresponding credit to the recipient is barred.

Proposal

The Law Committee examined the matter and felt that **credit may be allowed for debit notes irrespective of the date of issuance of the underlying invoice in case of debit note.** Accordingly, the Law Committee recommended amending the provisions of section 16(4) to allow ITC on debit notes by linking it to the date of issuance of the debit note by omitting the words "invoice relating to such".

Suggested Formulation

16(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. "Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under subsection (1) of said section for the month of March, 2019."

Thus, in the opinion of the Speaker, it can be said that the intention of amendment was **to delink invoice from debit note** for purpose of section 16(4), so that the desiring recipient can claim ITC as per year of debit note. **AR is issued as per legal interpretation.** Therefore, the above agenda cannot be said to be directly binding on AAR. However, it can aid when there is doubt about scope of amendment. With due respect the Speaker said, the AAR has missed the above issue.

He hoped that it may be taken care in Appeal in case an appeal is filed against the above AAR. In his opinion the **debit note should be considered independently** and section 16(4) should be applied accordingly as per year in which the Debit note is issued, delinking it from the year of tax invoice.

Aristo Bullion Private Limited AR No. GUJ/GAAR/R/15/2021 dated 27.01.2021

A very interesting issue is decided in this AAR

Issue

Following question was posed before AAR - *"Can the applicant use Input Tax Credit Balance available in the Electronic Credit Ledger legitimately earned on the inputs/raw-materials/inward supplies (meant for outward supply of Bullions) towards the GST liability on 'Castor Oil Seed' which were procured from Agriculturists and subsequently meant for onward supply?"*

The applicant was in the business of supply of **gold and gold products**. The input for such business is Gold dore / Silver dore and other incidental raw materials. The goods produced from above inputs are like gold/silver bars, coins etc. Due to fluctuation in prices, stocking etc. there is situation where applicant has **accumulated ITC** in its credit ledger.

Applicant also intends to trade in **Castor Oil Seeds**. The seeds are purchased from Agriculturists etc. which are unregistered parties. Hence there is no ITC from purchase of Castor Oil Seeds. But on supply of Castor Oil Seeds, applicant has to discharge the outward tax. For said purpose, the applicant wanted to use accumulated ITC from its gold business.

Arguments

The applicant cited **Section 49(4)** to support its argument that it is entitled to use the accumulated credit in gold business to Castor Oil Seeds liability. Section 49(4) reads as under:

*"(4) The amount available in the electronic credit ledger may be used for making **any payment** towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed."*

The AAR referred to **Section 16 (1)** of the CGST Act which reads as under:

*"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, **be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person."*

The Ld. AAR observed that the applicant is eligible to ITC on tax charged on supply of inward goods or services or both which are used or intended to be used in the course or furtherance of his business. Based on above reading the Ld. AAR observed that there should be link between inward supplies and outward supplies so as to be considered to be in course / furtherance of business and therefore be eligible for ITC. The Ld. AAR held that in this case there was no linkage between Gold business and Castor Oil Seeds business.

Conclusion

The AAR held that even the basic conditions envisaged in the provisions of Section 16(1) had not been fulfilled in the instant case in that the inputs eligible to ITC are not used or intended to be used in the course or furtherance of the business of supply of Castor oil seeds. Hence ITC utilization for discharge of liability on castor oil seed business was denied.

Observations of the Speaker

In the opinion of the Speaker the above ruling will create a number of unintended difficulties and certainly cannot be the intention of the Legislature. The Ld. AAR has given very restricted meaning to business / furtherance of business. It also appears that each line of business is being considered separately by AAR.

With due respect, the Speaker said, this AR cannot be said to be laying down correct legal position.

Enpay Transformer Components India Pvt. Ltd. AR No. GUJ/GAAR/R/1/2021 dated 20.01.2021

Issues

There were two issues put forward to the AAR.

1) The applicant imported goods from its holding company in Turkey. The payment term was 120 days from the date of invoice. For delay beyond 120 days the applicant was liable to pay interest to foreign supplier. The following question was placed before the AAR:

   "Whether liability to pay GST on Reverse Charge basis arises if amount is paid as interest on late payment of invoices of imported goods? If yes, then at what rate?"

2) Whether Stamp duty charges, paid by the Holding Company for obtaining credit facilities by the applicant on Corporate Guarantee and reimbursed to the Holding Company without any mark-up and on **cost to cost basis,** is liable to RCM as import of services?

Arguments

In this respect AAR made reference to two provisions:

One, to **entry 5(e) in Schedule II** to CGST Act. AAR observed that the foreign buyer has

tolerated the act of receiving payment after a lapse of a period of 120 days from the date of the invoice in respect of the goods supplied by them to the applicant for which interest is to be paid by the applicant. It is an act of tolerating the delayed payment and hence it amounts to providing services under entry 5(e).

Second, AAR referred to **Section 15(2)(d)** of CGST Act which deems interest / late fee or penalty for delayed payment of any consideration for any supply as part of value of supply.

Considering both the above provisions, AAR held that interest payable on late payment for imports will be **liable to RCM**.

About rate, AAR held that it will be liable at same rate at which goods are liable, as interest is part of valuation of goods as per Section 15(2)(d).

The other important issue involved in the AR was about liability on Stamp duty. Applicant has obtained **bank credit facility** from Citibank based on **Corporate Guarantee** issued by Holding Company (which is also foreign supplier). Foreign supplier has incurred stamp duty charges in Turkey on procuring the above facilities and had raised an Invoice separately to reimburse the same from the applicant.

The question before AAR was *"Whether liability to pay GST on Reverse charge arises, if amount is paid for reimbursement of Stamp Tax paid as a pure agent by M/s. Enpay Turkey on our behalf?"*

The strong argument of the applicant for the above matter was that the Stamp Duty charges were incurred by the Holding Company as a pure agent and it is just getting reimbursed for the same without any mark up. Hence it cannot be liable to GST.

The AAR referred to **Rule 33** of CGST Rules which provides value of supply in case of pure agent. It observed that all conditions (i) to (iii) of Rule 33 as well as clauses (a) to (d) of the Explanation are required to be fulfilled for applicability of pure agency rule.

In the instant case AAR observed deficiencies in complying Rule 33 as under:

(i) No document, authorising supplier to make payment to third party produced by applicant.

(ii) The amount of reimbursement is not indicated separately in invoice for supply of goods but separate invoice is raised

(iii) The alleged pure agent reimbursement is not in addition to supply of services/ goods by supplier but linked with supply being made by him.

AAR also found that there was no contract or agreement to act as pure agent. Further no document about not holding title on stamp duty expenses made was produced.

AAR further observed that the alleged pure agent expenses is used for own interest by the supplier as they are directly related to goods being supplied. The expenses should not be used for own interest, if it were to be of pure agent. The amount of reimbursement should be actual amount. AAR observed that no sufficient understandable documents were produced to show that the reimbursement was at actual amount.

Hence no pure agent category available and the reimbursement is liable to RCM as import of services.

Gujarat Narmada Valley Fertilisers & Chemicals Limited AR GUJ/GAAR/R/93/2020 dated 17.09.2020

Issue

Principle of Agency

The Applicant, Gujarat Narmada Valley Fertilizers & Chemicals Ltd. (GNFC) had rented its premises to Central Government, for use by

its CGST Department. The rent for premises was fixed at Rs.20,80,848/- per month. **In addition**, there was following clause in the agreement:

> *"9) "the Govt. of India" shall pay all charges in respect of electric power, Air-conditioning charges, light and water used along with the applicable taxes thereon for the said premises during the continuance of these presents"*

The applicant has provided sub-meter for calculating electricity charges as per actuals. On coming into operation of GST Laws, the lessee, the Central Government, conveyed to the applicant that no GST would be payable on electricity charges paid by it to the applicant for onward payment to the Electricity Company.

The following questions were raised before the AAR:

1. When landlord charges electricity or incidental charges in additional to rent as per Lease Agreement for immovable property rented to the tenant, is landlord liable to pay and recover GST from tenant on electricity or incidental charges charged by it?

2. Can electricity charges paid by landlord to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub meters from different tenants be considered as amount recovered as pure agent of the tenant when the **legal liability** to pay electricity bill to Torrent Power Ltd. is that of landlord?

Arguments

The Applicant was canvassing that the collection of electricity charges is covered by **section 15 (c)** of CGST Act and hence taxable. The applicant submitted that in terms of the provisions of Section 15 of CGST Act, 2017, it appears that electricity or other incidental charges recovered proportionately by a landlord from a tenant in addition to rent are nothing but incidental expenses or amount charged in respect of supply of renting service and hence the value thereof shall be included in value of taxable supplies; that when the applicant pays electricity charges to Torrent Power Limited (Electricity supplier), it pays electricity charges on its own account and not as a pure agent of the recipient of renting service.

Conclusion

The learned AAR observed that as per specific clause in agreement (reproduced above), the responsibility is of the lessee to pay electricity charges and it is independent of rent, which is a fixed amount. The learned AAR held that such charge is not incidental or other charges for renting. Thus, based on peculiar terms of agreement, AAR held that it is lessee who is liable to pay electricity charges to electricity supply Company. The applicant is arranging it on behalf of lessee, so it is agent of the lessee for such payment. The learned AAR ruled that there is on liability on applicant to pay GST on electricity charges collected by it from lessee and paid to Electricity Supply Company.

This is one of the cases where supplier also becomes agent of recipient.

Observations by the Speaker

The Speaker discussed the following matters on the fallout of the above decision –

Whether this can be used as a potential tool to avoid GST on Electricity and other incidental charges relating to renting of immoveable property?

In case of **E-square Leisure Private Limited, the Maharashtra AAR (No. GST-ARA-71/2018-19/B-171 dated 29.12.2018)** had held that electricity charges recovery is taxable.

The principle of agency was also interpreted differently in this AAR. In the opinion of Mr. C. B. it would be better if the

agency relationship is clearly brought out in writing on the agreements or term sheets. The reimbursements should be actual based on valid supporting.

M/s. BMW India Pvt. Ltd. (AR No. 49/2018-19 dated 10.04.2019)

Issues

ITC vis a vis goods distributed on free of cost basis:

The Applicant is engaged in the business of manufacturing and sale of motor cars. It organises various events across the year for the purpose of marketing and sales promotion of its products.

Such events are organised throughout the country with an intention to increase the brand loyalty of its customers. For organising such events various expenses are made like booking of space, hiring of consultant and expenses for distributing items free of cost (FOC) basis to the attendees to the event.

The questions before the AAR were

Whether certain customized lifestyle goods procured by BMW India either from a third party local supplier or imported from outside India for supply of goods during promotion/marketing events organized by the company will qualify as used **in the course or furtherance of business** in term of the provisions of the Central Goods and Services Tax Act, 2017 ("CGST Act")?

Whether the company is eligible to avail **input tax credit** for such goods supplied under the marketing events in terms of the CGST Act, 2017?

Arguments

The applicant referred to definition of "business" in Section 2(17) wherein it also includes any activity or transaction which is incidental or ancillary to the listed activities in the definition. Thus it was argued that any activity undertaken which was included in the definition for furtherance or promoting could constitute a supply under the GST laws.

Also Section 16 provides for every registered person to avail credit of the input tax paid on any supply of goods or services, provided he uses the same in the course or furtherance of business.

As regards Section 17 (5) restricting the ITC on goods distributed as gifts, it was argued that **"gift"** was not defined under the GST laws. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right.

The items supplied on FOC basis are embossed with company's logo for the purpose of enhancing brand loyalty in existing customers and attracting potential customers. Thus there is some hidden consideration involved and it should be differentiated from "gift" in common parlance.

Conclusion

The learned AAR observed that there is no reciprocity about expenses and sales. The recipient of items may not become buyers. The criteria of consideration are also not fulfilled. **There is no difference within gift and free of cost distributions.** AAR held that no ITC can be claimed on the above inputs.

The above view is also confirmed by AAAR Karnataka in case of ***Page Industries Ltd. (Order no. KAR/AAAR/05/2021 dated 16.04.2021)***. In this case promotional items held not eligible to ITC on the ground that it is gift and also non-taxable supply. Section 17 (5) (h) had been applied to reject the ITC.

Kalyan Jewellers India Limited – (AR Appeal No. 01/2020/AAAR dated 30.03.2021 - TN AAAR)

Issue

Taxability of Vouchers:

The issue before AAAR was from AR dated 25.11.2019. The appellant was in the business of jewellery products. It has introduced sales promotion schemes by offering different types of pre-paid instruments (PPI) like closed system PPI, semi-closed system PPI, Open system PPI etc. generally referred to as ***"Gift Vouchers/Gift Cards"***.

The learned AAR on posting of the taxability of such Gift Vouchers had decided as under:

i. The Own closed PPIs issued by the Applicant are 'Vouchers' as defined under CGST/TNGST Act 2017 and are a supply of **goods** under CGST/TNGST Act 2017

ii. The time of supply of such gift vouchers/ gift cards by the applicant to the customers shall be the date of issue of vouchers if the vouchers are specific to any particular goods specified against the voucher. If the gift vouchers / gift cards are not restricted to any specific goods and can be redeemed against any goods purchased, the time of supply is the date of redemption of voucher.

iii. In the case of paper based **gift vouchers** classifiable under CTH 4911 the applicable rate is 6% CGST as per Sl. No. 132 of Schedule II of the Notification No. 1/2017-C.T. (Rate) dated 28.06.2017 and 6% SGST as per Sl. No. 132 of Schedule II of Notification Ms. No. II (2)/ CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended.

In the case of **gift cards** classifiable under CTH 8523 the applicable rate is 9% CGST as per Sl. No. 382 of Schedule III of the Notification No. 1/2017- C.T.(Rate) dated 28.06.2017 and 9% SGST as per Sl. No. 382 of Schedule III of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017.

Arguments in Appeal

The Appellant argued that the voucher or PPI only have a redeemable face value and no intrinsic value capable of it being considered as marketable for the purposes of levy of GST. They are accounted as **"Current Liabilities"** on issuance and only credited to Sales/Revenue on redemption when goods are supplied against the voucher.

The PPIs are in the nature of actionable claims and not goods. It is submitted that if the PPIs are made liable to tax, it would amount to **double taxation** as GST is levied on supply of jewellery made by the appellant also at the time of redemption of vouchers.

Decision by AAAR

The AAAR observed the following:

On treating the PPI as actionable claims it observed that **vouchers are neither goods nor services,** and that whether they are actionable claims need not be examined.

About the nature of vouchers the AAAR observed that they are a means for advance payment of consideration for future supply of goods or services. Vouchers, being instruments used as consideration to settle obligations, is a type of money even if not recognized as such by Reserve Bank of India. It would still form **a means of payment of consideration** though it does not constitute money.

The AAAR ruled that **no GST** is to be levied on supply of vouchers per se. Since voucher is only an instrument of consideration and not goods or services, the same need not be separately classifiable but only the supply associated with the voucher is classifiable according to the nature of goods or services supplied in exchange of the voucher.

Provision of Subsection (4) of Section 12 and Section 13 with regards to time of supply of goods in case of vouchers was referred to by the AAAR. The learned AAAR held that, the

supply of the underlying goods or services for which voucher has been issued *will be date of issue of voucher if the supply is identifiable at that point of time or the date of redemption of voucher in all other cases.*

Opinion of the Speaker

Adv. C. B. Thakar said that the learned AAAR has resolved the complicated issue and will be very useful to the trade.

Metal Recycling Association of India v/s. Union of India (R/Special Civil Application 13238 and 13243 of 2018 dated 24.07.2020)

Issue

Intermediary services whether liable to IGST or CGST/SGST

This is not an AAR but a HC judgement deciding an issue which was decided contradictory by different AAR. Also an issue in this judgement was the nature of intermediary services and taxability of it.

Arguments

The Appellant argued that intermediary services are export of services whenever a foreign party is involved. It was argued that deciding place of supply as the location of the service provider u/s 13(8)(b) of the IGST Act, is unconstitutional. However, Honourable HC held that it is a policy decision of the government and cannot be held to be unconstitutional.

The other issue which was also indirectly dealt with in this judgment was whether IGST is payable or CGST/SGST is payable on intermediary service? Till this judgement, there have been contradictory advance rulings on this matter.

In case of *Micro Industries (No. GST-ARA-23/2018-19/ B-87 Mumbai dated 10.08.2018)* the learned Maharashtra AAR held that the intermediary services are liable to IGST. In case of *Sagar Powertex Private Limited (Advance Ruling No. GUJ/GAAR/R/98/2020, dated October 14, 2020)* the Gujarat AAR held that CGST and SGST is applicable.

Due to the above conflicting AR's there was confusion among the business community. The HC resolved the issue in this judgement in para 66 and 67, which are reproduced below:

> *"66. It therefore, appears that the basic logic or inception of section 13(8)(b) of the IGST Act,2017 considering the place of supply in case of intermediary to be the location of supply of service is in order to levy CGST and SGST and such intermediary service therefore, would be out of the purview of IGST. There is no distinction between the intermediary services provided by a person in India or outside India. Only because, the invoices are raised on the person outside India with regard to the commission and foreign exchange is received in India, it would not qualify to be export of services, more particularly when the legislature has thought it fit to consider the place of supply of services as place of person who provides such service in India."*

> *"67. Therefore, there is no deeming provision as tried to be canvassed by the petitioner, but there is stipulation by the Act legislated by the parliament to consider the location of the service provider of intermediary to be place of supply. Similar situation also existed in service tax regime w.e.f. 1st October 2014 and as such same situation is continued in GST regime also. Therefore, this being a consistent stand of the respondents to tax the service provided by intermediary in India, the same cannot be treated as "export of services" under the IGST Act, 2017 and therefore, rightly included in Section 13(8) (b) of the IGST Act to consider the location of supplier of service as place of supply so as to attract CGST and SGST."*

Opinion of the Speaker

From above, it now becomes clear that, intermediary services **is outside IGST** and therefore liable under CGST / SGST. This HC judgment is under the Central Act and hence will be operative in all states except the state in which any contradictory judgment of HC is available. In the opinion of the Speaker the Maharashtra AR can be said to be not correct and the assessee can follow the above HC ruling.

Modern Food Enterprises Pvt. Ltd. (Order No. Ker/23/201 dated 12.10.2018- Kerala AAAR)

Issue

Classification of Parota:

The above appeal was against advance ruling order (AR) passed by Kerala AAR. In the AR, the products "100% whole wheat Malabar parota" and "Classic Malabar parota" were held to be covered by CTH 2106 and not entitled to exemption as per heading 1905. The products were held to be liable to GST@18% (9% CGST and 9% SGST)

Arguments

The main contention of the Appellants was that the above items meets with the description of heading 1905 and hence exempt as per notification no. 2/2017 Central Tax/SRO no. 361/2017.

The learned AAAR examined the contents and manufacturing process of above parota. It was noticed that the impugned products are manufactured by the Appellant using various ingredients including Refined Wheat Flour Atta (Maida) / Wheat Atta, purified water, Edible Vegetable Oil (sunflower oil), Milk Solids, Sugar, common Salt and yeast. The impugned goods also contained permitted quantity of gluten, preservative, emulsifier and acidity regulator. Upon raw material intake, the ingredients went through various processes. The Whole wheat Malabar parota and Classic Malabar parota are made up of whole wheat flour and refined wheat flour (maida) respectively. Preservatives and acidity regulators are added for a longer shelf life for distribution in the retail chain.

The appellant has stated that the impugned goods are branded as "100% Whole Wheat Malabar parota" and "Classic Malabar parota" and sold in poly laminated packets. The impugned products are not readily consumable (ready to eat) but need to be heated or further processed before consumption.

Conclusion

The learned AAAR analyzed HSN 2106 and 1905. The comparative study showed that items under 1905 are ready to consume bakery products. It was observed that the parota in present case were not ready to consume but required certain process before consumption.

The learned AAAR also referred to rules of classification given under the Customs Tariff Act. The AAR came to conclusion that even if the products are considered to be equally falling in 1905 and 2106, heading 2106 comes last. It is observed that exemption can be availed if the product fell under 1905.

Observing as above, AAAR confirmed order of AAR, holding that the products **are liable to 18% GST**.

However, at end, AAAR has clarified as under:

"It is further clarified that this ruling is not applicable to generic parota and wheat parota that is supplied as a part of composite supply of services mentioned in item 6 (b) of schedule II to KGST and CGST Acts"

Jay Chemical Industries Limited (AR No. GUJ/GAAR/R/101/2020 dated 14.10.2020)

Issue

Reversal of ITC on Finished goods destroyed:

The Applicant was engaged in the business of manufacturing and marketing of dyes and dye intermediaries. It manufactured Vinyl Sulphone, H Acid, M.P.D.S.A, C.P.C etc. (collectively known as "dye intermediates") which were finished and marketable products.

There was a fire in the warehouse of the Appellant and some **finished goods** were destroyed in the fire. The Appellant had filed this AR application to know whether **ITC on inputs** used to manufacture the destroyed finished goods was required to be reversed in terms of Section 17(5) of the CGST Act?

Arguments

The contention of the applicant was that, as per **section 2(59), 2(62) and 2(63)**, the definition of Input Tax is very wide. A registered person is entitled to take Input tax credit on inputs, input service and capital goods, if the same are used by him in course or furtherance of his business or if such input, input service or capital goods are intended for use in course or furtherance of business.

In respect of restriction in **section 17(5)(h)**, which prohibits ITC in relation to goods destroyed, it was submitted that the restriction is "in respect of goods destroyed". Judgment in case of **Swastik Tobacco Factory (AIR-1966-SC-1000)** was cited to explain that **raw goods and finished goods are different.** Therefore, it was submitted that the ITC cannot be said to be in respect of "Input destroyed". Once the inputs are utilized in manufacturing of finished goods, inputs have been said to be consumed and have lost its identity and have been said to be used in course or furtherance of business.

Therefore, it was argued that once the finished goods are manufactured and subsequently get destroyed then it cannot be said that input got destroyed. What was destroyed was finished goods and not the inputs. It was further argued that the section nowhere states that input tax credit, in respect of input utilized for manufacture of finished goods should be reversed, if such goods get destroyed.

Conclusion

The learned AAR went through the provisions of **Section 17(5)(h).** It said that

> *"Notwithstanding anything contained in sub- section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following:*
>
> *(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples."*

Based on its analysis the AAR observed that *"Since the said inputs and capital goods have been used in manufacturing of finished goods that have been destroyed, the same are not used in course or furtherance of business."*

Thus, the learned AAR has given ruling for **reversal** of ITC in above situation.

Opinion of the Speaker

The Speaker opined that any loss incurred in the normal course of business should be considered as in the course of business. Therefore he felt this AR required reconsideration.

Hadi Power Systems (AR No. KAR-ADRG-18/2021 dated 06.04.2021)

Issue

Applicability of Concessional Rate to Chain of Sub-Contractors:

The Appellant had sought advance ruling in respect of following question:

"Whether concessional rate of GST shall apply to the sub-contractor who is sub-contracted from a sub-contractor of the main contractor, the main contractor being provider of works contract to a Government entity?"

Arguments / Facts

The parties involved in a State Government contract were as below:

Karnataka Neeravari Nigam Limited (Employer)

Ocean Construction India Private Limited (Main Contractor)

(for construction of irrigation scheme)

Shaaz Electricals (First Sub-contractor)

Hadi Power Systems (Sub-contractor to First sub-contractor and Applicant)

The applicant was of the opinion that the services provided by him falls under clause (ix) to serial number 3 of Notification 11/2017-Central Tax (Rate) dated 28-06-2017, as amended by Notification No.01/2018-Centra1 Tax (Rate) dated 25.1.2018 and the concessional rate of tax @ 12% shall apply to him.

The relevant clause read as under:

Description of Service	Rate (%)	Conditions
(ix) Composite supply of works Contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contract to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case maybe.

Based on above interlink of sub-contractor, it was submitted that applicant's contract should get covered by above notification of 6%/6% category.

Conclusion

The learned AAR observed that there was no privy of contract between the applicant and the Employer i.e. Ocean Constructions (India) Private Limited. Further the first sub-contractor M/s. Shaaz Electrical cannot be said to be Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.

Hence the applicant being second level sub-contractor was held to be **not eligible for concessional rate.** The learned AAR considered only sub-contractor appointed by main contractor (in this case M/s. Shaaz Electrical) as eligible to the concessions as per above notification.

Observations by the Speaker

In the opinion of the Speaker an issue may arise in light of judgement of Honourable Supreme Court in case of ***Larsen & Toubro Limited and Others vs. State of Andhra Pradesh and Others (2008)(17 VST 0001)*** in which it was held that in case of works contract the transfer of property is only once.

The effect of the judgement is that the whole contract becomes one transaction. Though the judgement was under old regime still the ratio can be applied to GST laws.

Further, the applicant sub-contractor also can be said to be sub-contractor to main contractor being linked to said contract. Therefore, possible argument can be that, the applicant should also get benefit of notification.

The intention of legislature is to extend benefit of concessional rate to the chain of contractors involved in the given transaction. Not giving benefit of concessional rate to sub-contractor of sub-contractor creates anomaly and in the same transaction it creates different tax treatment.

Conclusion & Vote of Thanks

Adv. C. B. Thakar Saheb answered to the queries of the participants.

Hon. Treasurer Mr. Sunil Khushalani gave well deserved vote of thanks to the learned Speaker and the participants.

[Contd. from Page No. 61]

Clarification

1) Interest u/s 234 A of the Act will continue where the self-assessment tax liability exceeds ₹ 1,00,000/-.

   For this purposes, in case of an Individual Taxpayer, the tax resident of India, the tax paid by him as self-assessment tax, before the original due date will be deemed to be the advance tax.

2) For all the compliances, extension has not been allowed and couple of such immediate compliances are stated hereinbelow:

Sr. No	Particulars	due date
1	Filing of belated / revised Return of income for AY 2020-21	31st May, 2021
2	Return of TCS for last quarter of Financial year 2020-21 relevant to AY 2021-22	15th May 2021
3	Application for Registration / Re-registration u/s 12A / 12AA / 12AB and 80G of the Act	30th June 2021

Representation & Response

May 18, 2021

To

The Hon'ble Chairman
Central Board of Indirect Taxes & Customs
New Delhi

Respected Sir,

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

While uploading invoices for outward supplies in the Statement of Outward Supplies in FORM GSTR-1, the GST common portal is not accepting the invoices against GSTINs which have been suspended / cancelled suo-moto by the proper officer, presumably for non-filing of returns.

This is to bring to your kind attention the following issues arising out of this situation and suggested solutions:

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

a. In such scenario, 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.

b. For suppliers to whom e-invoicing is applicable, details of such invoice are reported on the IRP and IRN is duly generated considering the invoice to be relating to a B2B supply.

c. Therefore, the invoice must be allowed to be reported under B2B supply category in FORM GSTR-1 in such cases irrespective of the fact of subsequent cancellation of registration of the recipient of supply.

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

a. 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.

b. 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.

c. 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.

d. 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.

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

a. 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.

b. 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.

c. 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.

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

e. For instance, where a supplier filing FORM GSTR-1 for April 2021 comes across ten instances of cancelled GSTINs as stated above, he will report the ten invoices under B2C section while filing FORM GSTR-1. Subsequently, in June 2021 one of the recipients may communicate that his registration has been restored by the department. As such, the supplier may report the same invoice under B2B in his FORM GSTR-1 filed for the month of June 2021 and amend B2C supplies of April 2021 in the same return. Subsequently, another recipient may communicate in October 2021 about the restoration of his registration. While the supplier may report the concerned invoice under B2B in his FORM GSTR-1 filed for the month of October 2021, he will not be able to amend the turnover of B2C supplies reported in April 2021 and amended in June 2021. There may be eight more such instances where amendment would not be possible.

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

a. 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.

b. Further, the problem for the supplier of multiple amendments to FORM GSTR-1 as stated in Para 3 above shall also arise in case of suspension of registration and subsequent revocation thereof.

5. Therefore, in case of situations arising as under Para 3 & 4 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.

6. 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.

While we have made our humble suggestions at the end of each issue, we request your good office to offer an alternative solution and issue suitable clarification for the same at the earliest to address the situation.

Thank you,

Yours faithfully,

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*

CC:

1) The Goods & Services Tax Council, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110 001

2) Principal Chief Commissioner of CGST & C. Ex., Mumbai Zone

3) Commissioner of GST & Customs, Pune Zone 1

4) Commissioner of State Tax, Maharashtra

5) GST Network, Worldmark 1, Aerocity, Indira Gandhi International Airport, New Delhi - 110037

May 19, 2021

To
The Hon'ble Commissioner of State Tax
Maharashtra State
8th Floor, GST Bhavan,
Mazgaon, Mumbai – 400 010

Respected Sir,

Subject: 1. Issues in service of assessment orders on dealers' emails

2. Recovery of dues by way of attachment of bank account during lockdown

Many orders in respect of MVAT and CST assessments have been passed by the State Tax Department in the month of March 2021. The officers are passing the orders and serving them on the dealer's email as per the Department's records. Physical orders are not being served and only emails are being sent.

It is noticed that many of the dealers have not received the orders on their email, for which the dealers and/or their authorised representatives will have to follow-up with the concerned officer once the lockdown is lifted.

In many cases the officers are attaching bank account directly without any prior inquiry as instructed earlier by your good office.

Further, it has been brought to our notice that the State Tax Officers are calling up the dealers and/or their authorised representatives insisting on immediate payment of outstanding dues as per orders passed in March 2021 and threatening to attach the dealer's bank account for recovery of dues in case of failure to comply. In many cases, the orders have not been received on either the dealer's or the representative's email.

Last week one of our members received call from the inspector of one of the assessing officers asking whether the dealer had made the payment of outstanding dues as per the order passed by the said officer after taking into account declarations in Form F submitted by the dealer in the month of March 2021. Neither the dealer nor his authorised representative had received the order on email. Therefore, a request was made to the inspector to send the order to the CA's email, which the inspector obliged. On perusal of the order, it was realised that credit for payment of differential CST dues made in one of the earlier years in respect of declarations not received for the year under assessment was not granted in the order passed and that the dealer would have to file an application for rectification. However, since the dealer's office is closed due to lockdown, he is not in position to visit the office and procure the tax paid challan for filing the rectification application. On 18th May 2021, said member received a call from the inspector once again inquiring whether the outstanding dues had been paid. The member informed the authority of the need to file a rectification application for grant of credit of the dues previously paid. He also informed their inability to visit their respective offices to procure and produce the challan immediately. However, the inspector has threatened to recover the dues by way of attachment of bank account of the dealer if the outstanding dues as per the assessment order are not paid. Upon the CA's request to refrain

from any coercive action and grant some time owing to the lockdown, the Inspector has agreed for a week's time.

The above is a representative example of many such instances of calls received by the dealers or their authorised representatives for the recovery of dues.

The terrible situation in Maharashtra caused by the second wave of the deadly pandemic is no secret. Everyone is fully aware of the collapsed health infrastructure and the record number of deaths being reported every day. It is because of this situation that severe restrictions in movement have been put in place by way of a lockdown in the entire State. Apart from the health risk, many businesses are on the verge of permanent closure being unable to absorb the economic losses caused by the second lockdown. In such a situation, it would not be prudent to expect the dealers or the practitioners to risk their lives and break the law to leave their homes and open their offices only to comply with requirements of the departmental authorities. In these times of distress, we expect compassion from the tax authorities.

We write this letter to request your good office to issue suitable instructions to the departmental authorities to not proceed with recovery proceedings and attachment of bank accounts of the dealers till the lockdown is fully lifted and business activities are resumed normally.

Further, since email is now the main medium of communication between the department and the dealers, we request the department to undertake a KYC drive to update their records so that any orders and other important communication will reach the desired recipient.

Hoping for your favourable response, we remain.

Yours faithfully,

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*

[Contd. from Page No. 62]

out at the time of actual partition. The shares will have to be determined, in changed scenario" and subsequent events have to be taken into consideration (para 99 of the judgement).

10. Thus by conferring status of coparcener to daughter, the distinction between coparcenary and HUF has been further diluted removing inequality in terms of partition of joint property.

(Vineeta Sharma vs. Rakesh Sharma and Ors. Civil Appeal No. 32601 of 2018 dt. 11-08-2020 – 118 taxmann.com 322- S.C. Three judges' bench decision overrides earlier judgments of the division benches of the Supreme Court)

Greatship (India) Limited

WP No. 92630 of 2020 decided on 30 April 2021 (Bombay High Court)

Facts of the Case

- The Petitioner had received best judgement assessment orders for F.Y. 2015-16 via email on 23.07.2020. The orders dated 20.03.2020 were stated to have been passed manually in accordance with Circular No. 4A of 2020 dated 20.03.2020 and were digitally signed on 22.07.2020.
- The Petitioner filed a Writ Petition before the Hon'ble Bombay High Court contending that the orders were passed only after the expiry of the limitation period on 31.03.2020 and were ante-dated.
- Subsequently, on 22.09.2020 the Petitioner was served with another set of assessment orders which were manually signed. The Petitioner were also provided with a document (referred to as 'content') which encapsulated the reasons for the assessment of the demands.
- The orders were uploaded on the portal on 02.08.2020 but the Petitioner was unable to download the same until 04.10.2020.

Contentions of the Petitioner

- The Petitioner contended that the orders served on them could not have been passed on 20.03.2020 or before 31.03.2020 and the orders were ante-dated and were barred by limitation.
- The Petitioner also referred to Internal Circular No. 4A of 2020 dated 20.03.2020 and the requirements thereunder and pointed out that there were gross anomalies in the conduct of the assessing officer.

Arguments of the Department

- The department submitted that, passing of the orders, uploading of the same on the system, downloading those and serving those again upon the petitioner were done on different dates because of the critical Covid-19 situation.

- It was submitted that as the assessment orders were required to be served upon the petitioner, copies of the same were scanned but the scanned copies of the assessment orders were neither properly readable nor legible. Therefore, the assessing authority downloaded clear legible copies of the assessment orders, signed those digitally and emailed them to the petitioner on 23.07.2020. The assessment orders were uploaded on the system on 14.07.2020 as per internal direction given which date of uploading gets automatically embossed on the assessment orders.
- Further, it was contended that, the orders served on 23.07.2020 and 22.09.2020 both were same, and these orders were manually passed on 20.03.2020. Further, best judgement orders were passed as nobody had attended the office of the assessing officer.
- The department further submitted that, the content part of the order could not be served earlier due to some technical reason and was immediately emailed when the issue came to its notice.

Observations and decision of the Hon'ble Bombay High Court

- The Hon'ble Bombay High Court referred provisions of the MVAT Act in relation to assessment, appeals, payment of taxes and rules relating to service of notices and orders.
- The Hon'ble High Court further referred the internal Circular No. 13A of 2018 dated 29.05.2018 which lays down guidelines regarding the passing of assessment orders including ex-parte best judgement assessment orders and observed that in accordance with the Internal Circular, it was necessary for the assessing authority to obtain administrative approval of the immediate supervisory authority at two stages. firstly, at the stage of issuing show-cause notice which should include the working of tax liability together with quantum of disallowances and the reasons for the same; secondly, at the time of passing the ex-parte best judgment assessment order.
- Referring to the Internal circular No. 4A of 2020 dated 20.03.2020, the Hon'ble High Court observed that as per instructions contained in the Internal Circular, the stamps and seals could not be carried home by the officer though the assessment orders passed manually must be sealed, dated, stamped and signed by the issuing authority before delivering those to the assessee. Further, it is specifically stated that assessment orders passed manually shall not be served electronically to the dealers as the speaking orders have to be delivered to the dealers manually. Printout of assessment orders passed manually and entered into the system should not be taken out as it would not be a proper assessment order but just a document created for the purpose of data entry. Further the date of manual service of the assessment orders will be considered for all legal matters involved in such assessment. Therefore, the assessment order passed manually has to be served manually in which event signature of the person to whom the order is so served has to be obtained as acknowledgment of service and the date of such manual service will be considered for all legal consequences. Such signature or endorsement has to be on the original order or on a separate slip.

- Further, the Hon'ble High Court scrutinized the original record of the assessment and observed that, though it is stated that assessment orders were passed, there was no mention of the page of the record where those have been kept or tagged and pagination or page numbering of such assessment orders was conspicuously missing. Further, the separate sheet (content) was not found attached with the order and was kept separately unnumbered.

- Also, there was no mention of the date when the assessment orders were manually served and there was no endorsement to that effect either on the body of the assessment orders found in the record or any separate endorsement sheet though it was stated that the assessment orders were passed manually and served upon the dealer as per Internal Circular No.4A of 2020.

- Further, the Hon'ble High Court observed that, the orders were passed without issue of any ex-parte show cause notice or obtaining prior approval of supervisory authority before passing such ex-parte best judgement orders as was required under Internal Circular No. 13A of 2018 dated 29.05.2018.

- The Hon'ble High Court further observed that, it does not appear to be practically feasible that the assessment orders as well as the separate order content running into 21 pages were passed on the very same day of the issuance of Circular No. 4A of 2020.

- The Hon'ble High Court observed that the assessing officer was prohibited from serving copies of the assessment orders and demand notices by email, since the assessment orders were passed manually. Secondly, uploading of the assessment orders on the system on 14.07.2020 which date is embossed on the emailed copies of the assessment orders can lead to the only rational inference that those were passed on 14.07.2020. Even those emailed copies of the assessment orders were not accompanied by the content of the assessment.

- Therefore, the Hon'ble High Court concluded that the assessment orders could not have been passed on 20.03.2020 or on any date prior to 31.03.2020. Those were passed beyond the limitation period of 31.03.2020 and thus are non-est in the eye of law. Accordingly, the assessment orders and the demand notices were set-aside and quashed.

[We are thankful to CA Parind Mehta for preparing gist of above judgement. The judgement runs into 38 pages & hence same is not reported here. Readers are requested to visit BHC site for full text of judgement]


Association News

Pravin Shinde & Mahesh Madkholkar,
Hon. Jt. Secretaries

I. Admission of New Members to the GSTPAM

The 11th Managing Committee Meeting for the year 2020-21 was held on Zoom Platform on 22nd May, 2021 and the following persons were admitted as the members of the Association:

A	LIFE OUTSTATION MEMBER	GSTPAM NO
	Popat Atul	LMP00035
B	**ORDINARY OUTSTATION MEMBERS**	**GSTPAM NO**
	Tilve Anil Vasant	OOT00119
	Chavan Anurudra Ramkrishan	OOC00136
	Nalawala Burhan Asgarbhai	OON00103
	Zahoor Hakim	OOZ00013
	Kasar Hemchandra Chandrakant	OOK00418
	Maldar Jabak Nazir	OOM00284
	Shrivastava Manish Sumnesh	OOS00568
	Shah Neel Dipak	OOS00569
	Salve Sandeep Sahebrao	OOS00570
	More Sayali Sunil	OOM00285
	Gandhi Siddhant Tushar	OOG00267
	S Sundar	OOS00571
	Phadke Tanmay	OOP00357
C	**ORDINARY LOCAL MEMBERS**	**GSTPAM NO**
	Ghedia Daivesh Mahesh	OG00268
	Diyora Ketan Babulal	OD00945
	Khatri Nilesh Sureshbhai	OK00362
	Mehta Parag Girish	OM00412
	Taral Vineet Madhukar	OT00144

II. Past Events

1. Intensive Study Course

Sr. no.	Date	Day	TIME	Topic	Faculty
1	24th April, 2021	Saturday	4.00 pm TO 7.00 pm	Valuation of Supply under GST	Group Leader : CA Aditya Surte
					Monitor : CA Deepak Thakkar
2	1st May, 2021	Saturday	4.00 pm TO 7.00 pm	Issues in RCM, TDS, TCS	Group Leader : CA Raj Khona
					Monitor : CA Mandar Telang

2. "Refund Workshop"

GSTPAM, AIFTP(WZ), BCAS, CTC, MCTC & WIRC had Jointly Organised Refund Workshop

Sr. No.	Date	Day	Time	Topic	Speaker
1	6th May, 2021	Thursday	4.00 PM to 6.00 PM	Refund of Zero Rate Supply - (Part 1)	CA Jignesh Kansara
2	7th May, 2021	Friday	4.00 PM to 6.00 PM	Refund of Zero Rate Supply - (Part 2)	CA Jignesh Kansara
3	10th May, 2021	Monday	4.00 PM to 6.00 PM	Refund under Inverted Duty	Adv. Rahul Thakkar
4	12th May, 2021	Wednesday	4.00 PM to 6.00 PM	All other Refunds under GST	CA Mandar Telang
5	14th May, 2021	Friday	4.00 PM to 6.00 PM	Remission of Duties and Taxes on Export Products (RODTEP)	Adv. Rohit Jain

3. Mock Tribunal under J H Baheti Fund :

On 8th May, 2021 Mock Tribunal was held and Smt. Sujata Rangnekar, Shri Deepak Thakkar and Shri Dhaval Talati acted as Tribunal members / Judges of the Mock Tribunal.

Following Participants participated in the Mock Tribunal which was divided into 4 Groups and 4 cases.

Case No	Appeallant	Respondent	Mentor	Case Name
1	Shri. Chetan Gala	Shri. Ramesh Arote	Adv. Dinesh Tambde	Intex E-way Bill
2	Shri. R. Subramanian	Miss. Rachita Shetty	Adv. Monarch Bhatt	Refund Rejection
3	Miss. Sneha Tekwani	Miss. Neha Chaudhari	Adv. Dinesh Tambde	ABC & Co.
4	Miss. Sakshi Mohite	Shri. R. Subramanian	Adv. Monarch Bhatt	Interest Availment

4. Certificate Course on GST

Smt. Mithibai Motiram Kundnani College of Commerce & Economics in association with The Goods & Services Tax Practitioners' Association of Maharashtra announces Certificate Course on GST.

DATE	DAY	TOPICS	TIME	SPEAKERS
14th May, 2021	Friday	Overview of GST (Basic Concept)	2.30pm to 4.00 pm	Adv. Dinesh Tambde
		Important Definitions under GST	4.00 pm to 5.30 pm	CA Hiral Shah
17th May 2021	Monday	Threshold Exemptions + Registration under GST Act	2.30pm to 4.00 pm	CA Viral Chheda
		Levy and Scope of Supply (including Exemptions under GST)	4.00 pm to 5.30 pm	Adv. Parth Badheka
19th May 2021	Wednesday	Time of Supply under GST	2.30 pm to 4.00 pm	Adv. Monarch Bhatt
		Value of Supply under GST	4.00 pm to 5.30 pm	Shri Pratik Satyug
21st May 2021	Friday	Place of Supply of Goods under GST	2.30 pm to 4.00 pm	CA Deepali Mehta
		Place of Supply of Services under GST	4.00 pm to 5.30 pm	CA Avinash Lalwani

5. 11th Study Circle Meeting

Sr. no.	DATE	DAY	TIME	TOPIC	FACULTIES
1.	15th May, 2021	Saturday	11.00 am to 1.00 pm	Recent Important AAAR and AAR rulings under the GST Regime	Adv. C.B. Thakar, Speaker

III. Future Event

1. GSTPAM Webinar jointly with Maharashtra National Law University

Sr. no.	DATE	DAY	TIME	TOPIC	FACULTIES
1.	25.05.2021	Tuesday	11.00 am to 12.30 pm	Inspection, Seizure and Arrest along with penal provisions under GST	Adv. Dinesh M. Tambde, Speaker

2. Virtual Workshop on GST in MARATHI Jointly with AIFTP(WZ), Marathwada Regional Association, NMTPA, VTPA & WMTPA

Date	Time	Topic	Speaker
26.05.2021 Wednesday	4.00 PM to 6.00 PM	Levy and Scope of Supply (including Exemptions under GST) + Threshold Exemptions + Registration under GST Act	CA Unmesh Patwardhan
27.05.2021 Thursday	4.00 PM to 6.00 PM	TDS / TCS & E-Commerce +Composition Levy + Reverse Charge Mechanism under GST	CA Aditya Seema Pradeep
28.05.2021 Friday	4.00 PM to 6.00 PM	ITC	CA Aditya Surte
29.05.2021 Saturday	4.00 PM to 6.00 PM	Type of Invoices, Credit / Debit Notes E-Way Bill and Maintenance of Accounts under GST	CA Chetan Bumb
31.05.2021 Monday	4.00 PM to 6.00 PM	Assessments & Penalties/ Demands & Recovery under GST	Adv. Amol Mane

3. Intensive Study Course

Schedule from 24.04.2021 TO 11-06-2021:

Sr. no.	Date	Day	TIME	Topic
1	22nd May, 2021	Saturday	4.00 pm TO 7.00 pm	Issues in Place of Supply under GST
2	29th May, 2021	Saturday	4.00 pm TO 7.00 pm	Issue in Logistics Industry
3	11th June, 2021	Friday	4.00 pm TO 7.00 pm	Issues in Refund under GST
4	12th June, 2021	Saturday	4.00 pm TO 7.00 pm	Issues in Time of Supply under GST
5	19th June, 2021	Saturday	4.00 pm TO 7.00 pm	Discussion on Important Judgments and AAR under GST

4. Certificate Course on GST

Smt. Mithibai Motiram Kundnani College of Commerce & Economics in association with The Goods & Services Tax Practitioners' Association of Maharashtra announces Certificate Course on GST.

DATE	DAY	TOPICS	TIME
24th May 2021	Monday	Composite and Mixed Supply	2.30 pm to 4.00 pm
		TDS / TCS & E-COMMERCE +COMPOSITION LEVY	4.00 pm to 5.30 pm
26th May 2021	Wednesday	Reverse Charge MECHANISM under GST	2.30 pm to 4.00 pm
		ITC and Refund under GST	4.00 pm to 5.30 pm
28th May 2021	Friday	Imports under GST	2.30 pm to 4.00 pm
		Exports & Supply to SEZ under GST	4.00 pm to 5.30 pm

DATE	DAY	TOPICS	TIME
31st May 2021	Monday	Type of Invoices, Credit / Debit Notes and Maintenance of Accounts under GST	2.30 pm to 4.00 pm
		E-Way Bill	4.00 pm to 5.30 pm
2nd June 2021	Wednesday	Returns and Payment of Taxes under GST (New and Old Returns)	2.30 pm to 4.00 pm
		Recent Amendments under GST	4.00 pm to 5.30 pm
4th June 2021	Friday	Annual Return	2.30 pm to 4.00 pm
		Audit under GST	4.00 pm to 5.30 pm
7th June 2021	Monday	Assessments & Penalties/ Demand & Recovery under GST	2.30 pm to 4.00 pm
		Appeals & AAR	4.00 pm to 5.30 pm
9th June 2021	Wednesday	Overview of Profession Tax & OTPT Scheme	2.30 pm to 4.00 pm
		Overview of GST Website	4.00 pm to 5.30 pm
12th June 2021	Saturday	Finalisation of Accounts under GST	2.30 pm to 4.00 pm

5. 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 ₹ 2450 + 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.

6. 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 Bankbranches 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 May 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 Referencers at Concessional rate of ₹ 650/- on or before 31/05/2021 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

INVITATION OF NOMINATIONS

Election Committee

Chief Election Officer	*Members*		
Shri J. D. Rawal	Shri I. A. Shah	Shri Ashvin A. Acharya	Shri Chirag S. Parekh
	Shri R. J. Gandhi	Shri Mayur R. Parekh	Shri Pravin R. Shah

(For the posts of office Bearers and Members of the Managing Committee for the year 2021-2022)

Pursuant to the appointment made by the Managing Committee as provided in Article 17(1) of the Constitution of the Association and in exercise of the powers conferred by Article 17(2), Nominations are hereby invited from the members of the Association, eligible to contest as per Article 17(3) of the Constitution, for the following posts for the year 2021-22:

(1) One President

(2) One Vice-President

(3) One Hon. Treasurer

(4) Two Hon.Jt. Secretaries

(5) Fifteen members of the Managing Committee

(1) Due to lockdown condition prevailing in the Maharashtra State on account of Covid-19 virus and as the situation is worsening day by day, the nomination Forms for the above posts can only be downloaded from the GSTPAM's official website at www.gstpam.org and no physical Form would be available from the Association's Office or at the Mazgaon Association's Library till lockdown condition prevailing in the State of Maharashtra.

(2) As per article 17(2) of the Constitution, the last date of submission of duly filled up and signed nomination Forms is 16.06.2021 up to 5 p.m. Due to lockdown condition Nomination Form could be submitted through an e-mail of the candidate to the specially created e-mail ID of the Association for the purpose of the election i.e. at: **gstpam.election@gmail.com**. The procedure of how to submit the Nomination Form is prescribed at point No. (14) of this circular.

However, those who wish to submit the nomination Forms physically, provided the travel and entry in the premises is permitted by the Maharashtra Government / Local Authorities, then they can submit the same up to 16.06.2021 up to 5.00 p.m. at room No. 104, Mazgaon Library at GST Bhavan, Mazgaon or at the Association's Office at Office: 8 & 9, Mazgaon Tower, 21, Mhatar Pakhadi Road, Mazgaon, Mumbai – 400 010.

(3) Any member of the Association who is not in arrears of fees and whose delay in payment of fees has been condoned by the Managing Committee on or before the date of filing of his/ her nomination Form, shall be eligible to file the nomination, subject to the provision of Article 17(3) of the Constitution which is reproduced herein below at point No. (13).

(4) The nomination should be proposed by one member and seconded by another member of the Association (other than the members of the Election Committee), who are not in arrears of fees and whose delay, if any, in payment of fees has been condoned by the Managing Committee on or before the date of filing of such nomination Form, as per provision of Article 17 (4) of the Constitution. The further procedure for the same is explained in point No. (14) of this circular.

(5) No member shall contest for more than one post as per Article 17(5) of the Constitution.

(6) As per Article 17(6) of the Constitution, a contestant shall be entitled to withdraw his/her nomination if he / she so wishes on or before19.06.2021up to 5.00 p.m. Due to lockdown condition Intimation of withdrawal Form may be done though the candidate's e-mail ID which he / she had provided in his / her Nomination Form to the Association's newly created ID for the purpose of election i.e. **gstpam.election@gmail.com.**

However, if any candidate wishes to withdraw his / her nomination Form by submitting it physically he / she can do so by submitting the same at Mazgaon Libray or at Association's Office at the address herein mentioned before by 19.06.2021 up to 5.00 P.M. Please note that Physical nomination form shall be accepted at the Mazgaon Library only up to 18.06.2021 and thereafter on 19.06.2021 the withdrawal Form shall be accepted only at Association's Office up to 5.00 p.m. Provided, if it is permitted by the State Government and Local Authorities to travel and entry in the respective buildings at such time.

(7) Election will be conducted as per Article 17 of the Constitution. Attention of the candidates is invited to Clause 15A inserted in Article 17, whereby a contestant, who desires recounting, shall ask in writing for recounting of votes within 15 minutes from the time of declaration of election results by the Chief Election Officer.

(8) Election at Mumbai shall be conducted between 11.00 a.m. and 5.00 p.m. on Friday, 16.07.2021 at the GSTPAM, Mazgaon Library Hall, Mazgaon, Mumbai-400 010.

(9) Election at District places shall take place on Monday, 12.07.2020 as per schedule given here in below.

(10) Nominations Forms Proposed/Seconded by any Member of the Election Committee Shall be rendered as invalid.

(11) To find out the feasibility of holding of an election, if any, and holding of an AGM in wake of lockdown declared in the Maharashtra State,a meeting of the Election Committee would be convened on 19.06.2021 after 5.00 p.m. and an interim report would be submitted to the Managing Committee of GSTPAM and the decision for holding the election / AGM on the prescribed date would be reviewed by the Managing Committee. If the circumstances so warrant due to spread of Covid-19 virus and resultant lockdown, the holding of election, if any, and AGM would be postponed considering the position of corona virus different zones declared by the Maharashtra Government / Local authorities, like green, yellow, red and containment area of Maharashtra State, social distancing rules, availability of public transport etc. prevailing at that time, and the decision of postponement and / or decision of change of place of Election Centers / AGM, if

taken,would be informed to all the members through a separate circular by the Managing committee.

However, if in the above meeting held after the report of the Election Committee of 19.06.2021, if it is found that the election, if any, and AGM is feasible to hold on the dates mentioned in this circular then no further notice / circular would be issued and this notice/ circular issued would be final.

(13) **ELECTION RULES:**

Article 17 (3):Any member of the Association who is not in arrears of annual membership fees and/or of Additional Membership Fees of the Association on the date of filing of nomination and whose delay in paying such fee is condoned by the Managing Committee on or before the date of filing of nomination shall be eligible to file nomination for a post of the office bearer or a member of the managing committee.

Provided that a Member of the Association shall be eligible to file the Nomination Form for following posts subject to the fulfilment of the criteria mentioned against each post in the Table given herein below:

Post	Eligibility Criteria for filing the Nomination Form
Managing Committee Member	Eligible only if the Applicant has been a Member of the Association for at least two consecutive years (24 months from the date of admission) on the date of filing Nomination Form.
Hon. Jt. Secretary or Hon. Treasurer	Eligible only if the Applicant has been a Member of the Managing Committee for a period of at least two years.
Vice-President	Eligible only if the Applicant has held the position as an Office Bearer of the Association for a period of at least two years.
President	Eligible only if the Applicant has held the position as an Office Bearer of the Association for a period of at least two years.

(14) Procedure to submit Election Nomination Form:

Subject to Note No. (2) and (4) of this circular and, in the wake of lockdown, the nomination Form may be filled up and signed by the contestant, scan the same and then send it through an e-mail to the proposer for his / her signature. The proposer will then sign that scanned Form. The proposer shall then send the scanned copy of the Form with his / her signature on the Form to the contestant. The contestant, then similarly can send the same Form which he has received from the proposer with the signature of the contestant and proposer to the person who seconds it for his / her signature. The person who seconds it then signs the scanned Form so received and sends the scanned copy of the same Form back to the contestant and the contestant then finally sends this duly completed nomination Form to the Association through his / here-mail which is mentioned in his / her nomination Form by the prescribed date and time as mention in para (2) of this circular to the newly created e-mail ID of the Association for the purpose of the election i.e. at: gstpam.election@gmail.com.

If due to paucity of time or any such other reason if it is not feasible to take signature of the proposer and who seconds it on the same nomination Form in that event the contestant should fill up the complete nomination Form including the mentioning the names and e-mail IDs of the proposer and the person who is going to second it (without the signature of the proposer and the person who seconds it) and fill up such other details and the contestant shall sign himself / herself on the nomination Form and mail it from his / her e-mail ID to gstpam.election@gmail.com and send it as c.c. to the proposer and who seconds it.

The proposer and the person who seconds it in turn then shall forward the mail received from the contestant to the Election Committee at gstpam.election@gmail.com from their respective E-mail IDs which is mentioned in the Election Nomination form by the Candidate and they should mention clearly that I hereby propose / second Mr. /Ms. (the name of the contestant) for the post of so and so for the ensuing election of the GSTPAM for the year 2021-22. And, the person proposing and seconding the contestant should also mention their contact number. Needless to mention that all these three mails should reach to the Election Committee by the prescribed date and time as mentioned in point No. (2) of this circular.

(15) **Outstation Election Centers: (dtd. 12.07.2021)**

Sr. No.	Election Centre at Outstation Place-as per Article 17A	Time
1.	Nagpur	01.00 P.M. to 04.00 P.M.
2.	Solapur, Nashik, Pune, Thane and Aurangabad	02.00 P.M. to 05.00 P.M.
3.	Kolhapur	10.00 A.M. to 01.00 P.M.
4.	Dhule	10.00 A.M. to 01.00 P.M.
5.	Jalgaon	03.00 P.M. to 06.00 P.M.

Note: The list of the above outstation election centers is based on the data available with the Association on the date of Notice, the same can change if updated data is made available to the election committee.

For and on behalf of the Election Committee-GSTPAM

Place: Mumbai – 400 010 J. D. Rawal

Dated : 19th April, 2021. Chief Election Officer

70th Annual General Meeting

NOTICE TO MEMBERS

NOTICE is hereby given to all the members of the Association that the **70th ANNUAL GENERAL MEETING** of the Association will be held on **Friday, 16th July, 2021 at 5.00 p.m.** at the GSTPAM Association Library Hall, Room. No. 104, 1st Floor, GST Bhavan, Mazgaon, Mumbai–400010, to consider the following agenda:—

AGENDA

1. To read and confirm the minutes of the last Annual General Meeting held on 17th July, 2020.
2. To receive and adopt the Audited Statement of Accounts of the Association, 'Sales Tax /GST Review' and 'Books and Bulletin' for the year ended **31.03.2021** and the Balance Sheet as on that date and to receive and adopt the Annual Report of the Managing Committee for the year 2020-21 (A copy of the report and accounts would be sent separately)
3. To appoint an Auditor for the year ending **31.03.2022** and fix his honorarium.
4. To receive the report of the Chief Election Officer and declare the result of the Election.
5. To transact any other business that may be brought with the permission of the Chair.

Place: Mumbai

Dated: 19.04.2021

Pravin V. Shinde
Mahesh Madkholkar
Hon.Jt. Secretaries

Notes:

1) In case, if there is any change the same would be communicated to all the members.

2) As per Article 13 of the Constitution of the GSTPAM, if the required quorum i.e. 40 members present in person is not there, the meeting shall stand adjourned and the adjourned meeting shall be held after lapse of half an hour from the appointed time at the same venue only to consider the items on the agenda circulated in the notice convening the meeting. Such adjourned meeting shall be deemed to be valid meeting with the members present forming the quorum and no other business than the one circulated shall be transacted at such adjourned meeting.

3) Any member desiring to seek any information on the Accounts may do so at least 3 days in advance in writing so as to enable the committee to reply to the same to the satisfaction of the member concerned.

4) Resolution : Any member desiring to move any resolution, other than alterations in the Articles of the Constitution of The Goods & Services Tax Practitioners' Association of Maharashtra, in the General Meeting, should send the same duly proposed by a member and seconded by another member so as to reach the office of Association, latest by 24th June, 2021.

Prize Distribution to the Children of the Members of our Association who have obtained Highest Percentage For the Academic Year 2020-21

To recognize bright students of members some prizes have been instituted by our association out of specific funds received from our members.

The following cash prizes are to be awarded to the children of the members of our association who have obtained highest percentage of marks at the following subject or examinations held in the academic year 2020-21

1. POURANA MEMORIAL PRIZE

(For securing the highest percentage of marks at the B.Com. Examination)

2. GALA & GALA PRIZE

(For securing the highest percentage of marks in paper of Accountancy paper at the B.Com. Examination)

3. SHRI VADILAL C. SHAH PRIZE

(For securing highest percentage of marks at the H. S. C. Examination)

4. M/S. CHHAJED & DOSHI PRIZE

(For securing highest percentage of marks at the S.S.C. Examination.)

5. LATE SMT. BHANUBEN H. VORA PRIZE

(For securing highest percentage of marks at the M.Com. Examination)

6. MR. BHARAT D. VASANI PRIZE

(For passing C.A. Final Exam)

The members are therefore requested to send the Scan copies of the Mark sheet stating the percentage of marks obtained by their children at the Examination or subject as stated above on or before 10th July, 2021 on following email ID office@gstpam.org

OBITUARY

We deeply mourn the sad demise of our Member Shri. Kamlesh Kothari on 1st May, 2021. Heartfelt condolences to his family members and we pray that the departed soul rest in eternal peace.

GST Digest

Dinesh Tambde,
Advocate

6 Limitation period for filing appeal under GST

Limitation period for filing appeal shall start only after order against which appeal is to be filed is uploaded on the GSTN Portal.

The petitioner had prayed to issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof for quashing the order passed by the respondent that it erroneously rejected the appeal filed by the petitioner on the ground of being beyond limitation period in violation of section 107 of the CGST Act read with rule 108 of the CGST Rules and remand the matter to the adjudicating authority to decide the matter on merits of the case.

The petitioner was an undertaking of Government of Gujarat, was engaged in transportation of gas through pipeline. It claimed refund of IGST amounting to Rs. 2.66 crores paid on supplies made to Special Economic Zone (SEZ). The Adjudicating Authority (AA) issued order sanctioning refund of Rs. 2.24 crores and refund of Rs. 41 lacs was held to be inadmissible. The AA handed over physical copy of adjudication order to the petitioner. Thereafter the petitioner at various occasions approached AA for uploading of order on GST portal but it was not uploaded due to technical glitches.

The petitioner without receiving electronic order filed appeal manually before Appellate Authority against refund order. The appeal filed by petitioner was rejected on ground of appeal being time barred. It filed writ petition seeking relief against the same.

The Hon'ble High Court observed that appeal is required to be filed in electronic mode only and if any other mode is to be prescribed then the same is required to be notified by way of a notification. No notification has been issued for manual filing of an appeal. In such circumstances, the time period to file appeal would start only when the order is uploaded on the GST portal. Without the order being uploaded, the petitioner could not file the appeal. Therefore, it was held that merely because the petitioner filed the appeal manually after exhausting all the efforts to ensure filing of the appeal in proper and legal manner, the order rejecting such appeal on the ground of limitation was not sustainable. The order passed by the appellate authority was liable to be quashed and set aside by condoning the delay in filing of the appeal.

Gujarat State Petronet Ltd. vs. Union of India GUJARAT HIGH COURT R/Special Civil Application No. 15607 OF 2019 Dated 5th March, 2020 [2021] 124 taxmann.com 98 (Gujarat)

7 Search and Seazure under GST

No recovery to be made at the time of search.

The Hon'ble Gujarat High Court directed the Central Board of Indirect Taxes and Customs (CBIC) and Chief Commissioner of Central/ State Tax to issue following guidelines by way of suitable circular/instructions:

1. No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.

2. Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/ advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

3. Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.

4. If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer.

Bhumi Associate vs. Union of India R/Special Civil Application Nos. 2426, 2515, 2618 & 3196 of 2021 Dated 16th February, 2021 [2021] 124 taxmann.com 429 (Gujara High Court).

8 Arrest and bail for offences under GST Law

CGST Act is primarily for collection of revenue and arrest is incidental to achieve said objective and the arrest is subject to provisions of the Code of Criminal Procedure, 1973.

Reason to believe not only include recording of reasons that a person has committed offence as specified, but also that as to why the person needs to be arrested.

Petitioner was before the court challenging validity of section 132(1)(b) [i.e. punishment for issuance of invoice without supply] and (c) [i.e. punishment availing ITC w.r.t. invoices without supply] of the CGST Act with declaration that the same is unconstitutional and further for declaration that exercise of power under Section 69 [i.e. Power of arrest] of the CST Act would be only upon determination of liability and that petitioner's arrest is illegal and in violation of section 69 and its spirit as well as is contrary to judgments of Hon'ble Supreme Court of India and Hon'ble High Court and sought his enlargement on bail.

Search and seizure had been carried out on its premises in October, 2020. Summons had been issued to petitioner to attend office of respondent no. 2 – Superintendent (Anti Evasion), CGST on 19.10.2020. Since the petitioner had been out of town, accountant of petitioner had been to respondent no. 2. He had furnished solicited information about it's Directors, office location etc.. Two emails had also been issued providing details viz. tally and ledgers etc.

The petitioner had attended all the dates except one while he had undergone angioplasty. On 23.03.2021, he was arrested. On the next date, he was produced before the Magistrate, Belapur seeking remand. On the very day, the petitioner had filed an application for bail. In the remand application by respondents before the Magistrate, several

allegations were made against petitioner, inter alia, that he had not deposited with the government tax collected to the tune of ₹ 6,30,00,000/- referring to its corroboration from the representative of Axis Bank. Input Tax Credit ('ITC') had been availed of to the tune of ₹ 2 Crores without receipt of goods and services. There have been transactions and supplies by petitioner suppressing the same from the department. Vehicle registration numbers declared in purchase invoices and e-way bills pertaining to supplies to certain concerns were found to be fictitious and non-existent and the petitioner had been dodgy and evasive and had been giving false information. There was alleged to be tax evasion to the tune of ₹ 9.90 Crores and further it was alleged that the petitioner being aware of the same, had pleaded ignorance despite him being sole decision maker.

It was the contention of the petitioner that, the allegations in the remand application were without any details as to the invoices, alleged illegally availing ITC, details of calculations of GST liabilities. The petitioner was remanded to judicial custody until 07/04/2021. While the petitioner was in judicial custody, the statement of petitioner had been recorded an the Magistrate had rejected the bail application of the petitioner. The petitioner had been produced before the Magistrate and his remand had been extended and petitioner continued to be in judicial custody.

Before the Hon'ble Bombay High Court, the petitioner contended that it is well-settled that a bail would normally not be refused unless there is some evidence warranting that a bail would not secure presence of convicts on judgment or if there is likelihood of interfering with witnesses for prosecution or would be polluting the process of justice. Petitioner had all along being cooperative right from the day of search and seizure and had always responded to and appeared as and when summoned. The petitioner had bona fide deposited a sum of ₹ 45 Lakhs without accepting the liability. It was submitted that the magistrate had not appreciated the purport of decision of Hon'ble Bombay High Court in the case of *Daulat Samirmal Mehta vs. Union of India*, in Civil Writ Petition No.471 of 2020, decided on 15/02/2021,wherein, based on Hon'ble Supreme Court judgments, it had been observed that, bail and not jail is the rule in the cases not involving heinous offences like rape, murder, terrorism etc. and that the case against the petitioner was not even at pre-trial stage where there had been no formal accusation in any form viz. FIR / complaint. It is submitted that the ratio in case of Daulat (supra) squarely applies to the present matter. It was further submitted that search and seizure had been carried out and alleged fake invoices, balance-sheets, ledgers etc. have already been taken in possession for conducting further investigation and as such, custody of petitioner would not be required.

It was further submitted that there was no rationale and intelligible nexus between 'reasons to believe' that petitioner has committed alleged offence and the arrest and as to his custody. There was no material placed on record in support of reasons to believe against the petitioner. It was contended that reasons to believe must be recorded in writing with application of mind by the commissioner. The decision of Hon'ble Delhi High Court in *Makemytrip (India) Private Limited vs. Union of India, 2016 (44) STR 481* was pressed into service to emphasize that a decision to arrest must not be taken on whimsical grounds and reasons must be based on credible material. It was further referred to even reasons to believe and its depiction was not a formality, it should be coupled with need to arrest.

Section 138 had been referred to contend that offences under CGST Act are compoundable and thus arrest of petitioner was absolutely unnecessary. The object of purpose of CGST Act basically was to levy, secure and recover tax and its purpose was economic

and was not to penalize a person. Collection of revenue being the central objective, the arrest was incidental to achieve the said purpose. Referring to section 138(3), it had been contended that the same prohibits further proceedings against the accused in respect of same offence and any criminal proceedings initiated would stand abated.

Hon'ble High Court observed that, the recording of 'reasons to believe' by the Commissioner that a person has committed offence and is required to be arrested is sine qua non for exercising the powers. It had also been observed that not only recording of reasons would be that a person has committed offence as specified, but also that as to why the person needs to be arrested, the court highlighted that CGST Act is primarily for collection of revenue and arrest is incidental to achieve said objective and the arrest is subject to provisions of the Code of Criminal Procedure, 1973, containing sections 41 and 41A. The court found that if the amount of tax evaded or ITC wrongly availed or utilized or amount of refund wrongly taken exceeds ₹ 5 Crores, then the sentence was imprisonment for a term which may extend to 5 years and all other sentences are below 5 years. While maximum sentence that can be imposed for commission of offence under section 132(1)(b) and (c) is 5 years with fine, then having regard to the case of Arnesh Kumar (supra).

The Hon'ble Court, having regard to factual position that the petitioners therein had responded to the summons and attended the dates, in the circumstances found that there could not have been justification to arrest the petitioner. Apart from that the court also found that there had not been any evidence about petitioner's tampering with the documents or trying to influence the witnesses, observing that mere allegation was not sufficient. The Hon'ble court also went on to consider section 167 and had considered that under said provision a person could not be kept in detention beyond a total period of 60 days where investigation related to offence punishable with imprisonment for a term not less than 10 years and that the Magistrate is authorized to detain beyond 15 days period if satisfied that the grounds were made out. However, he would not be able to authorize detention for a total period exceeding 60 days.

Mr. Krishna Murari Singh vs union of india & ors. Writ Petition (STAMP) NO. 9767 of 2021 dated 06/03/2021 (Bombay High Court)

9 Refund under GST Laws

Refund application cannot be rejected without proper opportunity of hearing.

The petitioner submitted a refund claim of excess tax paid and State Tax Officer issued a show cause notice calling upon petitioner to show cause as to why his refund claim to extent of amount claimed should not be rejected or amount erroneously refunded should not be recovered. The ground for issuing show cause notice was that claim for refund was belated having been filed after expiry of two years from relevant date.

The petitioner replied to the show cause notice and explained the delay. It relied upon Notification No. 35/2020-Central Tax dated 3-4-2020 and Notification No. 55/2020-Central Tax dated 27-6-2020, whereby due to outbreak of corona virus pandemic, time limit/due date for various compliances had been extended. The explanation on delay by the petitioner in light of the aforesaid Notifications of was accepted and accordingly, the application of the petitioner for refund was processed by the officer and refund was rejected. The petitioner filed writ petition against the same.

The Honorable High Court observed that any order passed by the adjudicating authority including an order passed under section 54 of the Act read with Rule 92 of the Rules of 2017 is appealable before the appellate authority and

the appellate authority is empowered to make such further enquiry. However, the petitioner, who was entitled to hearing before passing of the rejection order in terms of proviso to Rule 92(3) of the Rules of 2017, was denied such opportunity. Therefore, the order was fundamentally flawed and such order, which was passed in violation of the principles of natural justice and was violative of Article 14 of the Constitution of India, was amenable to challenge by way of writ petition under Article 226 of the Constitution of India.

It was also observed that the Madras High Court in the case *R. Ramadas vs. Joint Commissioner of C.Ex., Puducherry 2021 (44) G.S.T.L. 258 (Mad.)* held:

"The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are (sick) required to address such objections raised. This is the basis of the fundamental Principles of Natural Justice. In cases where the consequential demand traverses beyond the scope of the show cause notice, it would be deemed that no show cause notice has been given for that particular demand for which a proposal has not been made."

Therefore, relying upon the said decision, it was held that order was liable to be quashed and directed to remand the case back for passing order afresh after putting the petitioner to proper show cause notice and after affording him a reasonable opportunity of being heard.

Navneet R. Jhanwar vs. State Tax Officer WP(C) No. 443 of 2021 dated 17th March, 2021 (High Court of Jammu & Kashmir)

10 Recovery under GST Laws

DRC-01 cannot be issued for recovery of the amount towards interest on delayed of tax.

The petitioner was served Form DRC-01 by the proper officer for recovery of interest on delayed payment of tax. It filed writ petition against the proceeding. It challenged the proceedings on the ground that Form GST DRC 01 can't be issued for recovery of interest and it was without authority of law and liable to be quashed. It was also submitted that order or direction holding the interest on delayed payment of tax to be charged on gross liability was ultra vires and demand was wrongly raised.

The Honorable High Court observed that amendment has been proposed in Section 50 of the CGST Act, 2017 and it was clear that interest under section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability. In such circumstances, the demand raised by the respondent was not in accordance with law. Moreover, as per GST provisions, Form GST DRC 01 can be served by the proper officer along with the notice issued under section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130. There was reference of any notice under section 50 so far as Rule 142(1) (a) of the CGST Rules is concerned. In such circumstances, DRC 01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax. As per Rule 142(5) of CGST Rules, the notice for recovery of interest should have been issued in Form GST DRC 07 for recovery of interest. Therefore, it was held that Form GST DRC 01 was issued without any authority of law and liable to be set aside.

Rajkamal Builder Infrastructure (P.) Ltd. vs. Union of India R/Special Civil Application No. 21534 of 2019 dated 23rd March, 2021 [Gujarat High Court]

11 Cancellation of Registration

Reason that registration would not be revived since the petitioner has incorrectly availed of

ITC held to be not as per the provisions of law and would be putting the cart before the horse. In fact, it is seen that the petitioner had filed monthly returns as well as annual returns for the impugned periods and had also remitted late fee for filing of belated returns. Thus, and these being the only conditions that are to be satisfied by the petitioner for grant of revocation of registration, the cancellation of the registration in present case was held incorrect and improper. And Hence, Petition was allowed.

A show cause notice was issued to the petitioner by the first respondent assessing officer calling upon the petitioner to show cause why the registration not be cancelled, since the petitioner had not filed returns for a continuous period of six months. The non-filing of the returns was admitted. Thereafter, the registration came to be cancelled. The petitioner applied for revocation of the order of cancellation after filing all returns but, referring to outstanding interest and for allegedly wrongful claim of ITC, the application for revocation of order of cancellation was rejected. The petitioner filed appeal before the first appellate authority who issued the deficiency memo and refused to admit the appeal for same reason. The Petitioner challenged the said deficiency memo in present writ petition.

Hon'ble High Court observed that, the contention of the respondents herein that the revival of registration is conditional upon the petitioner satisfying tax dues and substantiating its claim of ITC, was misconceived. What was sought for by the petitioner was revocation/ revival of registration only, and in the guise of considering the application for revocation, the authorities cannot embark upon the process of assessment. An assessment would have to be made by the authority in terms of Section 73 or other applicable provision after following the procedure set out therein, and it is only in the course thereof that the officer may consider and decide questions of leviability of tax and claim of input tax credit.

Thus it was observed that, to state that registration will not be revived since the petitioner has incorrectly availed of ITC would be putting the cart before the horse. In fact, it was seen that the petitioner had filed monthly returns as well as annual returns for the impugned periods and had also remitted late fee for filing of belated returns. Thus, and those being the only conditions that were to be satisfied by the petitioner for grant of revocation of registration, the Hon'ble High Court was of the view that the cancellation of the registration in the present case was incorrect and improper. Hence the petition was allowed.

Makrishnan Mahalingam Versus State Tax Officer (circle), Goods And Service Tax Officer, Kotagiri., Deputy Commissioner (ST) W.P. No.15081 of 2020 And WMP.Nos.18799, 18801 & 18797 of 2020, Date 30th April, 2021 [Madras High Court]

12 Arrest and bail for offences under GST Law

Accused released on bail in the circumstances that custodial interrogation was not required, there was no previous involvement in similar offence which implied that he was not habitual offender and he was not at flight risk.

In the present case of bail application before the Hon'ble Patiala House Court, the reply was filed by the State which itself it mentioned that accused has admitted of causing loss to the tune of ₹ 7-8 crores to the exchequer and accused was in custody since more than 15 days. The Hon'ble Court observed that, to decide as to whether or not

admit accused on bail the following parameters as held by Hon'ble Supreme Court of India have to be measured/have to be assessed.

While deciding the application of bail, it has been held by Hon'ble Supreme Court of India in the case *State of UP vs. Amar Mani Tripathi (2005) 8 SCC 21* :

"18. It is well settled that the matters to be considered in an application for bail are

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the charge;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being tampered with; and

(viii) danger, of course, of justice being thwarted by grant of bail …"

The fact that accused was straightaway sent to judicial custody was prima facie indicative of the fact that accused was not required for custodial interrogation. Further, no previous involvement of accused in any similar offence had been brought on record which implied that it was his first offence and he was not a habitual offender. It was also to be seen that accused was not at a flight risk and no submissions had been made to that effect. It had been argued on behalf of respondent department that investigation was still pending and the argument of applicant/accused that complaint should not be filed within stipulated time was speculative at best. It was correct that it could not be decided or presumed at that stage that complaint shall or shall not be filed in the stipulated time. However, still it was to be seen that whether or not there was any requirement of accused for investigation as well as whether or not releasing the accused on bail might hamper the investigation. It had been argued on behalf of respondent department that, brother of accused was not responding to the process issued by the department and was at large. First, in the reply, voluntary statement of applicant/accused had been relied upon, wherein it was mentioned that applicant/accused had admitted that although his brother was shown as owner of the firm but the entire violation was made by him and his brother had nothing to do with this. Besides that, keeping the accused behind bar would not help the investigating agency in ensuring that other accused responds to the process and cannot be a reason for holding a person behind bar without establishing a direct nexus/any material on record to show any connivance/assistance by the said accused. Therefore, keeping in view the totality of circumstances, the period of incarceration and the fact that accused is not required for any further custodial interrogation, which is otherwise also not possible as 15 days since arrest of accused had already passed, as well as no report of any previous involvement, accused was admitted in bail on his furnishing personal bond in the sum of ₹ 1,00,000/- (Rupees One Lakh only), with one surety of equal amount, subject to following terms :

"1. That accused shall not leave the country without permission of the court and shall also submit his passport in court as and when the physical hearing is permitted by Hon'ble High Court of Delhi.

2. That accused shall appear before investigating agency as and when required and will also co-operate in investigation.

3. That he shall attend the hearing in compliance of this order and bail bonds so executed.

4. *That he shall not commit offence similar to the offence alleged in this case.*

5. *That he shall not do any act/omission to influence the witnesses."*

Naveen Bansal vs. Commissioner Central Tax, Bail Application No.-DW/GST/AE/PE/GRP 6/ NB/765/2021, Dated 3rd May, 2021 [Patiala House Court]

13 Refund under GST

When the law requires that no application for refund shall be rejected without giving an applicant an opportunity of being heard, the same cannot be substituted by telephonic conversations and exchange of e-mails.

Petitioner had applied for refund and show cause notice was issued for rejection of refund. Petitioner replied to the said show cause notice but he adjudicating authority could not see the replies on the portal because of some technical issues during the lockdown period. Several emails were exchanged between the petitioner and adjudicating authority/ respondent. The petitioner wanted the personal/ physical hearing which was not possible because of the pandemic situation. Petitioner in its detailed reply had specifically requested respondent to withdraw the proposal to pass ex-parte orders in its case without granting personal hearing based on detailed legal and factual submissions. This was followed by a number of e-mails requesting respondent for granting opportunity of being heard in person. However, the adjudicating authority/respondent passed refund rejection orders without giving personal hearing. Therefore, the present writ petition was preferred by the petitioner to challenge the refund rejection order.

Hon'ble Bombay High Court observed that, Section 54 of the CGST Act deals with refund of tax. Sub-section (1) says that any person claiming refund of any tax and interest may make an application before the expiry of two years from the relevant date in the prescribed form and manner. As per sub-section (5), if on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly. In terms of sub-section (7), the proper officer shall issue the order under sub-section (5) within 60 days from the date of receipt of the application, complete in all respects.

In a case where the proper officer is satisfied for reasons to be recorded in writing that the whole or any part of the amount claimed as refund is not admissible or is not payable, he shall issue notice to the applicant requiring filing of reply within 15 days of receipt of notice and after considering the reply make an order sanctioning the amount of refund in whole or in part or rejecting the refund claim which order shall be made available to the applicant. As per the proviso, an application for refund shall not be rejected without giving the applicant an opportunity of being heard. Therefore, there is a clear legal mandate that if an application for refund is to be rejected, the same can only be done after giving the applicant an opportunity of being heard.

When the law requires that no application for refund shall be rejected without giving an applicant an opportunity of being heard, the same cannot be substituted by telephonic conversations and exchange of e-mails. This is more so in the case of a claim for refund where no time limit is fixed vis-a-vis rejection of claim. Under sub-section (7) of section 54, a time-limit of 60 days is prescribed for making of an order allowing claim of refund; but that period of 60 days would commence from the date of receipt of the application complete in all respects without there being a corresponding provision for rejection of application not complete in all respects. It was obsvered that, admittedly in the present case, no hearing was granted to the

petitioner. Impugned orders, therefore, held as in violation of the proviso to subrule (3) of rule 92 of the CGST Rules and also in violation of the principles of natural justice. Therefore, the matter should be remanded back to the original authority for a fresh decision in accordance with law after giving an opportunity of being heard to the petitioner. Hence, the Petition allowed by way of remand.

BA Continuum India Pvt. Ltd. Vs. Union Of India and Others, WRIT PETITION (L) NO.3264 OF 2020, Date 8th March, 2021 [Bombay High Court]

14 Arrest and bail for offences under GST Law

As per section 167(2)(a)(ii) CrPC, the magistrate can authorize detention of an accused upto a maximum period of sixty days where the investigation relates to an offence other then those which are punishable with death, imprisonment for life or imprisonment for a term not less than ten years and on expiry of the aforesaid period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail.

Petitioner was arrested on 15.01.2021 by respondent in exercise of powers under section 69 of the MGST Act. As per the arrest memo dated 15.01.2021, an investigation visit was conducted on the business premises of the petitioner under section 67 of the MGST Act. Upon recovery of incriminating materials, it emerged that petitioner is the proprietor in one company and partner in another LLP having place of businesses at the addresses mentioned therein. It is alleged that petitioner had actively participated in receiving tax invoices or bills without any actual supplies of goods or services or both and in claiming ineligible ITC on such invoices, thus violating the provisions of MGST Act, CGST Act and IGST Act, 2017. Therefore, petitioner has committed offences under section 132(1)(b) and (c) of the MGST Act by receiving fake invoices of value not less than ₹ 277 crores and by taking input tax credit of not less than ₹ 31 crores. Such offences are punishable under section 132(1)(i) of the MGST Act which are cognizable and non-bailable. The arrest memo further states that, Assistant Commissioner of State Tax (Investigation-B) had reasons to believe that petitioner was liable to be punished under the aforesaid provisions and accordingly petitioner was arrested.

The remand application was filed before the Additional Chief Metropolitan Magistrate, 8th Court at Esplande, Mumbai upon arrest of the petitioner also made the same accusation. Further, to prevent tampering with evidence and commission of similar offences, judicial custody of the petitioner was sought.

It was submieeion of the petitioner that, on the day of hearing before the Court he completed 54 days in custody. Referring to the rejoinder affidavit filed by the petitioner, he submited that petitioner has paid a total of ₹ 4,68,66,408.00 to the respondents including ₹ 1,90,25,000.00 after arrest and under protest. Referring to section 69 of the MGST Act, he submited that legislature has conferred power upon the Commissioner to record reasons to believe that a person has committed any offence punishable under section 132 and on that basis, he may by order authorize any officer to arrest such person. Though respondents have claimed that Commissioner had delegated his powers under section 69, he submitted that, Commissioner of State Tax, Maharashtra has delegated his power under section 69 to Joint Commissioner of State Tax. Therefore, action of Assistant Commissioner i.e. respondent in recording his reasons to believe and thereafter affecting arrest of the petitioner is blatantly illegal violating the fundamental rights of the petitioner under Article 21 of the Constitution of India

Hon'ble Court observed that, punishment for committing offences under section 132(1) (b) and (c) is provided in clauses (i) to (iv) of sub-section (1) of section 132. As per clause (i), in cases where the amount of tax evaded or the amount of input tax credit wrongly availed of or utilized or the amount of refund wrongly taken exceeds Rs. five hundred lacs, then the punishment would be imprisonment for a term which may extend to five years and with fine. Other penalties provided in clauses (ii) to (iv) are less than five years. Since penalties in India are ordinarily imposed concurrently, the maximum penalty that can be imposed upon conviction for an offence under section 132(i) would be 5 years and with fine.

Further, it was observed that Section 167 of the Code of Criminal Procedure, 1973 lays down the procedure where investigation cannot be completed in twenty-four hours. As per section 167(2)(a)(ii), the magistrate can authorize detention of an accused upto a maximum period of sixty days where the investigation relates to an offence other then those which are punishable with death, imprisonment for life or imprisonment for a term not less than ten years and on expiry of the aforesaid period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail.

In these circumstances and taking an overall view, the Hon'ble Court was of the opinion that petitioner should be released on bail subject to certain conditions.

Decision on challenges with regard to delegation of powers of arrest and recording of the reasons by the Commissioner were deferred to the further date.

Anuj Mahesh Gupta vs. Assistant Commissioner Of State Tax, GST Bhawan, Mumbai & ANR. Writ Petition (Stamp) No. 4775 of 2021, Dated 9th March, 2021 [Bombay High Court].

15 Input tax credit – Amendment in GSTR-1

Since Forms GSTR-1A and GSTR-2 are yet to be notified, the petitioner should not be mulcted with any liability on account of the bonafide, human error and the petitioner must be permitted to correct the same.

The petitioner sought a mandamus directing the respondents to rectify the mistake in its GSTR-1, wherein it had, instead of the GST number of the purchaser in Andhra Pradesh, mentioned the GST number of the purchaser in Uttar Pradesh.

The issue that arose in the present matter was substantially covered by the decision in the case of Sun Dye Chem Vs. The Assistant Commissioner (ST) [2020 VIL 524 (Mad)].

Had the requisite statutory Forms been notified, that error would have been captured in the GSTR-2 return, an online form, wherein the details of transactions contained in the GSTR-3 return would be auto-populated and any mismatch noted. Likewise, had the GSTR-1A return been notified, the mismatch might have been noticed at the end of the purchaser/ recipient. However, neither Form GSTR-2 nor Form GSTR-1A have been notified till date. No doubt, the time for modification/amendment of a GSTR-3B return was extended till the 31st of March 2019, which benefit the petitioner did not avail since it was unaware that a mistake had crept into its original returns.

Hon'ble Court allowed the petition with direction that, since Forms GSTR-1A and GSTR-2 are yet to be notified, the petitioner should not be mulcted with any liability on account of the bonafide, human error and the petitioner must be permitted to correct the same.

Pentacle Plant Machineries Pvt. Ltd. vs. Office Of The GST Council, New Delhi, Office Of The Assistant Commissioner (ST), Pallavaram

Assessment Circle, Chennai, Office Of The Superintendent Of Central Tax, Office Of The Superintendent, Central Goods & Service Tax, Range V,U.P. W.P. No.1022 of 2020 Dated 23rd February, 2021. [Madras High Court]

16 Attachment for recovery u/s 83 of CGST Act

The Commissioner shall be duty bound to deal with objections to attachment by passing a reasoned order which must be communicated to taxable person whose property would be attached.

The exercise of power for ordering a provisional attachment must be preceded by formation of an opinion by Commissioner that it is necessary so to do for purpose of protecting interest of government revenue. Before ordering a provisional attachment, the Commissioner must form an opinion on basis of tangible material that assessee is likely to defeat demand, if any, and that therefore, it is necessary so to do for purpose of protecting interest of government revenue. The formation of an opinion by Commissioner under section 83(1) must be based on tangible material bearing on necessity of ordering a provisional attachment for purpose of protecting interest of government revenue.

The provisional attachment was ordered against appellant while invoking section 83 of Himachal Pradesh Goods and Service Tax (HPGST) Act, 2017 and rule 159 of the HPGST Rules, 2017. The appellant instituted Writ Petition under article 226 of Constitution challenging orders of provisional attachment. The High Court dismissed writ petition on ground that provisional attachment could not be challenged in a petition under article 226 on ground that an 'alternative and efficacious remedy' of an appeal under section 107 was available. It filed appeal against the order.

The Honorable Supreme Court observed that writ petition before High Court under article 226 of Constitution challenging order of provisional attachment was maintainable. It was held that, the High Court has erred in dismissing writ petition on ground that it was not maintainable.

It was observed by the Hon'ble Apex Court that, the order of provisional attachment was passed before the proceedings against the Appellant were initiated under Section 74 of the HPGST Act. Section 83 of the HPGST Act requires that there must be pendency of proceedings under the Section 62 (assessment of non-filers of returns) or Section 63(assessment of unregistered persons) or Section 64 (summary assessment in certain special cases) or Section 67 (power of inspection, search and seizure) or Section 73 (determination of tax in non-fraud cases) or Section 74 (determination of tax in fraud cases) against the taxable person whose property is sought to be attached.

It was further observed that, the power to order a provisional attachment of property of taxable person including a bank account is draconian in nature and conditions which are prescribed by statute for a valid exercise of power must be strictly fulfilled. The exercise of power for ordering a provisional attachment must be preceded by formation of an opinion by Commissioner that it is necessary so to do for purpose of protecting interest of government revenue. Before ordering a provisional attachment, the Commissioner must form an opinion on basis of tangible material that assessee is likely to defeat demand, if any, and that therefore, it is necessary so to do for purpose of protecting interest of government revenue. The formation of an opinion by Commissioner under section 83(1) must be based on tangible material bearing on necessity of ordering a provisional attachment for purpose of protecting interest of government revenue.

In the instant case, it was held that, there was a clear non-application of mind by Joint Commissioner. There was a breach of mandatory requirement of rule 159(5) and Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard. The Commissioner shall be duty bound to deal with objections to attachment by passing a reasoned order which must be communicated to taxable person whose property would be attached. Therefore, it was held that the appeal would be allowed and order of High Court was liable to be set aside and writ petition filed by appellant under article 226 of Constitution shall stand allowed by setting aside order of provisional attachment.

The Hon'ble Supreme Court held that, the power of provisional attachment of the property of the taxable person is to be resorted as a measure of last resort and that too based on opinion by the Commissioner that attaching the property is necessary for the purpose of protecting the interest of the government revenue. Such opinion should be based on tangible material bearing on the necessity of ordering a provisional attachment. The expression "necessary so to do for protecting the government revenue" u/s 83(1) implies that the interests of the government revenue cannot be protected without ordering a provisional attachment. At the same time the conditions prescribed by the statute for a valid exercise of the power must be strictly followed.

The Hon'ble Supreme Court allowed the SLP and set aside the impugned judgment and order of the High Court. The writ petition filed by the appellant under Article 226 of the Constitution stood allowed by setting aside the orders of provisional attachment.

Radha Krishan Industries vs. State of Himachal Pradesh & Ors. Civil Appeal No 1155 of 2021 (Arising out of SLP(C) No 1688 of 2021), Dated 20th April, 2021 [Supreme Court]

17 Registration under GST

VAT registration was cancelled for non-filing return during interim period when provisional GST registration was granted which also was consequentially cancelled, in that case if subsequently VAT registration was restored, then consequentially cancelled provisional registration under GST should also be restored and final registration should be granted retrospectively. All the returns were allowed to be filed without late fees and ITC was also allowed to be claimed.

The applicant was registered under Gujarat Value Added Tax Act, 2003 was granted provisional registration certificate. But due to the default in filing returns under VAT Act, the registration of applicant under VAT Act was cancelled. Based on such cancellation, provisional registration of applicant under GST Act was also blocked/inactivated and final registration was not granted to applicant under GST Act. The applicant filed an appeal under the VAT Act challenging the legality and validity of the cancellation of VAT registration order. The first appellate authority allowed the appeal and restored the registration under the VAT Act right from the date on which it was cancelled. Thereafter, the applicant represented before the authorities on number of occasions requesting for activation of the registration certificate under the GST Act and grant of final registration certificate. But no response was received from the authorities despite number of representations. It filed writ petition against the same.

The Honorable High Court observed that GST registration of applicant was automatically cancelled due to cancellation of the VAT registration number. Since the very basis for inactivation/blocking of such certificate

had been removed by the first appellate authority under the VAT Act, the authorities should unblock/activate the registration of the applicant under the GST Act. Also, the authorities were directed to permit the applicant to upload the returns and pay tax under the GST Act from 1st July 2017 onwards without charging any late fee for the belated filing of the returns.

Also, the Court directed the authorities to allow applicant to claim the Input Tax Credit in respect of the imports/purchases made during the period in which the registration under the GST Act was blocked/inactivated. The authorities must not raise the dispute of time limit under section 16(4) of the GST Act for claiming such credit during the period of blocking/inactivation of the registration.

JAP Modular Furniture Concepts Pvt. Ltd. vs. State of Gujarat R/Special Civil Application No. 20885 of 2019, Dated 19th March, 2021 [Gujarat High Court]

18 Criminal Proceedings under GST

Lodging of the FIR does not amount to prosecution and is clearly distinguishable from prosecution. Therefore, prior sanction of the Commissioner of CGST, before filing FIR, is not required:

The instant petition has been filed under Section 482 Cr.P.C., for quashing of FIR under Section 132 of the CGST Act and Sections 420, 467, 468 & 471 IPC along with consequential proceedings arising therefrom. The petitioner had contended that it was very apparent that respondent had been very casual in filing the complaint without even issuing a show cause notice to the petitioner. Further it was contended that, respondent went way beyond his jurisdiction as he could not have set the criminal law in motion without the prior permission of the Commissioner of Central Government as provided for under Section 132(6) of the CGST Act.

Since the inherent powers vested under Section 482 Cr.P.C. are extremely wide and undefined, a great deal of circumspection needs to be exercised. In the case in hand, as also stated by the learned counsel for the petitioner, investigation is still underway and final report under Section 173 Cr.P.C. has not yet been presented by the investigating agency. Therefore, this Court would not be justified in embarking upon the truthfulness or falsehood of the allegations levelled in the complaint. Moreover, a perusal of the FIR in question did prima facie disclosed the commission of offences alleged against the petitioner. Needless to add the correctness or otherwise of the allegations would be gone into by the trial Court as and when the evidence is adduced by both the parties.

Adverting to the grievance of the petitioner that respondent could not have set the criminal law in motion without the previous sanction/permission of the Commissioner of Central Government as provided for under Section 132(6) of the CGST Act, was observed to be devoid of merit.

It was further observed that, prosecution of a person or an accused commences only when the Magistrate or Court concerned takes cognizance of the same. In other words, prosecution means the initiation or commencement of the criminal proceedings when formal charge-sheet is presented before a Court of law. Coming to the instant case, as already admitted by the learned counsel for the petitioner, investigation is still underway and charge sheet/ final report under Section 173 Cr.P.C. has not yet been presented before the Court concerned. The complaint filed by respondent cannot be said to be beyond his jurisdiction because the previous sanction of the Commissioner as provided for under

Section 132(6) of CGST Act, would be required only after the conclusion of the investigation and at the stage of presentation of charge-sheet/final report under Section 173 Cr.P.C., when judicial notice of the offence(s) are taken for the first time by a Court of law. Lodging of the FIR does not amount to prosecution and is clearly distinguishable from prosecution. Petition was dismissed.

Rakesh Garg vs. State Of Haryana And Another, CRM-M-32331-2020, Dated 12th March, 2021 [Punjab And Haryana High Court]

19 Service of Order

The order has to be uploaded on website of revenue and statutory procedure prescribed under rule 142(1) for communicating order was not followed by revenue. Therefore, order served on email was laible to be set-aside.

The GST Authority passed an order on the applicant and raised tax demand upon it. Subsequently, the authority issued an order in Form GST DRC-07 and demanded tax. The applicant filed a writ petition and contended that as per provisions of rule 142(1) of CGST Rules, 2017, the department was obliged to communicate order by uploading same on website of revenue so that the applicant could have access to same and be aware of reasons behind demand. But the order was not uploaded on website of revenue.

The department submitted that the order was communicated to applicant on his E-mail address and despite receiving same, the applicant failed to file any response. The Honorable High Court observed that as per the statutory procedure prescribed under rule 142(1), the only mode for communicating order was by way of uploading same on website of revenue. In the instant case, the order was not uploaded on website of revenue and statutory procedure prescribed under rule 142(1) for communicating order was not followed by revenue. Therefore, the order deserved to be struck down.

Ram Prasad Sharma vs. Chief Commissioner W.P. NO. 16119 of 2020 dated 19th November, 2020 [High Court of Madhya Pradesh]

20 Service of Order

Notice served to truck driver can't be considered as service of notice to assesse.

The petitioner submitted that the Authority detained goods of the petitioner under transport by an order passed under section 129(3). It filed writ petition by submitting that none of notices as required to be served under section 129 had been served upon it and as such proceedings initiated and concluded against it were ex parte. The Revenue, on other hand, stated that notices were got served on driver of truck and detention order was served through a fixation on truck.

The Honourable High Court observed that service of notice on driver or a fixation of copy of order on truck was none of methods prescribed under section 169 and thus it was clear that notices or order were never served upon it and proceedings were held ex parte. Since, at no point of time, the petitioner was granted an opportunity of submitting its reply and grounds were not considered, there was a failure of natural justice. Thus, it was held that the impugned orders deserved to be set aside with a liberty to Competent Authority to conclude proceedings in accordance with law.

Ranchi Carrying Corporation vs. State of UP, Writ Tax No. 655 of 2020, Dated 7th December, 2020 [High Court of Allahabad]

21 Returns in Form GSTR-3 & 3B

The rectification/ adjustment mechanism for the months subsequent to when the errors are noticed is contrary to the scheme of the Act.

The writ applicant is engaged in the business of printing of dress materials etc. While submitting the return of his business electronically on the GST Portal, the applicant inadvertently, wrongly uploaded the entries of M/s. Deepak Process instead of M/s. Deepak Print in Form GSTR-3B in the month of May, 2019. In this regard, the applicant made representation to the Nodal Officer and the concerned authority but no formal reply was given by them.

The issue under consideration was that whether the writ applicant is entitled to seek rectification of Form GSTR-3B for the month of May, 2019.

The Hon'ble Gujarat High Court placed reliance on the judgment of *Bharti Airtel Limited Versus Union Of India And Ors. No.- W.P.(C) 6345/2018, CM APPL. 45505/2019 dated 5th May, 2020 - Delhi High Court*. In the said judgment, the Court observed that the statutory scheme, as envisaged under the Central Goods and Services Tax Act, 2017 ('CGST Act') provided a facility for validation of monthly data through the IT System of the Government. However, GSTR-2 and GSTR-3 could not be operationalized by the government till date. The Court, therefore, permitted rectification in GSTR-3B for the period to which error related instead of rectification being done in subsequent months.

In view of the above judgement, Hon'ble High Court permitted the writ applicant to rectify Form GSTR-3B in respect of the relevant period. The Court directed the concerned authority to verify the claim of the applicant in rectified Form GSTR-3B and give effect to the same. The Court further directed that the applicant shall not be saddled with the liability of payment of late fees since it has been dragged into unnecessary litigation only on account of the technicalities raised by the authorities.

Deepak Print vs. Union of India, R/Special Civil Application No. 18157 of 2019, Dated 9th March, 2021 [High Court of Gujarat].

22 Attachment for recovery u/s 83 of CGST Act

Bank account of only the taxable person can be provisionally attached under section 83 of the CGST Act.

Out of the nine bank accounts that had been attached by respondent, only three accounts belong to the petitioner whereas the other accounts belong to the family members.

In *Siddhart Mandavia vs. Union of India, [2020 (11) TMI 111 - BOMBAY HIGH COURT]*, the Bombay Court had examined a similar issue relating to attachment of bank account of not only the taxable person but also of his family members. In that context, this Court held that bank account of only the taxable person can be provisionally attached under section 83 of the CGST Act and therefore the provisional attachment of bank account of the family members was set aside.

Some bank accounts were released with observations that, the petitioner may file objection before the Commissioner i.e. respondent within a period of seven days from date of disposal of petition.

Dharmesh Gandhi vs. Assistant Commissioner (Anti-Evasion), CGST & Central Excise, Belapur Commissionerate & ors. Writ petition (l) no.4229 of 2021, Dated 10th March 2021 [Bombay High Court]

From the Courts

CA Mayur R. Parekh

4 In case of Deduction towards Sub contractors Value relief granted by the first appellate authority, can Revisional authority issued notices under Section 64 of the Act seeking suo moto revision of orders passed by first appellate authority as well as Prescribed Authority under the provisions of Karnataka Value Added Tax Act, 2003 ?

Held : No

That for the assessment years 2008-09 upto 2011-12, the appellant has filed its returns on its business turnover and paid the taxes accordingly. The appellant claimed deductions under the Rules while filing returns of turnover. It is the case of the appellant that it is engaged in the business of development of properties and construction of residential flats in apartments. The appellant being the owner of the land and developer had sub-contracted the construction work to sub-contractors with a pre-condition that it would supply cement and steel required for the construction in order to ensure good quality of construction. It is the case of the appellant that the respective orders, the appellant had sub-contracted construction work to various sub-contractors, for example, for the year 2008-09, the appellant had sub-contracted construction works to two sub-contractors namely M/s. Aura Engineers and Contractors (P) Ltd., and M/s. R.A.K. Construction, both being registered dealers under the KVAT Act. That payments were made to the subcontractors through banking transactions and the details were reflected in the books of accounts. The said subcontractors had filed their returns of turnover and have discharged their tax liabilities on the turnovers in accordance with their books of accounts. The appellant had produced all the details of the sub-contractors. The certificates issued by them declaring the amounts paid by the appellant in the returns of turnover filed by them and that they have discharged the tax due on the taxable turnover. It is the case of the appellant that under Rule 3(2)(i-1) of the KVAT Rules the appellant is eligible to claim deduction of the entire sub-contractors' payments made during the year. Accordingly, the appellant claimed the said deductions along with the returns filed by the appellant for the respective years. The Prescribed Authority (PA) initially passed an assessment order and thereafter re-assessment order for the year 2008-09, but in respect of other assessment years, the Prescribed Authority passed only an assessment order and issued an audit report by accepting the total and taxable turnovers declared by the appellant during the respective tax periods. Appellant also furnished the details of the sub-contractors and the declaration of turnovers made for the monthly returns along with the certificates issued by the sub-contractors in the prescribed form under the KVAT Rules to the Prescribed Authority. According to the appellant, for the assessment year 2008-09,

the Prescribed Authority made a rectification order on 21/01/2015 under Section 69(1) of the KVAT Act and reduced the expenditure to be carried forward at the end of March 2009 and excess input tax credited by restricting the deduction claimed towards sub-contract, which according to the appellant was on flimsy ground as the amounts were already reflected in the certificates issued by sub-contractors. According to the appellant, for the assessment year 2008-09 even in the absence of a show-cause notice issued to the appellant, the rectification order was passed. For the other assessment years, the Prescribed Authority did not accept all other claims for deduction. Being aggrieved by the orders of the Prescribed Authority for the respective assessment years, the appellant filed an appeal before the Joint Commissioner of Commercial Taxes (Appeals) - I, inter alia, contending that the rectification order was in violation of the principles of natural justice as well as Section 69 of the KVAT Act insofar as the assessment year 2008-09 was concerned and that in respect of the other assessment years, the Prescribed Authority had failed to appreciate the case of the appellant regarding deductions as well as exemptions sought by the appellant. The first appellate authority accepted the contentions of the appellant/assessee and placing reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Andhra Pradesh and others vs. Larsen & Toubro Limited and others [(2008) 9 SCC 191] (Larsen and Toubro)* granted relief to the appellant herein by holding that the assessment made by the Prescribed Authority was erroneous and the deductions with regard to the payments made by the assessee to the sub-contractors could be claimed by the assessee.

When the matter stood thus, in respect of the aforesaid four assessment years, notices were issued by the respondent under Section 64 of the KVAT Act seeking suo moto revision of the orders passed by the first appellate authority as well as the Prescribed Authority. In response to the respective notices issued by the respondent/ revisional authority, the appellant/ assessee filed its reply. Appellant/assessee was heard in the matter and the impugned orders in the respective appeals were passed by the respondent. Being aggrieved, the assessee has preferred these appeals.

The appellant contended that having regard to the judgment of the Hon'ble Supreme Court in Larsen and Toubro, the first appellate authority had rightly granted relief to the appellant herein and therefore, the respondent could not have revised the said order exercising the powers under Section 64 of the KVAT Act. Appellant's next contended, even if for a moment it is assumed that the initiation of the suo moto revisional powers was justified in the instant case, the exercise of the said powers is not in accordance with law. In this regard, the appellant placed reliance on paragraph No.11 of the judgment of a Coordinate Bench of this Court in the case of *Godrej Agrovet Limited vs. Additional Commissioner of Commercial Taxes, Zone II, Bangalore [(2011) 39 VST 20]* to contend that when the first appellate authority followed the judgment of the Apex Court, it cannot be said that the said order is erroneous. It is bound by the order of the Tribunal as well as the order of the Apex Court and to maintain judicial discipline, it has to follow the said judgment and has given effect to it. But if the Revenue did not want to accept the said finding, it was always open to them to prefer an appeal against the said order before this Court. The appellant contended that the said exercise of jurisdiction was also faulty for the reason that on merits of the matter this is not a case where there was any prejudice caused to the Revenue and in the absence of such a precondition being met, setting aside of the orders of the first appellate authority as well as Prescribed Authority in toto and remanding the matter to the Prescribed Authority for a fresh consideration was wholly unnecessary. In this regard, the appellant placing reliance on the judgment of a Division Bench of the Bombay High Court in the case of *Commissioner*

to Income-tax vs. Gabriel India Limited [(1993) 71 Taxman 585 (Bombay)] and submitted that even though the said judgment is rendered under Section 263 of the Income Tax Act, 1961, the object and purpose of that Section and Section 64 of the KVAT Act being similar, paragraph Nos.8 to 11 are apposite. He submitted that in paragraph No.10, the Bombay High Court has delineated on the circumstance under which the power of suo moto revision could be exercised namely, if the order is erroneous and by virtue of order being erroneous, prejudice has been caused to the interest of the Revenue. That both the criteria have to be met before the suo moto jurisdiction could be exercised. That in the instant case, such criteria have not been met and therefore, the very exercise of jurisdiction suo moto by the respondent is not in accordance with law. Therefore, the impugned orders may be set aside and the orders of the first appellate authority may be given effect to.

The respondent supported the impugned orders and submitted that where there is no clarity on any specific aspect or finding given by the first appellate authority, it is always open to the revisional authority to issue notice and on seeking reply from the assessee to revise the said order. That in the instant case, that is precisely what has been done by the respondent/ revisional authority as the said authority found the need to verify the issue with regard to the payments on purchases and sub-contract made to the subcontractors and a fresh assessment to be made. The appellant is not in anyway prejudiced as the matter has been remanded for a fresh re-assessment to be made under Section 39(1) of the KVAT Act. The appellant, therefore, can have no grievance with regard to the order made by the respondent/revisional authority. There is no merit in these appeals and the same be dismissed.

However, the Court observed that there must be two circumstances which co-exist to enable the respondent to exercise power of revision under Section 64 of the KVAT Act, which is a suo moto revisional power. Firstly, the order passed by the first appellate authority or any other inferior authority not above the rank of the Joint Commissioner is erroneous. Secondly, the erroneous order must prejudice the interest of the Revenue. Therefore, the revisional authority has to first determine what is the erroneous order and thereafter determine as to whether the erroneous order has adversely affected the interest of the Revenue. Both the circumstances must co-exist before the revisional authority can initiate suo moto revisional proceedings. That, it is not sufficient to vest power in the respondent/ authority to exercise suo moto revision merely because an order is erroneous. If an order is erroneous, but not prejudicial to the interest of the Revenue, the power of suo moto revision cannot be exercised. Every erroneous order of an authority inferior to the revisional authority cannot be a subject matter of revision. In the absence of the second requirement being fulfilled, namely, the erroneous order was prejudicial to the interest of Revenue. For that, there must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

The Court further observed that the respondent/Authority was not right in remanding the matter to the Prescribed Authority to verify the issues with regard to certain observations made during the course of the order of purchases and sub-contractors and to make a fresh re-assessment under Section 39(1) of the KVAT Act without giving a finding as such and in categorical terms as to whether the appellant/ assessee was, indeed, entitled to make a claim regarding the deductions vis-a-vis the payments made to various sub-contractors in the respective assessment years. In the circumstances, we find it just and proper to set aside the orders impugned in these appeals and to remand the matters to the respondent/Authority to reconsider the same afresh in accordance with the observations made above and in particular to give a categorical

finding as to whether the appellant/assessee is entitled to claim the deductions made on the payments to the sub-contractors during the respective years and to dispose of the revision in accordance with law.

Finally the impugned orders of the respondent/Authority are set aside and the appeals are ***allowed and disposed of*** in the aforesaid terms.

[M/s. Silicon Estates vs. The Additional Commissioner Of Commercial Taxes, Zone-II, Bengaluru (2021-VIL-329-KAR)]

5 The Petitioner having separately charged freight in the sale bill whether the Tribunal is legally correct in holding that it is part of sale price and the Petitioner is not entitled to claim deduction of freight under the provisions of CST Act ?

Held : No

The background facts are that the Petitioner is a manufacturer of cast iron goods and is also engaged in the trading of iron and steel goods. The Petitioner is a registered dealer under the Orissa Sales Tax Act, 1947 (OST Act) and the Central Sales Tax Act, 1956 (CST Act). The Department of Telecommunications (DoT), Maharashtra Telecom Circle, Mumbai floated a tender on 30th April 1998, for supply of "cast iron socket-Socket 'B'." Clause 9 of the Bid Document stipulated the bid price. Clause 9.1 required the bidder to quote a basic unit price and other component prices individually in terms of the Schedule given in Section (iii). Clause 9.2 (i) provided that the bidder should quote the excise duty, sales tax, insurance, freight and other taxes paid or payable item wise. Clause 9.2 (ii) stipulated that the bidder had to quote the price as per the price schedule given in Section (iii) Part 3 for all the items given in the schedule of requirements. Clause 9.3 provided that the price quoted by the bidder would remain fixed during the entire period of the contract and should not be subjected to variation of any account.

It is stated that in its bid, the Petitioner specifically gave the break up price quoted by it for supply of Socket-B in the following manner:

Basic Unit Price exclusive of all levies and charges but inclusive of packing, forwarding and insurance	: Rs. 261.70/-
Excise @ 15%	: Rs. 39.26/-
Sales Tax @ 4%	: Rs. 12.04/-
Freight	: Rs. 45.00/-
Unit Price inclusive of all levies and charges	: Rs. 358.00/-

On 24th April 1999, an inspection report was submitted by the STO, Investigation Unit, Rourkela alleging that the Petitioner had evaded tax during 1999-2000 on freight charges of Rs.1,49,576/- on the total freight collection of Rs.37,39,393/-. On this basis, the assessment proceedings were initiated under Rule 12 (5) of the CST (Orissa) Rules. The Petitioner offered an explanation that the goods had been delivered ex factory to the common carriers. The claim of deduction on account of outward freight, separately charged in the sales bills, was allowable as a deduction in view of the definition of sale price contained under Section 2 (h) of the CST Act. However, the STO rejected the Petitioner's explanation and raised an additional demand of Rs.1,36,956/- by the impugned assessment order. Aggrieved by the said order, the Petitioner filed an appeal which came to be dismissed by the Assistant Commissioner of Commercial Taxes, Sundargarh Range, Rourkela by an order dated 11th April, 2002. It was held in the said order that the contract in question clearly mentioned that the prices were inclusive of excise duty, sales tax, freight, packing and also "FOR destination". Thus, it was held that it was a contract of sale where the cost of freight was a part of the sale prices and the purchaser i.e. the

DoT had not undertaken any obligation to pay freight incurred by the selling dealer. Therefore, the selling dealer i.e. the Petitioner would not be entitled to any deduction towards freight despite showing it separately in the sale invoice.

Thereafter, the Petitioner went before the Orissa Sales Tax Tribunal, Cuttack (the Tribunal) with S.A.35 (C) of 2002-03 against the above order. By an order dated 5th October 2009, the Tribunal dismissed the appeal holding that the transportation charges, even though shown separately in the bill, was includible in the sale price. It was held therein that in the instant case the place of sale was the consignee's place and hence, transportation cost incurred was the inward transportation cost of the Petitioner, but not outward transportation cost to be reimbursed by the DoT.

The Petitioner submitted that the definition of sale price under Section 2 (h) of the CST Act made it clear that the sale price excluded the cost of freight of delivery where such cost was separately charged. He further referred to the clauses in the contract which made it clear that the sale was completed inside the Petitioner's factory, once it was inspected by the DoT and the goods to be sold were earmarked for purchase. He pointed out that the Petitioner had transported the goods to the site of the DoT at the latter's behest, after the sale was complete. Accordingly, the freight was charged separately and could not be included in the sale price. In support of his contention that even when the freight is shown as a uniform per unit price, it would still be not includible in the sale price. The petitioner relied on the decision of the Supreme Court in *State of Karnataka and another vs. Bangalore Soft Drinks Pvt. Ltd. (2000) 117 STC 413 (SC) - 1998-VIL-01-SC.* He also placed reliance on the decisions in *Shree Rani Sati Mining Traders vs. Sales Tax Officer (1983) 53 STC 322 (Orissa); Orient Paper Mills Ltd. vs. State of Orissa (1975) 35 STC 84 (Orissa); Greaves Chitram Ltd. vs. State of Tamil Nadu (1996) 100 STC 411; Ramco Cement Distribution Co. Pvt. Ltd. vs. State of Tamil Nadu (1993) 88 STC 151 (SC) - 1992-VIL-12-SC; The State of Karnataka vs. Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. (1984) 57 STC 81 (Karnataka); Commissioner of Sales Tax, U.P. vs. Rai Bharat Das and Bros. (1988) 71 STC 277 (SC); Black Diamond Beverages vs. Commercial Tax Officer, Central Section Assessment Wing, Calcutta (1997) 107 STC 2019 (SC) - 1997-VIL-25-SC; Commissioner of Sales Tax vs. Gill and Company Ltd. (1974) 33 STC 536 (MP) and Hindustan Sugar Mills vs. State of Rajasthan (1979) 43 STC 13 (SC) - 1978-VIL-01-SC.*

On the other hand, the Revenue referred to certain passages in the impugned order of the Tribunal which held that in the present case the sale was complete when the delivery took place at the site of the DoT. He referred to the observations of the Tribunal that it was highly unlikely that irrespective of the distance of the site of the purchaser, the freight charge would be the same and therefore, the freight charge was actually a part of the sale price itself. He drew attention to the clauses of the bid documents which according to him required the delivery be made at the purchaser's site.

However, the Court observed that the definition of sale in Section 2(h) of the CST Act had to be understood in the context of the clauses of the contract. Once the sale was complete at the site of the inspection of the goods, which is the factory of the petitioner, then the freight charge for further transportation of the goods to the purchaser's site would not form part of the sale price. Therefore, it was being separately shown in the invoice. Even when the freight is shown as a uniform per unit price, it would still be not includible in the sale price. The Tribunal committed a serious error in understanding the freight charge to be same freight charge irrespective of the distance between the factory of the Petitioner and the destination of the Purchaser. The Petitioner is entitled to claim deduction of the freight charges from the taxable sales turnover.

[M/s. Utkal Moulders vs. State of Orissa (2021-VIL-368-ORI)]

Gist of Advance Rulings

CA Ashit Shah

5 Penalty for wrong mention of vehicle number on the E-way Bill

Facts of the matter

Appellant is a registered taxpayer and is engaged is wholesale and retail trade business of Beedi. Goods had been transported to the buyer's premises and during transportation of goods, vehicle was intercepted by the GST authorities. On scrutiny of the documents provided by the driver person/in- charge of the vehicle, it was observed all the documents were in order except the mistake in vehicle no. mentioned in the E-way bill. Authorities had detained the goods and imposed penalty u/s. 129 (1).

Contention of the appellant

Ld. Adjudicating Authority while confirming the demand and imposing the penalty has not considered the fact that the physical characteristics of the goods detained by them were in consonance with tax invoice and E- Way- bill particulars. There was no deviation from the goods declared in the invoice and the goods transported by the appellant. The goods detained were accompanied by a valid E-Way except the Part B was not having correct Vehicle no. HP32A3097, the vehicle no. was written as HP 32A1597 in Part-B. The appellant has followed all the conditions and nothing adverse is available on the record that the appellant wanted to evade any tax during the movement of goods. Thus, wrong filing of vehicle details in PART B was an inadvertent mistake and the does not render the whole transaction as illegal one. The harsh stance cannot be taken on it by the department.

Circular No. 64/38/2018 dated 14-09-2018 which clarified that proceedings under section 129 of the CGST Act may not be initiated when error in one or two digits / character of the vehicle number and penalty of INR 1,000 (CGST + SGST) should be imposed.

Contention of the adjudicating authority

The use of term "may" in Circular No. 64/38/2018 dated 14-09-2018 signifies that it has left the proper Officer in using his discretion in non-invoking the provisions of sec 129(1) rather it seems to be advisory in nature and therefore the said circular, does not make the Adjudication Officer, legally bound to relax the invoking of the provisions of sec 129(1).

Observations of the Authority

Circular issued by the Board - Circular No. 64/38/2018 dated 14-09-2018, is advisory in nature and not implementable by the adjudicating authority is not acceptable. The said circular and the subsequent notification under the HPGST Act have to be followed and 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.

Ruling:

Penalty have to be levied in accordance with Circular No. 64/38/2018 dated 14-09-2018 i.e INR 1,000 (CGST + SGST) and proceedings not to be initiated in pursuance of Section 129 (1) of CGST Act.

[M/s. K. B. Enterprise – GST Appellate Authority Himachal Pradesh – Order No. 001/2019, dated 07-12-2019]

6 Rights granted for shared access of pathways

Facts of the matter

The appellant has acquired a portion of the property from the landlady. In accordance with the terms of agreement, appellant had agreed to pay consideration for allowing to use the passage out of the acquired land for shared access purpose for 35 years. Without the access the Landlady would be unable to, come out to the road and make her ingress and exit to and from the house. Thus, unless the right to pathway was sold along with the land there was no way the Landlady would be able, to live in her residential house and the acquisition of the land would not have been made possible. The appellant felt that the right to pathway enabling the Landlady to access the road and thus the outside world was a covenant running with the land and hence the sum, charged for the access was an element of the price for the sale and purchase of the land. The sale and purchase of land is not subject to the levy of GST, It was also felt that the grant of access to pathway to the residential dwelling was exempt from GST under SI. no 12 of Notification 12/2017 since any leasing in connection with residential property was exempted therein.

The Original authority has ruled that leasing of pathway by the appellant to landlady (lessee) by way of shared access of the Non-residential property held by the appellant is taxable under GST. Aggrieved by the order of the original authority, appellant had filed an appeal petition before Appellate Authority.

Contention of the Appellant

The grant of access to road over the land makes the easement part and parcel of the residential dwelling and the same is not taxable. The land would not have been supplied without the easement of access to road. Hence, it amounted to a composite supply in which the principal supply was that of land which is not taxable under GST. Easement do not involve right of occupation and possession and are not liable to tax.

Observations

Shared access granted by the appellant is not 'easement' acquired by the land owner on the sale of his land to the appellant. Sale of Land by the landowner to the appellant is supply made to the appellant for which compensation is paid by the appellant to the land owner and grant of shared' access on payment of lease rentals for a specific period to the land owner by the appellant is another supply made by the appellant to the land owner. A composite supply is one in which one or more supplies are bundled naturally and supplied in conjunction by the service provider to the recipient. In the case at hand, land is supplied by the land owner to the appellant and the access to the pathway is granted by the appellant to the land owner. The recipient and the supplier are not the same in these supplies and therefore the same is not a 'Composite supply'.

It is clear that the entire land had been acquired by the appellant and the same had been acquired for business purposes only. The appellant after acquisition of the land had granted shared- access to the pathway with no grant of right of occupation and possession and the activity is in the genre of licence extended for a specific period against payment of rentals. In the case of renting or leasing of the property, the owner (appellant in this case) will not have

the right to use the land/pathway involved as 'renting/Leasing' involves transfer of the right to enjoy the property to the lessee and the lessor does not retain right to enjoy the property during the lease period. In the instant case, it is not a lease of the pathway but only rights are granted to the land owner by the appellant for the shared access. It is seen that the grant of access to the pathway is a right given by them to the landowner.

Ruling

This activity of agreeing to grant rights for shared access of the pathway is an "act of agreeing to tolerate an act' and is classifiable under SAC 999794 under "other miscellaneous services/Agreeing to tolerate an act' and is taxable to 9% CGST and 9% SGST as per SI.No.35 of Notification 11/2017 CTR, dated 28.06.2017 as rightly held by the Lower Authority.

[Chennai Metro Rail Ltd. – GST AAAR Tamilnadu – Order No. AAAR / 05 / 2021, dated 04-03-2021]

7 Services of Cold Storage of tamarind (Imli) inner pulp without shell & seeds

Facts of the matter

The applicant is dealing with the service of cold storage They have sought Advance Ruling on whether the service of cold storage of tamaring inner pulp without shell and seeds are exempted under the purview of the definition of Agricultural produce vide Notification No.11/2017 and 12/2017 Central Tax(Rate) both dated 28.06.2017.

Contention of Applicant

The applicant has stated that their service is covered under Notification No.11/2017 – CTR dated 28.06.2017 under Sl.No.24(e) - Loading unloading packing storage or warehousing of agricultural produce (Heading SAC 9986). Entry no.54 of Notification No. 12/2017- C.T.(Rate) dated 28.06.2017 exempts services relating to cultivation of plants and rearing of all life forms of animals except the rearing of horses, for food, fibre, raw material or other similar products or agricultural produce by way of (e) loading, unloading packing storage or warehousing of agricultural produce.

The process of removal of shells and seeds are only done by manually as the tamarind has stickiness even after drying in sunlight. Due to the stickiness of tamarind, the process through machinery is not possible. The tamarind are primarily produced or cultivated by small farmers who remove the shell or the upper part and bring the inner part for sale. The tamarind may or may not come for storage with seeds. The inner pulp without shell and/or seeds come under the purview of the definition of 'Agricultural produce' as it does not lose its essential characteristics.

They had relied on the AAR of Andhra Pradesh Advance Ruling No. AAR/AP/02(GST)/2018 dated 28/03/2018 wherein it is ruled that the cold storage service of agriculture produces such as chillies, whole pulses, Apples, potato, raw cashew nots, oil seeds, maize, tamarind, millets, cattle feed, food grains etc., is exempted from tax under GST and exemption shall cover both traders and farmers.

Observations

Ongoing through the definition of "agriculture produce" under explanation 2(d) of Notification No. 12/2017- CTR dated 28.06.2017 and Circular No. 16 /16 /2017 – GST, dated 15-11-2017, it is evident that –

(i) Support service to agriculture mean 'Services relating to agricultural produce by way of -loading, unloading, packing, storage or warehousing of agricultural produce' ;

(ii) 'agricultural produce' is any produce out of cultivation of plants on which either

no further processing is done or such processing is done as is usually done by a cultivator which does not alter its essential characteristics but makes it marketable for primary market.

(iii) The process done should be usually of one being carried out by the farmers at farm level

(iv) Processed spices fall outside the definition of agricultural produce.

Thus the following ingredients are to be satisfied to be eligible for the exemption at Sl. No. 54 of Notification No. 12/2017- CTR dated 28.06.2017 above :-

(a) The storage service is to be provided to 'agricultural produce'

(b) 'Agricultural produce' is that,-

(a) produced out of cultivation of plant;

(b) on which a process if any is done, would be that carried out by the farmer at farm level to make it marketable for primary market.

In the case at hand, it is seen from the affidavits of the Traders' and the oath of allegiance of the 'Cultivators' that the process of removing the shell and seeds are undertaken as a 'Cottage Industry' with the 'Human Resource' as a main resource and wooden stick, wooden/ iron hammer as equipment. The product for which the cold storage service is provided by the applicant is the deshelled, destringed & deseeded tamarind. As per the HSN Explanatory Notes, 'tamarind pods, unprocessed tamarind pulp with or without seeds, strings or pieces of the endocarp' are covered under CTH 0813, when prepared either by direct drying in the sun or by industrial processes. In the present case, the product stored is processed by drying the same in the sun and then by beating with wooden sticks to remove the pod and hammered to deseed and destring for extraction of the endocarp/pulp of the Tamarind. This process is not done at farm level. It is done as a 'Cottage Industry' as furnished in the affidavits of the Traders and the Oath of allegiance of the Farmers to whom the storage services are extended by the applicant. Therefore, as clarified in the Circular above, the Tamarind which is processed by sun drying, deshelling, deseeding, the process which are not farm level processes, is not an 'Agricultural Produce' as defined under explanation 2(d) of the Notification No. 12/2017- CTR dated 28.06.2017. Once the product for which the storage services are extended is held to be not an 'agricultural produce', then the exemption at SI. No. 54 of the Notification No. 12/2017- CTR dated 28.06.2017 is not available to the product, irrespective of the class of receivers of the service.

Ruling

The Tamarind inner pulp without shell and seeds is not an 'Agricultural produce' as defined under explanation 2(d) of the Notification No. 12/2017- C.T.(Rate) dated 28.06.2017 and therefore the service of cold storage of such tamarind are not exempted under SI. No. 54 (e) of Notification No. 12/2017- CTR dated 28.06.2017 .

[Arun Cooling Home – GST AAR Tamilnadu – Order No. TN/07/ARA/021, dated 24-03-2021]

8 Input Tax Credits on the promotional products to promote own brand

Facts of the matter

Appellant is a manufacturer of knitted and woven garments under the brand name "JOCKEY" and swim wear and swimming equipment under the brand name "SPEEDO". The goods manufactured by the Appellant are sold through their own outlets and also through their distributors and retail dealers. For the purpose of promoting their brand and products, the Appellant procures various

items such as gondola racks, wall shelves and panels, mannequins, storage units, hangers, signages, posters, display stands, etc. which are used in the showrooms for display of their products as well as for advertising their products. Further, the Appellant also procures certain give away items such as carry bags, calendars, dairies, leather bags, pens with their brand name embossed I engraved which are distributed to the showrooms and retailers for giving away to customers who purchase their products. In addition, the Appellant also procures advertising services for advertising their products in the print media, electronic media and outdoor advertising. All the above items and services are procured on payment of GST and the Appellant avails input tax credit of the tax paid on the same.

The Appellant had applied for a ruling on whether the promotional goods purchased for use in their showrooms for displaying their products and the items distributed to their showrooms, distributors and retailers for giving away to customers, can be treated as 'inputs' on which input tax credit can be availed. The lower Authority held that the items which are sent to the showrooms for use in the display of the Appellant's products without transferring the ownership, are to be treated as capital goods and not inputs; that the GST paid on the procurement of such items is eligible for input tax credit. However, when these items reach the end of their period of usage, they are either disposed of or written off by the Appellant and hence the input tax credit which was claimed is required to be reversed as per Rule 43 of the CGST Rules, 2017. As regards, the items distributed to their Exclusive Brand Outlet/franchisee showrooms, distributors and retailers as give away items to the customers, the lower Authority has held that the items distributed to the distributors and franchisees is eligible for input tax credit as input since the supply is made to related parties whereas the giveaway items distributed to retailers is to be considered as gifts which is not eligible for input tax credit in terms of Section 17(5) of the CGST Act.

Observations

We find that the lower Authority has concluded that promotional items (referred to by the Authority as non-distributable goods) are in the nature of capital goods since the ownership of these goods is retained with the Appellant. It is evident from the agreements that the ownership of the promotional items remains with the Appellant at all times. It is also expressly stated in the agreements that on termination of the agreements, it is the responsibility of the EBOs and distributors to return the promotional materials to the Appellant. Therefore, it is evident that the title of the promotional items remains with the Appellant and is not transferred to the EBO or the distributor. In normal accounting standards, the cost incurred for promotional activities and procurement of promotional items is an expense for the Company. The Appellant has also urged before us that these promotional items are not capitalised in their books of accounts but are always treated as revenue expenditure and hence they cannot be considered as 'capital goods'. This is in tune with the normal accounting practices. We therefore, disagree with the finding of the lower Authority and hold that the promotional items purchased by the Appellant and provided to the EBOs/franchisees, distributors and retailers are not capital goods but 'inputs' which are used in the course or furtherance of business.

We observe that the promotional materials are provided to the franchisees

and distributors free of charge. As per Section 7 of the CGST Act, a transaction is termed as a supply only when it is made for a consideration. However, the transactions specified in Schedule I of the CGST Act can be treated as a supply even if they are made without any consideration. One such transaction mentioned in clause (b) of Schedule I is a supply of goods or services or both made between related parties or distinct persons, in this case, we find that the franchisees and distributors are independent entities and are not related to the Appellant in any of the ways mentioned in the Explanation to Section 15 of the CGST Act. Another transaction made without consideration which amounts to a supply is mentioned in clause (a) of Schedule I and it applies to the permanent transfer and disposal of business assets where input tax credit has been availed on such assets. We have already held that these promotional items are not assets of the Appellant and hence this clause will also be applicable to the Appellant's case. Therefore, the provision of promotional materials free of charge by the Appellant to the franchisees and distributors is neither covered within the scope of a taxable supply as defined in Section 7 of the CGST Act nor is it a supply covered under the ambit of Schedule I of the said Act. The activity of providing the promotional items can be termed as an 'non-taxable supply' as defined in Section 2(78) of the CGST Act. In terms of Section 17(2) of the CGST Act, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. When the goods or services or both are used towards making an exempt supply, then input tax credit is not allowed. In view of the above provisions, we hold that the GST paid on the procurement of promotional items supplied to the EBOs/ franchisees and distributors free of charge will not be eligible for input tax credit since the said supply is a non-taxable supply.

We also observe that in the case of the promotional items such as carry bags, calendars, diaries, pens, etc. embossed/ engraved with the brand name and which are distributed to the EBOs/distributors/ retailers for the purpose of giving away to the customers (referred to by the lower Authority as 'distributable goods'), there is no contractual obligation on the part of the Appellant to provide these promotional items for distribution. These distributable/give away items are supplied at will, free of cost to the EBOs/franchisees, distributors and retailers. While this supply is also a non-taxable supply and ineligible for input tax credit, there is an additional disentitlement in terms of Section 17(5)(h) which provides that goods which are disposed of by way of gift are not eligible for input tax credit.

Ruling

The Promotional Products/Materials & Marketing items used by the Appellant in promoting their brand & marketing their products can he considered as "inputs" as defined in Section 2(59) of the CGST Act, 2017. However, the GST paid on the same cannot be availed as input tax credit in view of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act, 2017.

[Page Industries Ltd. – GST AAAR Karnataka – Order No. KAR / AAAR / 05 / 2021, dated 21-04-2021]

DGFT Update

CA Ashit Shah

8 Extension of Foreign Trade Policy 2015 – 2020

The existing Foreign Trade Policy 2015 – 2020 which is valid up to 31st March, 2021 is extended up to 30th September, 2021.

[N. No. 60/2015-2020, DGFT, dated 31-03-2021]

9 Export policy of Remdesivir and Remdesivir API

The export of injection Remdesivir and Remdesivir Active Pharmaceutical Ingredients (API) covered under HSN 293499 and 300490, whose exports were free till now, has been covered under category of "prohibited". It means exports of injection Remdesivir and Remdesivir API are prohibited from 11th April 2021 and onwards.

[N. No. 01/2015-2020, DGFT, dated 11th April, 2021]

10 Import policy of Melon seeds:

Melon Seeds covered under HSN 12077090 has been revised from "Free" to "Restricted" policy subject to revised policy condition.

[Notification No. 3/2015-2020, DGFT, dated 26-04-2021]

11 Import policy of mosquito killer racket:

Mosquito killer racket i.e. electrical or electronic devices for rapelling insects (e.g. mosquitos or other similar kind of insects) covered under HSN 85167920 and 85167990, is revised from "free" category to "prohibited" category if CIF value is below INR 121 per racket.

[N. No. 2/2015-2020, DGFT, dated 26-04-2021]

12 Exemption from custom clearance:

Para 2.25 of Foreign Trade Policy, 2015-20 is revised to include import of oxygen concentrators for personal use through post, courier or e-commerce portals in the list of exempted categories, where Customs clearance is sought as "gifts", till 31 July 2021.

[N. No. 4/2015-2020, DGFT, dated 30-04-2021]

13 Submission of application of MEIS

A relaxation in the late cut provisions have been provided for shipping bills for the period 01-04-2019 to 31-03-2020 can be submitted till 30-09-2021 without any late cut. However, any such application submitted after 30-09-2021,

the late cut charges would be applicable as per para 3.15 (a)(i) of the FTP 2015-2020.

[Public Notice No. 53/2015-2020, DGFT, dated 09-04-2021]

14 Imports of Injection Remdesivir and Remdesivir API

Exemption from payment of Custom Duty leviable under First Schedule in respect of imports of goods covered under chapter heading 29 & 30 viz. Remdesivir Active Pharmaceutical Ingredients, Beta Cyclodextrin (SBEBCD) used in manufacture of Remdesivir, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and Injection Remdesivir. Further this exemption in force up to 31st October 2021.

[N. No. 27/2021 – Customs, dated 20-04-2021]

15 Imports of COVID related goods

Exemption from payment of Custom Duty leviable under First Schedule and health cess on imports of oxygen, oxygen related equipment's and COVID 19 vaccines when imported into India. Further this exemption in force up to 31st July 2021.

[N. No. 28/2021 – Customs, dated 24-04-2021]

16 Imports of Inflammatory Diagnostic (markers) kits

Exemption from payment of Custom Duty leviable under First Schedule in respect of imports of specified Inflammatory Diagnostic (markers) kits covered under chapter 3822 viz. IL6, D-Dimer, CRP(C-Reactive Protein), LDH (Lactate De-Hydrogenase), Ferritin, Pro Calcitonin (PCT) and blood gas reagents. Further this exemption in force up to 31st October 2021.

Neither numbers nor powers nor wealth
nor learning nor eloquence nor anything else will
prevail, but purity, living the life, in one word,
anubhuti, realisation. Let there be a dozen such
lion-souls in each country, lions who have broken
their own bonds, who have touched the Infinite,
whose whole soul is gone to Brahman, who care
neither for wealth nor power nor fame, and these
will be enough to shake the world.

– Swami Vivekananda

Recent Amendments

CGST NOTIFICATION AND CIRCULARS

Government of India
Ministry Of Finance
(Department of Revenue)
(Central Board Of Indirect Taxes And Customs)

Notification No. 07/2021 – Central Tax New Delhi, the 27th April, 2021

G.S.R……(E). - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, in rule 26 in sub-rule (1), after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of May, 2021, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** and the details of outward supplies under section 37 in **FORM GSTR-1** or using invoice furnishing facility, verified through electronic verification code (EVC).".

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 01/2021-Central Tax, dated the 1st January, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 2(E), dated the 1st January, 2021.

Notification No. 08/2021 – Central Tax New Delhi, the 1st May, 2021

G.S.R (E).- In exercise of the powers conferred by sub-section (1) of section 50 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 661(E), dated the 28th June, 2017, namely:–

(i) In the said notification, in the first paragraph, in the first proviso, in the Table after S. No. 3, the following shall be inserted, namely: –

(1)	(2)	(3)	(4)
"4.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	9 per cent for the first 15 days from the due date and 18 per cent thereafter	March, 2021, April, 2021
5.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	March, 2021, April, 2021
6.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	March, 2021, April, 2021
7.	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	Quarter ending March, 2021.".

2. This notification shall be deemed to have come into force with effect from the 18th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification number 13/2017 – Central Tax, dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 661(E), dated the 28th June, 2017 and was last amended vide notification number 51/2020 – Central Tax, dated the 24th June, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 404(E), dated the 24th June, 2020.

Notification No. 09/2021 – Central Tax New Delhi, the 1st May, 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), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 76/2018– Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1253(E), dated the 31st December, 2018, namely:–

In the said notification, after the seventh proviso, the following proviso shall be inserted, namely: –

"Provided also that the amount of late fee payable under section 47 shall stand waived for the period as specified in column (4) of the Table given below, for the tax period as specified in the corresponding entry in column (3) of the said Table, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in **FORM GSTR-3B** by the due date, namely:-

Table

S. No. (1)	Class of registered persons (2)	Tax period (3)	Period for which late fee waived (4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	March, 2021 and April, 2021	Fifteen days from the due date of furnishing return
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	March, 2021 and April, 2021	Thirty days from the due date of furnishing return
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	January-March, 2021	Thirty days from the due date of furnishing return.".

2. This notification shall be deemed to have come into force with effect from 20th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 76/2018-Central Tax, dated 31st December, 2018 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1253(E), dated the 31st December, 2018 and was last amended vide notification number 57/2020 – Central Tax, dated the 30th June, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 424(E), dated the 30th June, 2020.

Notification No. 10/2021 – Central Tax New Delhi, the 1st May, 2021

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:–

In the said notification, in the third paragraph, after the first proviso, the following proviso shall be inserted, namely: –

"Provided further that the said persons shall furnish the return in **FORM GSTR-4** of the Central Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2021, upto the 31st day of May, 2021.".

2. This notification shall be deemed to have come into force with effect from the 30th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019 and was last amended by notification No. 64/2020-Central Tax, dated the 31st August, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 539(E), dated the 31st August, 2020.

Notification No. 11/2021 – Central Tax New Delhi, the 1st May, 2021

G.S.R….. (E).- In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017, the Commissioner, with the approval of the Board, hereby extends the time period upto the 31st day of May, 2021, for furnishing the declaration in **FORM GST ITC-04**, in respect of goods dispatched to a job worker or received from a job worker, during the period from 1st January, 2021 to 31st March, 2021.

2. This notification shall be deemed to have come into force with effect from the 25th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Notification No. 12/2021 – Central Tax New Delhi, the 1st May, 2021

G.S.R.....(E).- In exercise of the powers conferred by the second proviso to sub- section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely:–

In the said notification, after the proviso, the following proviso shall be inserted, namely:-

"Provided further that the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the said rules for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act, for the tax period April, 2021, shall be extended till the twenty-sixth day of the month succeeding the said tax period.".

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification number 83/2020 – Central Tax, dated the 10th November, 2020, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020.

Notification No. 13/2021 – Central Tax New Delhi, the 1st May, 2021

G.S.R…(E).- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. Short title and commencement. -(1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017,----

(i) in sub-rule (4) of rule 36, after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that such condition shall apply cumulatively for the period April and May, 2021 and the return in **FORM GSTR-3B** for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.";

(ii) in sub-rule (2) of rule 59, the following proviso shall be inserted, namely:-

"Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.".

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and last amended vide notification No. 07/2021 - Central Tax, dated the 27th April, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 292 (E), dated the 27th April, 2021.

Notification No. 14/2021 – Central Tax New Delhi, the 1st May, 2021

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017), in view of the spread of pandemic COVID-19 across many parts of India, the Government, on the recommendations of the Council, hereby notifies, as under,-

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 31st day of May, 2021, including for the purposes of--

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

but, such extension of time shall not be applicable for the compliances of the following provisions of the said Act, namely: -

(a) Chapter IV;

(b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129;

(c) section 39, except sub-section (3), (4) and (5);

(d) section 68, in so far as e-way bill is concerned; and

(e) rules made under the provisions specified at clause (a) to (d) above :

Provided that where, any time limit for completion of any action, by any authority or by any person, specified in, or prescribed or notified under rule 9 of the Central Goods and Services Tax Rules, 2017, falls during the period from the 1st day of May, 2021 to the 31st day of May, 2021, and where completion of such action has not been made within such time, then, the time limit for completion of such action, shall be extended upto the 15th day of June, 2021;

(ii) in cases where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order in terms of the provisions of sub- section (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 31st day of May, 2021, whichever is later.

2. This notification shall come into force with effect from the 15th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Notification No. 15 /2021 – Central Tax New Delhi, the 18th May, 2021

G.S.R……(E). - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 23, in sub-rule (1), after the words "date of the service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30," shall be inserted;

(ii) in rule 90, -

(a) in sub-rule (3), the following proviso shall be inserted, -

"Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.";

(b) after sub-rule (4), the following sub-rules shall be inserted, namely: -

"(5) The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08**, in respect of any refund application filed in **FORM GST RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W.**

(6) On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.";

(iii) in rule 92, -

(a) in sub-rule (1), the proviso shall be omitted;

(b) in sub-rule (2), -

(i) for the word and letter "Part B", the word and letter "Part A" shall be substituted;

(ii) the following proviso shall be inserted, namely: -

"Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of **FORM GST RFD- 07**.";

(iv) in rule 96, -

(a) in sub-rule (6), for the word and letter "Part B", the word and letter "Part A" shall be substituted;

(b) in sub-rule (7), for the words, letters and figures, "after passing an order in **FORM GST RFD-06**", the words, letters and figures, "by passing an order in **FORM GST RFD-06** after passing an order for release of withheld refund in Part B of **FORM GST RFD-07**" shall be substituted;

(v) in **FORM GST REG-21**, under the sub-heading "Instructions for submission of application for revocation of cancellation of registration", in the first bullet point "after the words "date of service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Additional Commissioner or the Joint Commissioner or Commissioner, as the case may be, in exercise of the powers provided under proviso to sub- section (1) of section 30," shall be inserted;

(vi) in rule 138E, for the words "in respect of a registered person, whether as a supplier or a recipient, who, —" the words "in respect of any outward movement of goods of a registered person, who, —" shall be substituted.

(vii) for **FORM GST RFD-07**, the following **FORM** shall be substituted, namely: -

"FORM GST RFD-07

[See rules 92(2) & 96(6)]

Reference No. Date: <DD/MM/YYYY>

To

_____ (GSTIN/UIN/Temp. ID)

_____ (Name)

_____ (Address)

_____ (ARN)

Part-A

Order for withholding the refund

Refund payable to the taxpayer with respect to ARN specified above are hereby withheld in accordance with the provisions of sub-section (10)/ (11) of section 54 of the CGST Act, 2017. The reasons for withholding are given as under:

S. No.	Particulars	
1	ARN	
2	Amount Claimed in RFD-01	<Auto-populated>
3	Amount Inadmissible in RFD-06	<Auto-populated>
4	Amount Adjusted in RFD-06	<Auto-populated>
5	Amount Withheld	
6	Reasons for withholding (More than one reason can be selected)	o Recoverable dues not paid o In view of sub-section 11 of Section 54 o On account of fraud (s) of serious nature o Others, (specify)
7	Description of the reasons	(Up to 500 characters, separate file can be attached for detailed reasons)
8	Record of Personal Hearing	(Up to 500 characters, separate file can be attached for detailed records)

Part-B
Order for release of withheld refund

This has reference to your refund application <ARN> dated <date> against which the payment of refund amount sanctioned vide order <RFD-06 order no> dated <date> was withheld by this office order <Order Reference No> dated <date>. It has been now found to my satisfaction that the conditions for withholding of refund no longer exist and therefore, the refund amount withheld is hereby allowed to be released as given under:

S. No.	Particulars	
1	ARN	
2	Amount Claimed in RFD-01	<Auto-populated>
3	Amount Inadmissible in RFD-06	<Auto-populated>
4	Amount Adjusted in RFD-06	<Auto-populated>
5	Amount Withheld in RFD-07 A	<Auto-populated>
6	Amount Released	
7	Amount to be Paid	

Date: Signature (DSC):

Place: Name:

Designation: Office Address: ";

(viii) after **FORM GST RFD-01 B**, the following **FORM** shall be inserted, namely: -

"FORM GST RFD-01 W
[Refer Rule 90(5)]
Application for Withdrawal of Refund Application

1. ARN:
2. GSTIN:
3. Name of Business (Legal):
4. Trade Name, if any:
5. Tax Period:
6. Amount of Refund Claimed:
7. Grounds for Withdrawing Refund Claim:
   - i. Filed the refund application by mistake
   - ii. Filed Refund Application under wrong category
   - iii. Wrong details mentioned in the refund application
   - iv. Others (Please Specify)

8. Declaration: I/We <Taxpayer Name> hereby solemnly affirm and declare that the information given herein is true and correct to the best of my/ our knowledge and belief and nothing has been concealed therefrom.

Place: Signature of Authorised Signatory

Date: Name

Designation/ Status".

[F. No. CBEC-20/06/04/2020-GST]

(Rajeev Ranjan)
Under Secretary, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and was last amended vide notification No. 13/2021-Central Tax, dated the 01.05.2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 309(E), dated the 01st May, 2021.

Circular No. 148/04/2021-GST New Delhi, dated the18th May, 2021 CBEC-20/06/04/2020-GST

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

Madam/Sir,

Subject: Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017 – reg.

As you are aware vide Finance Act, 2020, section 30 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") was amended and the same has been notified with effect from 01.01.2021 vide notification No. 92/2020- Central Tax, dated 22.12.2020. The amended provision provides for extension of time limit for applying for revocation of cancellation of registration on sufficient cause being shown and for reasons to be recorded in writing, by:

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

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

Consequently, changes have also been made in rule 23 and **FORM GST REG-21** of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") vide notification No.15/2021- Central Tax, dated 18.05.2021.

2. In order to ensure uniformity in the implementation of the provisions of above rule across the field formations, till the time an independent functionality for extension of time limit for applying in **FORM GST REG-21** is developed on the GSTN portal, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby provides the following guidelines for implementation of the provision for extension of time limit for applying for revocation of cancellation of registration under the said section and rule.

3. As has been provided in section 30 of the CGST Act, any registered person whose registration is cancelled by the proper officer on his own motion, may apply to such officer in **FORM GST REG-21**, for revocation of cancellation of registration within 30 days from the date of service of the cancellation order. In case the registered person applies for revocation of cancellation beyond 30 days, but within 90 days from the date of service of the cancellation order, the following procedure is specified for handling such cases:

4.1. Where a person applies for revocation of cancellation of registration beyond a period of 30 days from the date of service of the order of cancellation of registration but within 60 days of such date, the said person may request, through letter or e-mail, for extension of time limit to apply for revocation of cancellation of registration to the proper officer by providing the grounds on which such extension is sought. The proper

officer shall forward the request to the jurisdictional Joint/Additional Commissioner for decision on the request for extension of time limit.

4.2 The Joint/Additional Commissioner, on examination of the request filed for extension of time limit for revocation of cancellation of registration and on sufficient cause being shown and for reasons to be recorded in writing, may extend the time limit to apply for revocation of cancellation of registration. In case the request is accepted, the extension of the time limit shall be communicated to the proper officer. However, in case the concerned Joint/Additional Commissioner, is not satisfied with the grounds on which such extension is sought, an opportunity of personal hearing may be granted to the person before taking decision in the matter. In case of rejection of the request for the extension of time limit, the grounds for such rejection may be communicated to the person concerned, through the proper officer.

4.3 On receipt of the decision of the Joint/Additional Commissioner on request for extension of time limit for applying for revocation of cancellation of registration, the proper officer shall process the application for revocation of cancellation of registration according to the law and procedure laid down in this regard.

5. Procedure similar to that explained in paragraph 4.1 to 4.3 above, shall be followed mutatis-mutandis in case a person applies for revocation of cancellation of registration beyond a period of 60 days from the date of service of the order of cancellation of registration but within 90 days of such date.

6. The circular shall cease to have effect once the independent functionality for extension of time limit for applying in **FORM GST REG-21** is developed on the GSTN portal.

7. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in). Hindi version follows.

(Sanjay Mangal)
Commissioner (GST)

SGST NOTIFICATION AND CIRCULARS

FINANCE DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, dated the 6th May 2021.

NOTIFICATION

Notification No. 08/2021—State Tax

MAHARASHTRA GOODS AND SERVICES TAX ACT, 2017.

No. GST.1021 /C.R. 47 / Taxation-1.— In exercise of the powers conferred by sub-section (1) of section 50 of the Maharashtra Goods and Services Tax Act, 2017 (Mah. XLIII of 2017) (hereinafter in this notification referred to as the "said Act"), read with section 148 of the said Act, the Government of Maharashtra, on the recommendations of the Council, hereby makes the following further amendments in the Government notification of the Finance Department, No. MGST.1017/C.R.103(20)/Taxation-1.[Notification No. 13/2017-State Tax], dated 29th June 2017, published in the Maharashtra Government Gazette, Part-IV-B, Extra-ordinary No.182, dated the 29th June 2017, namely :—

(i) In the said notification, in the first paragraph, in the first proviso, in the Table after S. No. 2, the following shall be inserted, namely : –

(1)	(2)	(3)	(4)
"3	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	9 per cent for the first 15 days from the due date and 18 per cent thereafter	March, 2021, April, 2021

4	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	March, 2021, April, 2021
5	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	March, 2021, April, 2021
6	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	Quarter ending March, 2021.".

2. This notification shall be deemed to have come into force with effect from the 18th day of April, 2021.

By order and in the name of the Governor of Maharashtra,

MANDAR KELKAR,
Deputy Secretary to Government.

Note: The principal Notification No. MGST.1017/C.R. 103(20)/Taxation-1.[Notification No. 13/2017], dated the 29th June 2017, was published in the Maharashtra Government Gazette, Part IV-B, Extraordinary No. 182, dated the 29th June 2017 and was last amended vide Notification No. GST.1020/C.R.66/Taxation-1. [Notification No.51/2020-State Tax] dated the 1st July 2020, was published in the Maharashtra Government Gazette, Part IV-B, Extraordinary No. 138, dated the 1st July 2020.

FINANCE DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 6th May 2021.

NOTIFICATION

Notification No. 09/2021—State Tax

MAHARASHTRA GOODS AND SERVICES TAX ACT, 2017.

No. GST.1021/ C.R. 47 (A) / Taxation-1.— In exercise of the powers conferred by section 128 of the Maharashtra Goods and Services Tax Act, 2017 (Mah. XLIII of 2017), the Government of Maharashtra, on the recommendations of the Council, hereby makes the following further amendments in the Government notification of the Finance Department, No. MGST.1018/C.R.150/Taxation-1.[Notification No. 76/2018- State Tax], dated 31st December 2018, published in the Maharashtra Government Gazette, Part-IV-B, Extra-ordinary No.472, dated the 31st December 2018, namely :—

In the said notification, after the seventh proviso, the following proviso shall be inserted, namely :—

"Provided also that the amount of late fee payable under section 47 shall stand waived for the period as specified in column (4) of the Table given below, for the tax period as specified in the corresponding entry in column (3) of the said Table, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in FORM GSTR-3B by the due date, namely :—

Table

S. No. (1)	Class of registered persons (2)	Tax period (3)	Period for which late fee waived (4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	March, 2021 and April, 2021	Fifteen days from the due date of furnishing return

2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	March, 2021 and April, 2021	Thirty days from the due date of furnishing return
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	January-March, 2021	Thirty days from the due date of furnishing return.".

2. This notification shall be deemed to have come into force with effect from 20th day of April, 2021.

By order and in the name of the Governor of Maharashtra,

MANDAR KELKAR,
Deputy Secretary to Government.

Note: The principal Notification No. MGST.1018/C.R. 150/Taxation-1. [Notification No.76/2018- State Tax], dated the 31st December 2018, was published in the Maharashtra Government Gazette, Part IV-B, Extraordinary No. 472, dated the 31st December,2018 and was last amended vide Notification No. MGST.1020/C.R.71/Taxation-1. [Notification No.57/2020- State Tax], dated the 8th July, 2020, was published in the Maharashtra Government Gazette, Part IV-B, Extraordinary No. 145, dated the 8th July, 2020.

FINANCE DEPARTMENT
Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 6th May 2021.

NOTIFICATION
Notification No. 10/2021—State Tax

MAHARASHTRA GOODS AND SERVICES TAX ACT, 2017.

No. GST.1021/C.R.47 (B)/Taxation-1.—In exercise of the powers conferred by section 148 of the Maharashtra Goods and Services Tax Act, 2017 (Mah. XLIII of 2017), the Government of Maharashtra, on the recommendations of the Council, hereby makes the following further amendments in the Government notification of the Finance Department, No. GST.1019/C.R.58/Taxation-1.[Notification No.21/2019- State Tax], dated the 23rd April, 2019, published in the Maharashtra Government Gazette, Part-IV-B, Extra-ordinary No.130, dated the 23rd April, 2019, namely:—

In the said notification, in the third paragraph, after the first proviso, the following proviso shall be inserted, namely:—

"Provided further that the said persons shall furnish the return in FORM GSTR-4 of the Maharashtra Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2021, upto the 31st day of May, 2021.".

2. This notification shall be deemed to have come into force with effect from the 30th day of April, 2021.

By order and in the name of the Governor of Maharashtra,

MANDAR KELKAR,
Deputy Secretary to Government.

Note: The principal Notification No.GST.1019/C.R.58/Taxation-1. [Notification No.21/2019-State Tax], dated the 23rd April, 2019, was published in the Maharashtra Government Gazette, Part IV-B, Extraordinary No. 130, dated the 23rd April, 2019 and was last amended by Notification No.GST.1020/C.R.83/Taxation-1. [Notification No.64/2020-State Tax], dated the 8th September, 2020, was published in the Maharashtra Government Gazette, Part IV-B, Extraordinary No. 204, dated the 8th September, 2020.

FINANCE DEPARTMENT
Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, Dated the 6th May 2021.

NOTIFICATION

Notification No. 14/2021—State Tax

MAHARASHTRA GOODS AND SERVICES TAX ACT, 2017.

No. GST.1021 / C.R.47 (C) / Taxation-1.—In exercise of the powers conferred by section 168A of the Maharashtra Goods and Services Tax Act, 2017 (Mah. XLIII of 2017), (hereinafter in this notification referred to as the "said Act"), in view of the spread of pandemic COVID-19 across many parts of India, the Government of Maharashtra, on the recommendations of the Council, hereby notifies, as under,—

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 15th day of April, 2021 to the 30th day of May 2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 31st day of May 2021, including for the purposes of—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Act stated above ; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Act stated above ;

but, such extension of time shall not be applicable for the compliances of the following provisions of the said Act, namely:—

(a) Chapter IV;

(b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129;

(c) section 39, except sub-section (3), (4) and (5);

(d) section 68, in so far as e-way bill is concerned; and

(e) rules made under the provisions specified at clause (a) to (d) above :

Provided that where, any time limit for completion of any action, by any authority or by any person, specified in, or prescribed or notified under rule 9 of the Maharashtra Goods and Services Tax Rules, 2017, falls during the period from the 1st day of May 2021 to the 31st day of May 2021, and where completion of such action has not been made within such time, then, the time limit for completion of such action, shall be extended upto the 15th day of June 2021;

(ii) in cases where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order in terms of the provisions of sub-section (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 15th day of April 2021 to the 30th day of May 2021, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 31st day of May 2021, whichever is later.

2. This notification shall come into force with effect from the 15th day of April 2021.

By order and in the name of the Governor of Maharashtra,

MANDAR KELKAR,
Deputy Secretary to Government.

No. JC (HQ)-1/GST/2021/ADM-8 dated 23 April, 2021

Trade Circular No.8T of 2021.

Subject: Clarification on refund related issues - Reg.

Ref: Circular No. 147/03/2021-GST dated the 12th March, 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 clarifcatory 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,
(RAJEEKUMÁR MITAL)
Commissioner of State Tax,
Maharashtra State, Mumbai.

Note : For Circular No. 147/03/2021-GST dated the 12th March, 2021 issued by the CBIC please refer page no. 63 of GST Review March 2021.

FINANCE DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, Dated the 20th April 2021.

NOTIFICATION

MAHARASHTRA VALUE ADDED TAX ACT, 2002.

No. VAT-1521 / CR-39 / Taxation-1.- Whereas, the Government of Maharashtra is satisfied that circumstances exist which render it necessary to take immediate action further to amend the Maharashtra Value Added Tax Rules, 2005 and to dispense with the condition of previous publication thereof under the proviso to sub-section (4) of section 83 of the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005);

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) read with the proviso to sub-section (4) of section 83 of the said Act, and of all other powers enabling it in this behalf, the Government of Maharashtra hereby, makes the following rules further to amend the Maharashtra Value Added Tax Rules, 2005, namely:-

1. These rules may be called the Maharashtra Value Added Tax (Amendment) Rules, 2021.

2. In rule 17 of the Maharashtra Value Added Tax Rules, 2005 (hereinafter referred to as "the principal Rules"), in sub-rule (4B), in clause (a) for the proviso, the following proviso shall be substituted, namely :-

"Provided that, for the year 2019-20 and 2020-21 annual return shall be filed on or before the 30th June 2021;".

3. In rule 41 of the principal Rules, in sub-rule (1),-

(a) in the second proviso, for the word, brackets and letters "clause (a),(b)" the word, brackets and letter "clauses (b)" shall be substituted;

(b) after the second proviso the following proviso shall be inserted, namely:-

"Provided also that, the dealer, who is required to file the return as per proviso to clause (a) of sub-rule (4B) of rule 17, shall pay into Government Treasury, the amount of tax due from him for the period ended on the 31st March 2020 and the 31st March 2021, on or before the 30th day of June 2021".

By order and in the name of the Governor of Maharashtra,

MANDAR KELKAR,
Deputy Secretary to Government.

Inaugural Session of Workshop on Refund jointly by GSTPAM, AIFTP(WZ), BCAS, CTC, MCTC & WIRC OF ICAI For the Year 2020-2021

Inaugural Session of Joint Workshop by Raj P. Shah, President.

Seen from L to R on E Platform in the First Row: Shri Pravin Shah, Chairman – AIFTP (WZ); Adv. Monarch Bhatt, Convenor – GSTPAM; Shri. Raj Shah, President – GSTPAM; CA Aalok Mehta, Vice President, GSTPAM; Shri. Suhas Paranjpe, President – BCAS.

Seen from L to R on E Platform in the Second Row: Shri. Atul Mehta, Chairman – IDT, CTC; CA Deepak Thakkar, Chairman – GSTPAM; Shri. Anish Thacker, President – CTC; Adv. Sunil Khushalani, Hon. Treasurer – GSTPAM; Shri. M. D. Prajapati, President – MCTC.

Seen from L to R on E Platform in the Third Row: CA Manish Gadia, Chairman – WIRC; Shri. Pravin Shinde, Hon. Jt. Secretary – GSTPAM; Adv. Sejal Shah, IT, Managing Committee Member- GSTPAM.

Day 1, 06/05/2021

CA Jignesh Kansara, Speaker, addressing Participants on topic of "Refund of Zero Rated Supply Part I"

Day 2, 07/05/2021

CA Jignesh Kansara, Speaker, addressing Participants on topic of "Refund of Zero Rated Supply Part II"

Day 3, 10/05/2021

Adv. Rahul Thakar, Speaker, Addressing Participants on topic of "Refund under Inverted Duty"

Day 4, 12/05/2021

CA Mandar Telang, Speaker, addressing Participants on topic of "All other Refunds"

Day 5, 14/05/2021

Adv. Rohit Jain, Speaker, addressing Participants on topic of "Remission of Duties and Taxes on Export Products (RODTEP)"

7th Webinar on Intensive Study Circle Meeting held on 24th April, 2021

Seen from L to R on E Platform in the First Row: CA Aalok Mehta, Vice President; CA Premal Gandhi, Jt. Convenor; CA Dharmen Shah, Member; Adv. Rahul Thakar, Jt. Convenor.

Seen from L to R on E Platform in the Second Row: Adv. Sejal Shah, Committee Member; CA Aditya Surte, Group Leader; Shri. Pravin Shinde, Hon. Jt. Secretary; CA Deepak Thakkar, Monitor addressing members on the topic of "Valuation of Supply under GST"

8th Webinar on Intensive Study Circle Meeting held on 1st May, 2021

Seen from L to R on E Platform in the First Row: Shri. Pravin Shinde, Hon. Jt. Secretary; CA Raj Khona, Group Leader.

Seen from L to R on E Platform in the Second Row: CA Premal Gandhi, Jt. Convenor; CA Madar Telang, Monitor addressing members on the topic of "Issues in RCM, TDS and TCS"

Certificate Course in GST jointly with MMK College of Commerce & Economics held on 14th May, 2021

Seen from L to R on E Platform in the First Row: Shri. Pravin Jadhav, Jt. Convenor; Shri. Pravin Shinde, Hon. Jt. Secretary; Shri. Raj Shah, President.

Seen from L to R on E Platform in the Second Row: Dr. CA Kishore Peshori, Principle; CA Mahesh Madkholkar, Hon. Jt. Secretary; Dr. Manikandan Iyer, Vice-Principle.

Seen from L to R on E Platform in the Third Row: Adv. Sunil Khushalani, Hon. Treasurer; CA Aalok Mehta, Vice-President

Day 1, 14/05/2021

Adv. Dinesh Tambde, Speaker, addressing members on the topic of "Overview of GST (BASIC CONCEPTS)"

CA Hiral Shah, Speaker, addressing members on the topic of "Important Definitions under GST"

Day 2, 17/05/2021

CA Viral Chheda, Speaker, addressing members on the topic of "Threshold Exemptions and Registration under GST Act"

Adv. Parth Badheka, Speaker, addressing members on the topic of "Levy and Scope of Supply (including Exemptions under GST)"

Virtual "Mock Tribunal" under J H Baheti Fund held on 8th May, 2021

Seen from L to R on E Platform in the First Row: Adv. Sejal Shah, Committee Member; CA Mahesh Madkholkar, Chairman & Hon. Jt. Secretary; Shri. Raj Shah; President; Shri. Pravin Jadhav; Jt. Convenor.

Seen from L to R on E Platform in the Second Row: CA Aalok Mehta, Vice President; CA Deepak Thakkar, Past President & Acting Judge at Mock Tribunal; Adv. Monarch Bhatt, Mentor at Mock Tribunal; Adv. Dinesh Tambde, Mentor at Mock Tribunal.

Seen from L to R on E Platform in the Third Row: Shri. Dhaval Talati, Acting Judge at Mock Tribunal; CA Sujata Rangnekar, Past President & Acting Judge at Mock Tribunal; Adv. Sunil Khushalani, Hon. Treasurer; Shri. Ajay Talreja, Jt. Convenor.

Participants of 1st Case at Mock Tribunal

(Appellant)

(Respondent)

Miss. Sneha Tekwani as represented the Appellant and Miss Neha Chaudhari represented as Respondent in 1st case

Participants of 2nd Case at Mock Tribunal

(Appellant)

(Respondent)

Miss. Sakshi Mohite act as represented the Appellant and Shri. R. Subramanian presented as the Respondent in 2nd case

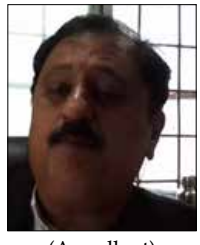
Participants of 3rd Case at Mock Tribunal

(Appellant)

(Respondent)

Shri. Chetan Gala act as represented the Appellant and Shri. Ramesh Arote represented as the Respondent in 3rd case

Participants of 4th Case at Mock Tribunal



(Appellant)

(Respondent)

Shri.R. Subramanian as represented the Appellant and Miss. Rachita Shetty represented as the Respondent in 4th case

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11th Study Circle Meeting held on 15th May, 2021

Adv. C. B. Thakar, Speaker & Past President, addressing members on the topic of "Important recent AAR AND AAAR Rulings under the GST Regime"

Seen from L to R on E Platform in the First Row: Adv. Sejal Shah, Committee Member; CA Janak Vaghani, Chairman; Adv. C. B. Thakar, Speaker & Past President; Adv. Sunil Khushalani, Hon. Treasurer.

Seen from L to R on E Platform in the Second Row: Shri. Pravin Shinde, Hon. Jt. Secretary; Adv. Parth Badheka, Jt. Convenor; CA Aalok Mehta, Vice President; Shri. Raj Shah, President.

To

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