DELHI
SALES TAX CASES

Containing important decisions of the Supreme Court of India, High Courts, Sales Tax Appellate Tribunal, Other Appellate and Revisional Authorities, Notifications, Circulars, Articles, etc.

Editors-in-Chief
Raj K. Batra

Index – Volume 58

2020

Issued by

THE KNOWLEDGE DIFFUSION & PROMOTION SECTION

of

THE SALES TAX BAR ASSOCIATION (REGD.)

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VOLUME 58

[2020]

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[2020] 58 DSTC 1 (Supreme Court)

IN THE SUPREME COURT OF INDIA

[Justice A.M.Khanwilkar and Justice Dinesh Maheshwari]

Civil Appeal No. 8941/2019

The State of Uttar Pradesh & Ors. ... Appellants

Versus

M/s Kay Pan Fragrance Pvt. Ltd. & Anr. ... Respondents

Date of Order: 22.11.2019

GOODS AND SERVICES TAX – GOODS SEIZED DURING MOVEMENT – WRIT PETITION BEFORE HIGH COURT – INTERIM ORDER – HIGH COURT DIRECTING THE STATE TO RELEASE GOODS – SUBJECT TO SECURITY OTHER THAN CASH AND BANK GUARANTEE OR INDEMNITY BOND EQUAL TO TAX & PENALTY – AFTER PASSING INTERIM ORDER WRIT PETITION DISPOSED OFF AS INFRUCTUOUS – SPECIAL LEAVE PETITION – ATTENTION OF SUPREME COURT DRAWN TO AN ORDER WHERE HIGH COURT ALLOWED WITHDRAWAL OF WRIT AFTER INTERIM ORDER – SECTION 67(8) OF CENTRAL GOODS & SERVICES TAX ACT AND RULE 141 OF RELEVANT RULES – GOODS RELEASED WITHOUT ADVERTING TO PROCEDURE PRESCRIBED – WHETHER JUSTIFIED?

In the first place, we find force in the submission canvassed by the State that a complete mechanism is predicated in the Act and the Rules for release and disposal of the seized goods and for which reason, the High Court ought to have been loath to entertain the Writ Petitions questioning the seizure of goods and to issue directions for its release.

It is broadly agreed that similar relief has been claimed in all the writ petitions filed before the High Court, including the one disposed of by the High Court as infructuous or by passing order which is impugned by the assessee in the second set of appeal referred to above.

For the sake of consistency, we have no hesitation in observing that the High Court in all such cases ought to have relegated the assessees before the appropriate authority for complying with the procedure prescribed in Section 67 of the Act read with Rules as applicable for release (including provisional release) of seized goods.

There is no reason why any other indulgence need be shown to the assessees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto

the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67 (6) of the Act. In the interim orders passed by the High Court which are subject matter of assail before this Court, the High Court has erroneously extricated the assessees concerned from paying the applicable tax amount in cash, which is contrary to the said provision.

In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

We reiterate that any order passed by the High Court which is contrary to the stated provisions need not be given effect to in respect of all the cases referred in the affidavit by the State Government before this Court and fresh cases which may have been filed or likely to be filed before the High Court in connection with the subject matter of these appeals, by all concerned and are deemed to have been set aside/modified in terms of this order.

In view of this order, all the Writ Petitions pending before the High Court, list whereof has been furnished in the affidavit are deemed to have been disposed of accordingly. We have passed this common order to cover all cases of seizure during the relevant period, to obviate inconsistency in application of Law and also to do away with multiple appeals required to be filed by the State/ assessee to assail the unstatable orders/directions passed by the High Court in subject writ petition(s) referred to in the affidavit filed by the State before this Court.

Order

Leave granted.

Heard the learned counsels appearing for the parties.

These appeals throw up common issues for consideration. The first set of appeals is filed by the State of U.P., questioning the interim order

passed by the High Court directing the State to release the seized goods, subject to deposit of security other than cash or bank guarantee or in the alternative, indemnity bond equal to the value of tax and penalty to the satisfaction of the Assessing Authority. It has come on record that similar orders came to be passed in several other writ petitions by the High Court, details whereof have been mentioned in the affidavit filed by the State in this Court. It was brought to our notice that the High Court, after passing the said interim order would then dispose of the main Writ Petition as having become infructuous, consequent to release of goods by the appropriate authority in terms of the interim order of the High Court. In the context of that grievance, this Court had to pass an order on 16.9.2019 which reads thus:

"Applications for exemption from filing certified copy of the impugned order and official translation are allowed.

Issue notice on the special leave petition as also on the prayer for interim relief.

Dasti allowed.

Tag with Special Leave Petition (C) Diary No.24795 of 2019.

Considering the fact that in the present case goods have already been released pursuant to the impugned order, no interim relief can be granted.

However, our attention was invited to an order dated 31.01.2019 passed by the High Court in a similar matter i.e. Writ Tax No.141 of 2019 - 2019-VIL-461-ALH *and couple of other case(s), wherein the High Court allowed the writ petitioner(s) to withdraw writ petition(s) after release of goods pursuant to the interim order, despite the fact that the interim order passed by it directing release of goods was subject matter of challenge pending before this Court. That cannot be countenanced. For, the claim of the State cannot be made faitaccompli in this manner.*

In future, if such occasion arises including in the case of writ petitioners in this case, it will be open to the petitioner(s) (Department) to invite the attention of High Court regarding the pending special leave petition before this Court. We are certain that the High Court will consider the request for withdrawal of writ petition appropriately." (emphasis in italics supplied)

It is now brought to our notice that after the aforementioned order of this Court, the High Court is disposing of Writ Petitions by referring to Section 67 (8) of the Central Goods and Services Act, 2017 (for short, ‹the Act›) and Rule 141 of the relevant Rules. We deem it proper to advert to one such order passed by the High Court, which is assailed by the assessee in the second set of appeal filed before this Court. The said order reads thus:

> “Heard learned counsel for the petitioner and learned Additional Advocate General for the State.
>
> It has been brought to notice of the Court that the goods are perishable and hazardous in nature.
>
> Sri Manish Goyal, learned Addl. Advocate General has submitted that the Central Goods and Services Tax Act, 2017 provides a complete procedure for release of such goods, as contained in Section 67(8) of the Act read with Rule 141 of the relevant Rules, which are quoted herein below:
>
> > “Section 67(8). The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be, after its seizure under sub-section (2), be disposed of by the proper officer in such a manner, as may be prescribed.
> >
> > Rule 141.Procedure in respect of seized goods.
> >
> > (1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.”
>
> Subject to compliance of the above provisions of law, the goods so seized may be considered for release within next one week.
>
> The writ petition is, accordingly, disposed of.”

In the first place, we find force in the submission canvassed by the State that a complete mechanism is predicated in the Act and the Rules for release and disposal of the seized goods and for which reason, the High Court ought to have been loath to entertain the Writ Petitions questioning the seizure of goods and to issue directions for its release.

In the second set of appeal filed by the assessee, the relief claimed by way of Writ Petitions before the High Court is as under:

(a) issue a suitable writ, order or direction in the nature of certiorari quashing the seizure order dated 25.7.2019 passed by the respondent No.2 and 3 under Section 67(2) of the Act and the panchnamas dated 19.7.2019 (Annexure - 2 & 3) to the writ petition respectively.

(b) issue a writ, order or direction in the nature of mandamus/ prohibition declaring the search and seizure proceedings dated 25.7.2019, to be void and restraining the respondent authorities from taking any coercive action against the petitioner.

(c) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to release the goods of the petitioner forthwith without demanding any security.

(d) issue any such order and further orders which this Court may deem fit and proper in the facts and circumstances of the case.

(e) Award the cost of the Writ Petition to the petitioner.

It is broadly agreed that similar relief has been claimed in all the writ petitions filed before the High Court, including the one disposed of by the High Court as infructuous or by passing order which is impugned by the assessee in the second set of appeal referred to above.

For the sake of consistency, we have no hesitation in observing that the High Court in all such cases ought to have relegated the assessees before the appropriate Authority for complying with the procedure prescribed in Section 67 of the Act read with Rules as applicable for release (including provisional release) of seized goods.

Section 67 of the Act reads thus:

“Section 67 Power of inspection, search and seizure

67. (*1*) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that--

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorize in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (*1*) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (*2*) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorized under sub-section (*2*) shall have the power to seal or break open the door of any premises or to break open any *almirah*,

electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (*2*) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) *The goods so seized under sub-section (*2*) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.*

(7) *Where any goods are seized under sub-section (*2*) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) *The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (*2*), be disposed of by the proper officer in such manner as may be prescribed.*

(9) Where any goods, being goods specified under sub-section (*8*), have been seized by a proper officer, or any officer authorized by him under sub-section (*2*), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (*5*) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

(*11*) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(*12*) The Commissioner or an officer authorized by him may cause purchase of any goods or services or both by any person authorized by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier." (emphasis in italics supplied)

The relevant rules for release of seized goods are Rules 140 and 141 and the same read thus:

"Rule 140 - Bond and security for release of seized goods

(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INR-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

Explanation.- For the purposes of the rules under the provisions of this Chapter, the «applicable tax» shall include Central Tax and State Tax or Central Tax and the Union Territory Tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) (2) in case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

Rule 141 - Procedure in respect of seized goods

(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower,

such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the Commissioner may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things."

There is no reason why any other indulgence need be shown to the assessees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67 (6) of the Act. In the interim orders passed by the High Court which are subject-matter of assail before this Court, the High Court has erroneously extricated the assessees concerned from paying the applicable tax amount in cash, which is contrary to the said provision.

In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

We reiterate that any order passed by the High Court which is contrary to the stated provisions need not be given effect to in respect of all the cases referred in the affidavit by the State Government before this Court and fresh cases which may have been filed or likely to be filed before the High Court in connection with the subject matter of these appeals, by all concerned and are deemed to have been set aside/modified in terms of this order.

In view of this order, all the Writ Petitions pending before the High Court, list whereof has been furnished in the affidavit are deemed to have

been disposed of accordingly. We have passed this common order to cover all cases of seizure during the relevant period, to obviate inconsistency in application of Law and also to do away with multiple appeals required to be filed by the State/ assessee to assail the unstatable orders/directions passed by the High Court in subject writ petition(s) referred to in the affidavit filed by the State before this Court.

Accordingly, the appeals are disposed of in the afore-stated terms. All pending applications are also disposed of.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[Aniruddha Bose and Deepak Gupta, JJ]

Civil Appeal No. 302-303 of 2009

Commissioner Central Excise, Delhi-III ... Appellant

Versus

M/s UNI Products India Ltd. ... Respondent

Date of Judgment : 1 May, 2020

CAR MATTING – WHETHER COVERED BY CHAPTER 57 OF THE FIRST SCHEDULE TO CENTRAL EXCISE TARIFF ACT, 1985 – CARPETS AND OTHER TEXTILE FLOORING – OR UNDER CHAPTER 87 THEREOF – VEHICLES OTHER THAN RAILWAYS OR TRAMWAY ROLLING STOCK AND PARTS AND ACCESSORIES?

The core issue in these appeals is as to whether car mats come under chapter-heading 57.03 or not. In the second appeal, the numerical representation of the product, as claimed by the assessee, was different but that difference is not of much significance. Revenues case is that the goods are manufactured in such a way that these can be used as accessories of cars. The Tribunal found that though in common parlance the products involved may not be considered as carpets, in view of the wordings of the chapter, section notes, chapter notes and explanatory notes, the goods were classifiable under chapter heading 570390.90.

We do not find any error in such reasoning. Chapter 87 of the Central Excise Tariff of India does not contain car mats as an independent tariff entry. We have reproduced earlier the various parts and accessories listed against tariff entry 8708. All of them are mechanical components, and revenue want car mats to be included under the residuary sub-head other in the same list. The HSN Explanatory Notes dealing with interpretation of the rules specifically exclude tufted textile carpets, identifiable for use in motor cars from 87.08 and place them under heading 57.03.

Revenues argument is that the Explanatory Notes have persuasive value only. But the level or quality of such persuasive value is very strong, as observed in the judgments of this Court to which we have already referred. Moreover, the Commissioner himself has referred to the Explanatory Notes in the order-in- original while dealing with the respondents stand. Thus, we see no reason as to why we should make a departure from the general trend of taking assistance of these Explanatory Notes to resolve

entry related dispute. Now, on referring to these Explanatory Notes, we find that one category of carpets [Textile carpets (Chapter 57)] has been excluded specifically from parts and accessories. In our opinion, the subject-item does not satisfy the third condition specified in Section XVII of the Explanatory Notes in relation to III-Parts and Accessories. A plain reading of clause (C) thereof, which we have quoted above, excludes textile carpets (Chapter 57).

The main argument of the appellant is that because the car mats are made specifically for cars and are used also in cars, they should be identified as parts and accessories. But if we go by that logic, textile carpets could not have been excluded from Parts and Accessories. We have referred to such exclusion in the preceding paragraph. It has also been urged on behalf of the revenue that these items are not commonly identified as carpets but are different products. The Tribunal on detailed analysis on various entries, Rules and Notes have found they fit the description of goods under chapter heading 570390.90. We accept this finding of the Tribunal. Once the subject goods are found to come within the ambit of that sub-heading, for the sole reason that they are exclusively made for cars and not for home use (in broad terms), those goods cannot be transplanted to the residual entry against the heading 8708. As we find the subject-goods come under the chapter-heading 570390.90, and the other entry under the same Chapter forming the subject of dispute in the second order of the Commissioner, in our opinion, there is no necessity to import the common parlance test or any other similar device of construction for identifying the position of these goods against the relevant tariff entries.

Judgment

Aniruddha Bose, J.

These two appeals against the decision of the Customs Excise & Service Tax Appellate Tribunal (CESTAT) rendered on 16TH July, 2008 require adjudication on the question as to whether car matting would come within Chapter 57 of the First Schedule to the Central Excise Tariff Act, 1985 under the heading Carpets and Other Textile Floor Coverings or they would be classified under Chapter 87 thereof, which relates to Vehicles other than Railway or Tramway Rolling-Stock and Parts and Accessories Thereof. The appeals are against a common decision and we shall also deal with both these appeals together in this judgment. The respondent-assessee want their goods to be placed under Chapter heading 5703.90. We shall refer to the specific entries against this item later in the judgment. The respondent, at the material point of time were engaged in the

business of manufacture of textile floor coverings and car matting. The subject-goods have been referred to interchangeably by the revenue also as car mattings and car carpets. The respondent, at the material time, were clearing the goods declaring them to be goods against Heading No.570390.90. Effective rate of excise duty on goods under that entry was 8% and education cess at the applicable rate for the subject period. We find this rate of duty, inter-alia, from the order of the Commissioner dealing with the first and the second show-cause notices. The rate of basic excise duty would have been 16% apart from education cess if these goods were classified against goods specified in heading no.8708.99.00. Altogether three show-cause-notices were issued against the respondent over clearance of goods under the said heading. These notices required them to answer as to why they should not be charged the differential rate of duty and interest. We would like to point out here that in the show-cause notices, the respective chapter sub-headings have been referred to as 8708.99.00 and 570390.90 and in the order of the Tribunal also, the sub-headings have been referred to as such. But the authorities themselves in certain places described the sub-headings in shorter numerical forms, as 5703.90 and 8708.00. We find these minor variations in the paper-book. But this variation of the sub- headings represented in numerical form is not of any significance so far as adjudication of these appeals are concerned. The respondent were also to answer as to why penalty should not be imposed upon them in terms of Section 38A of the Central Excise Act, 1944 read with Rule 25 of the Rules made thereunder. The first show-cause notice is dated 9th August, 2005 in regard to clearance of goods made during the period between 9 th July, 2004 and 31ST March, 2005. They had cleared altogether 8,65,777 pieces of those items in different sizes in that period. The second show-cause notice was issued on 2 nd May, 2006 and related to clearance of 12,02,482 pieces of the same goods for the period between 1ST April, 2005 and 31ST January, 2006. The third show- cause notice is of 7th March, 2007 and the clearance involved 20,15,412 pieces from 1ST February, 2006 to 31ST January, 2007. For the period involved in the third show-cause notice, clearance was made by the respondent under Chapter sub-heading NO.570500.19, which carried effective rate of duty @8%.

2. By the time the third show-cause notice was issued, the adjudicating authority of first instance (Commissioner Central Excise, Delhi III) had passed the order against the respondent on 29TH September, 2006, upon considering their responses to the said two show-cause notices. In this judgment, we shall mainly refer to this order, while examining the decision of the Tribunal. The authorities stand has been that the subject-items ought to be classified under sub-heading 8708.99.00. Against chapter heading 8708, the goods described are parts and accessories of motor vehicles of

headings 8701 to 8705. The sub-headings against tariff item NOS.8701 to 8705 refer to five categories of vehicles. These are (i) tractors (except those falling under 8709), (ii) motor vehicles for the transport of ten or more persons, including the driver, (iii) motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702) including station wagons and racing cars (iv) motor vehicles for transport of goods (v) special purpose motor vehicles, other than those principally designed for the transport of persons or goods. The description of goods in Chapter 87 of the Central Excise Tariff of India (2004-05) in the eight digit format list the tariff-items of chapter 8708 have been depicted in the following manner:-

Tariff Item	Description of Goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
8708	**– Parts and accessories of the motor vehicles of headings 8701 to 8705**		
8708 10	– Bumpers and parts thereof:	Kg	16%
8708 10 10	– For tractors	Kg	16%
8708 10 90	– Other	Kg	16%
	– Other parts and accessories of bodies (including cabs):	Kg	16%
8708 21 00	– Safety seat belts	u	16%
8708 29 00	– Other	Kg	16%
	– Brakes and servo-brakes and parts thereof:		
8708 31 00	– Mounted brake linings	Kg	16%
8708 39 00	– Other	Kg	16%
8708 40 00	– Gear boxes	Kg	16%
8708 50 00	– Drive-axles with differential, whether or not provided with other transmission components	Kg	16%
8708 60 00	– Non-driving axles and parts thereof	Kg	16%
8708 70 00	– Road wheels and parts and accessories thereof	Kg	16%
8708 80 00	– Suspension shock-absorbers other parts and accessories:	Kg	16%
8708 91 00	– Radiators	Kg	16%
8708 92 00	– Silencers and exhaust pipes	Kg	16%
8708 93 00	– Clutches and parts thereof	Kg	16%
8708 94 00	– Steering wheels, steering columns and steering boxes	Kg	16%
8708 99 00	– Other	Kg	16%

3. As would be evident from the above-referred table, there are total seventeen items under the said sub-heading of tariff-item specified as parts and accessories (including those referred to as other) and the item against which the excise authorities want the car mattings to be treated is in the nature of a residuary item, referred to in that table as other. On the other hand, the relevant parts of Chapter 57 of Central Excise Tariff of India, 2004-2005 stipulates:-

Notes:

1. For the purposes of this Chapter, the term carpets and other textile floor coverings means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes article having the characteristics of textile floor coverings but intended for use for other purposes.

Heading No.	Sub-heading No.	Description of goods
(1)	(2)	(3)
57.01	Xx	xx
57.02		Carpets and other textile floor coverings (other than those of heading No. 57.01), knotted, woven, tufted, or flocked, whether or not made up. In or in relation to the manufacture of which any process is ordinarily carried on with the aid of machines:
	5702.11	Of coconut fibres (coir)
	5702.12	Of jute
	5702.19	Othe Other
	5702.90	Other
57.03		Other carpets and other textile floor coverings, whether or not made up
	5703.10	Of coconut fibres (coir)
	5703.20	Of jute
	5703.90	Other”

4. Before the authority of first instance (Commissioner, Central Excise, Delhi-III, Gurgaon), the respondent explained their manufacturing

process in course of hearing on the first two show-cause notices. This is recorded in the order of the Commissioner passed on 29TH September, 2006. We reproduce below that part from the said order:-

> Depending upon the variety of Moulded Car Carpets, the fibre i.e. polyester/polypropylene is fed in opening and blending equipments, from where it is transported to carding equipments. After carding, the same is put for Needle punching. After needle punching, the fabric is then chemically treated in order to provide strength to the carpet fabric as per customer requirement. After chemical binding, the fabric is laminated as per customer requirement. The laminated fabric/impregnated fabric is then moulded as per the requirement and trimmed to be fixed in the vehicle. After trimming the Namda felt is fixed on the back of the carpet as per requirement. Thereafter, the child parts as well as grippers are fixed wherever required. The resultant product is the moulded car carpets which was classified under sub-heading 5703.90. (quoted from the order of the Commissioner)

5. The respondents argument that the Chapter heading 5703.90 covered carpets and other textile floor coverings and they were manufacturing those items only was rejected by the Commissioner. This plea, however, was subsequently accepted by the Tribunal.

6. Reference has been made before us to **"Harmonized Commodity Description and Coding System"**, **Explanatory Notes** issued by the World Customs Organisation (2002). These Notes, termed HSN Explanatory Notes have been referred to by the learned Counsel for both the parties. Strong persuasive value of these Explanatory Notes has been recognised by this Court in the cases of **CCE vs. Wood Craft Products Ltd.** [(1995) 3 SCC 454], **Collector of Central Excise vs. Bakelite Hylam** [1997 (91) E.L.T. 13 (S.C.)], **Collector of Customs vs. Business Forms Ltd.** [(2005) 7 SCC 143] and **Holostick India Ltd. vs. Commissioner of Central Excise** [(2015) 7 SCC 401]. General Rules for the Interpretation of the Harmonized System lay down the Principles of Interpretation for classification of Goods in the Nomenclature. Rule 3(a) thereof provides:-

> "Rule 3(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods,

even if one of them gives a more complete or precise description of the goods."

Clause 3 (a) of the **General Rules For the Interpretation** of First Schedule to the Central Tariff Act, 1985 in cases where possibilities arise of a single item being classified under more than one head corresponds to the said Rule 3(a) of the **Explanatory Notes**.

The Explanatory Note IV (b) to this Rule i.e. 3(a), of the Rules for Interpretation of the **HSN Explanatory Notes** specifies:-

"(iv) It is not practicable to lay down hard and fast rules by which to determine whether one heading more specifically describes the goods than another, but in general it may be said that:-

(a) xx xx xx

(b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.

Examples of the latter category of goods are:

(1) Tufted textile carpets, identifiable for use in motor cars, which are to be classified not as accessories of motor cars in heading 87.08 but in heading 57.03, where they are more specifically described as carpets.

(2) ……"

7. Section Note 2 of Section XVII of Central Excise Tariff excludes eleven sets of items from being treated as parts and accessories. Section Note 3 further provides:-

"3. References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory."

8. There is reference to "PARTS AND ACCESSORIES" under the main heading "GENERAL", in Section XVII of the HSN Explanatory Notes, 2002. Under the sub-heading "(iii) PARTS AND ACESSORIES", a three-

layer test has been postulated. It is on satisfying all of these conditions a particular item would come under that chapter head. The sub-head III reads:-

"(III) PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes **no provision** for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships, etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned.

It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below). and

(b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below). and

(c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below)."

9. Paragraph (B) and relevant extract from Paragraph (C) to the same document stipulates: -

"**(B) Criterion of sole or principle use.**

(1) Parts and accessories classifiable both in Section XVII and in another Section.

Under Section Note 3, parts and accessories which are not suitable for use **solely or principally** with the articles of Chapters 86 to 88 are **excluded** from those Chapters.

The effect of Note 3 is therefore that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined but its **principal use.** Thus the steering gear, braking systems, road wheels, mudguards, etc.,

used on many of the mobile machines falling in Chapter 84, are virtually identical with those used on the lorries of Chapter 87, and since their principal use is with lorries, such parts and accessories are classified in this Section.

(2) Parts and accessories classifiable in two or more headings of the Section.

Certain parts and accessories are suitable for use on more than one type of vehicle (motor cars, aircraft, motorcycles, etc.); examples of such goods include brakes, steering systems, wheels, axles, etc. Such parts and accessories are to be classified in the heading relating to the parts and accessories of the vehicles with which they are **principally used.**

(C) Parts and accessories covered more specifically elsewhere in the Nomenclature –

Parts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g: -

xx xx

xx xx

xx xx

(7) Textile carpets (Chapter 57)

xx xx

xx xx"

Moreover, the **Explanatory Notes** dealing with parts and accessories under chapter-head 87.08 includes floor mats (other than of textile materials or unhardened vulcanised rubber).

10. The Commissioner found that car mattings satisfied all the tests enumerated in the said explanatory notes of HSN to be treated as parts and accessories classifiable under Chapter 87.08.

11. One of the reasons for such finding was that the car mattings were suitable for use solely or principally with the vehicle and that were not excluded by provisions of Notes to Section XVII. Then he applied the "market test", and concluded that if anybody asked for car matting in the market, the consumer would get a product which could only be used in

a car, with fixed length and width. In his order, the Commissioner found that what was excluded was textile carpets of Chapter 57 and not car mattings.

12. The Commissioner, thus, did not accept the assessee's stand and observed:-

> "(A) what is excluded are the Textile carpets of Chapter 57 and not car mattings. One can only safely infer of exclusion of car matting in the list, provided, if it is established that "car mattings" are nothing but ordinary textile carpets of Chapter 57. But as has been already discussed supra car mattings are commercially known differently in the market than ordinary textile carpets of Chapter 57. From the point of view of its manufacturing process these are entirely different from ordinary carpets. My discussion and logic given in para 18.7.1 clearly indicates that, the "car mattings" are different products. Board's Circular No.117/28/05-CX dt. 17.4.95 clearly states car mattings different product all together.
>
> The observations advanced in the judgments of Hon'ble Tribunal in the cases of Sterling India (2000(115) ELT-807-Trib., Jyoti Carpet Industries (2001 (132) ELT-458-Trib- Delhi), Swaraj Majda (1993 (68 ELT 258 Trib) clearly indicates that "car mattings" are entirely different than ordinary textile carpets of Chapter 57 (All these judgments are discussed in latter paras)
>
> B-1 The HSN Clarificatory Notes on Chapter 57 (page 783 of HSN Clarificatory Notes Volume-II) states the following category of products are classifiable under Chapter 57:
>
> > "The above products are classified in this chapter whether made-up (i.e. made directly to size, hemmed, lined, fringed, assembled etc.) in the form of carpet squares, beside rugs, hearth rugs, or in the form of carpets for installation in rooms, corridors, passages or stairs, in the lengths for cutting and making up. They may also be impregnated (i.e. with latex) or packed with woven or non-woven fabrics or with cellular rubber or plastics."
>
> B-2 From the above notes it is clear that not only the carpets in running length, but also made ups (i.e. made directly to size, hemmed, lined, fringed assembled etc.) in the form of carpet squares, or in the form of carpet installation in rooms, corridors,

passages or stairs are required to be classified under Chapter 57.

B-3 From the above explanation, it is seen that, carpets covered under Chapter 57 are simple carpets in running length may be made up directly to size, hemmed, lined, fringed, assembled etc. in the form of carpet squares, or in the form of carpet installation in rooms, corridors, passages or stairs and not certainly covers car mattings which undergo further processing like moulding, chemical treatment to provide strength to the carpet fabric as per customer requirement, lamination as per customers requirements, and trimming for fixing in the vehicle with NamdA fixing on the back. The car mattings although is of textile carpet origin are not ordinary carpets as explained in the Explanatory Notes of HSN for Chapter 57 and certainly not covered under Chapter 57.

When car mattings are not by definition covered under Chapter 57 (as explained above taking reference of the clarificatory notes of HSN) those are not excluded from para-C of HSN General Explanatory Notes on Section XVII referring to parts and accessories Part-III para (c) (Sl.No.7) (page 1412 of HSN Explanatory Notes Vol.4).

Thus “car mattings” satisfies the test 2-C.

18.7. From the above discussion it is clear that “car matting” satisfies all the tests enumerated in the explanatory notes of HSN for Chapter XVII, to be treated as a part and accessory classifiable under chapter 87.08 of motor vehicles of Chapter 87.05-87.07.”

13. The other order of Commissioner in connection with the third show-cause notice was passed on 5th January, 2007. The reasoning and conclusion of this order was in the same line with the order passed on 29th September, 2006. Thus, in both the orders the Commissioner sustained the directions for payment rejecting the reply of the assessee and the orders charged on the respondent duty differential and interest and also imposed penalty.

14. The two appeals of the respondent before the Tribunal were decided in their favour by a composite decision. This decision is assailed before us by the revenue authorities in these two appeals. The Tribunal observed and held:-

"**5.3** We find that chapter 57 covers not only carpets but also other floor coverings. What has to be considered is that between the terms 'carpets and other floor coverings' the terms 'parts and accessories' which can be considered more specific. Even if the claim of the Department that at no stage the carpets come into existence is accepted, it cannot be denied that the article can be considered as other floor coverings meant for other application. We also find that in the interpretative notes for rule 3(a) in HSN, where by way of an example, it has been clarified that "textile carpet identifiable for use in motor cars to be classified not as accessories of motor cars in heading 8708 but in heading 5703 where they are more specifically described as carpets". Though, in common parlance the impugned product may not be considered as carpets, in view of the wordings of the chapter, the section notes, chapter notes and the explanatory notes extracted above we are of the considered opinion that the impugned goods is correctly classifiable under chapter heading 570390.90 as claimed by the assessee."

6. The orders of commissioner are set aside and the appeals are allowed with consequential relief."

15. Chapter Notes to Chapter 57 of the HSN Explanatory Notes, relating to carpets and Other Textile Floor Coverings are relevant for effective adjudication of these two appeals. The said Chapter Notes read:-

"**Chapter Notes.**

1.- For the purposes of this Chapter, the term "carpets and other textile floor coverings" means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes.

2. This Chapter does not cover floor covering underlays.

GENERAL

This Chapter covers carpets and other textile floor coverings in which textile materials serve as the exposed surface of the article when in use. It includes articles having the characteristics of textile floor coverings (e.g., thickness, stiffness and strength) but intended

for use for other purposes (for example, as wall hangings or table covers or for other furnishing purposes).

The above products are classified in this Chapter whether made up (i.e., made directly to size, hemmed, lined, fringed, assembled, etc.), in the form of carpet squares, bedside rugs, hearth rugs, or in the form of carpeting for installation in rooms, corridors, passages or stairs, in the length for cutting and making up.

They may also be impregnated (e.g., with latex) or backed with woven or nonwoven fabrics or with cellular rubber or plastics."

16. The said instrument, i.e. HSN Explanatory Notes deal with four entries against tariff item no.5703 in following terms:-

"**57.03 – CARPETS AND OTHER TEXTILE FLOOR COVERINGS, TUFTED, WHETHER OR NOT MADE UP.**

5703.10 - Of wool or fine animal hair

5703.20 - Of nylon or other polyamides

5703.30 - Of other man-made textile materials

5703.90 - Of other textile materials

This heading covers tufted carpets and other tufted textile floor coverings produced on tufting machines which, by means of a system of needles and hooks, insert textile yarn into a pre-existing backing (usually a woven fabric or a nonwoven) thus producing loops, or, if the needles and hooks are combined with a cutting device, tufts. The yarns forming the pile are then normally fixed by a coating of rubber or plastics. Usually before the coating is allowed to dry it is either covered by a secondary backing of loosely woven textile material, e.g., jute, or by foamed rubber.

Products of this heading are distinguished from the tufted textile fabrics of heading 58.02 by, for example, their stiffness, thickness and strength, which render them suitable for use as floor coverings."

17. Learned counsel for the revenue has argued, referring to three earlier orders of the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT-the predecessor of CESTAT) and has also relied on a circular issued by the excise authorities dated 17th April, 1995. The said circular (bearing no.117/28/95-CX) specifies:-

"Car Mattings made from non-woven materials in roll form – Dutiability of Circular No.117/28/95-CX, dated 17-4-1995

[From F.No.57/1/94-CX.1]

Government of India Ministry of Finance
(Department of Revenue)
New Delhi

Subject: Dutiability of Car Mattings made from non-woven materials in roll form – Regarding

I am directed to refer to Board's <<15391$Circular No.5/Floor-Coverings/87>> (F. No.57/1/87-CX.1), dated 23-6-1987 wherein it was clarified that duty liability would not be attracted on car mattings made from duty paid non-woven material in roll form. It has been brought to the notice of the Board that this position may not hold good after extension of Modvat to these items.

2. The matter has been re-examined by the Board. The Board is of the view that there are two clear stages i.e. non-woven material emerging as excisable and dutiable goods in roll form and finally car mattings emerging as different final products. Duty has to be charged at both stages as the processes of conversion of non-woven material in roll form into car mattings involves the processes of cutting, stitching, sizing etc., and both products are known differently in the market.

3. It is, therefore, clarified that appropriate Central Excise Duty is payable on floor coverings in the form of non-woven material in rolls when cleared from the factory, as well as, on the car mattings subsequently manufactured out of duty paid floor coverings in the form of non-woven material in rolls.

4. The Board's earlier <<15391$Circular No.5/Floor Coverings/87>> (F. No.57/1/87-CX.1) dated 23-6-1987 may be treated as withdrawn and assessments may be finalized in terms of the revised instructions."

This circular deals with a situation in which non-woven materials in roll form which were excisable goods, emerged as a different product when the former is transformed as car matting upon application of certain process. For this reason, it was stipulated, that duty would be leviable at

two stages. But in these two appeals, we are to determine as to whether car mattings came within the aforesaid tariff under Chapter 57. These appeals do not raise the question as to whether car mattings themselves would be subjected to excise duty or not. The question here is under which tariff-head the duty should be paid. The aforesaid circular does not assist the revenue in the subject appeals.

18. In the three Tribunal decisions cited on behalf of revenue authorities, such car mattings were treated as parts and accessories of motor cars. The first case cited is that of **Collector of Central Excise, Bombay-II** vs. **Sterling India** [(2000) 115 ELT 807]. This was a decision of CEGAT, New Delhi. Before the Tribunal in this case, the assessee went unrepresented. The goods involved were canvas canopy, floor mattings and seat covers. The Tribunal upheld the Collector's order that the said articles were not classifiable as floor coverings under sub-heading No.5702.90 of the Tariff and those were to be classified under Heading No. 8708.00. The order of the Tribunal does not contain any analysis or reasoning and reads: -

> "**3.** We have gone through the facts on record. We find that both the Asstt. Collector of Central Excise, Bombay, who had adjudicated the matter and the Collector of Central Excise (Appeals), Bombay, had held that the goods in dispute were not the carpets and floor mattings but were accessories of motor vehicles. The goods in dispute are canvas canopy, floor matting and seat covers for motor vehicles.
>
> Floor matting was made from jute coated with PVC. Other items also were not used as floor coverings. The Collector of Central Excise (Appeals) has also referred to the HSN Explanatory Notes and the relevant Chapter Notes to arrive at his conclusion that the type of the goods involved in these proceedings were not to be classifiable as floor coverings."

19. The next case is that of **Collector of Central Excise** vs. **Swaraj Mazda** [(1993) 68 ELT 258]. This is also a decision of CEGAT. This case relates to availability of Modvat credit on floor mats for motor vehicles. In this case floor mats had been cleared on payment of duty under sub-heading No.8708, which covered parts and accessories of motor vehicles of heading 87.01 to 87.05.

Applicability of that entry was not in lis in that appeal. The Tribunal found that floor mats could be an item entering into the stream of completion of

the manufactured product rendering it fit for marketing. On that ground input credit under the Modvat provisions was allowed.

The third case, which was cited on behalf of the revenue was that of **Jyoti Carpet Industries** vs. **Commissioner of Central Excise, Jaipur-I** [(2001) 132 ELT 458] decided by the CEGAT. This was a case where the manufacturer classified textile floor covering of jute as product under sub-heading 5703.20 in the relevant years. The assessee in this case had been procuring raw-materials from different manufacturers and out of such materials, they had been producing car mattings and other mattings as well, such as bath mats, telephone mats, floor foot mats etc. with the aid of power operated machines. The process of manufacture involved cutting as per standards, overlocking and stitching etc. Following the case of **Sterling India** (supra), it was held that floor mats of cars could be classifiable under head No.8708. But again, like in the case of **Sterling India** (supra), the Tribunal has not given any reasoning for such classification in this decision. The Tribunal in these appeals, following the case of **Sterling India** (supra) found that the subject-goods were classifiable under Chapter 8708.

All these three cases have been decided by the Tribunal, which obviously has no precedent value for us. We however, discussed these cases only for the purpose of ascertaining as to whether the revenue authorities had been treating car mats as a subject head under sub-heading 8708, on proper analysis of competing claim of the assessees to include them in sub-heading 5703. We do not find so from these decisions of the Tribunal.

20. There are authorities in which it has been held that the popular meaning among consumers would be a major factor for interpretation of dispute relating to classification. This principle has been laid down in the cases of **Plasmac Machine Manufacturing Co. Pvt. Ltd.** vs. **Collector of Central Excise, Bombay** [1991 Supp.(1) SCC 57] and **Dabur India Ltd.** vs. **Commissioner of Central Excise, Jamshedpur** [(2005) 4 SCC 9]. In the case of **Dabur India Ltd (supra)**, it has been held: -

> "**9.** From the above mentioned authorities, it is clear that in classifying a product the scientific and technical meaning is not to be resorted to. The product must be classifiable according to the popular meaning attached to it by those using the product. As stated above, in this case the appellants have shown that all the ingredients in the product are those which are mentioned in Ayurvedic textbooks. This by itself may not be sufficient but the appellants have shown that they have a Drug Controller's licence for the product and they have also produced evidence by way of prescriptions of Ayurvedic doctors, who have prescribed these for treatment of rickets. As against this, the Revenue has not made

any effort and not produced any evidence that in common parlance the product is not understood as a medicament."

21. In the case of **A.P. State Electricity Board** vs. **Collector of Central Excise, Hyderabad** [(1994) 2 SCC 428], the marketability test has been applied, which is, in a way, a corollary to the "popular meaning" test. In this case it has been held: -

"**10.** It would be evident from the facts and ratio of the above decisions that the goods in each case were found to be not marketable. Whether it is refined oil (non-deodorised) concerned in *Delhi Cloth and General Mills* or kiln gas in *South Bihar Sugar Mills* or aluminium cans with rough uneven surface in *Union Carbide* or PVC films in *Bhor Industries* or hydrolysate in *Ambalal Sarabhai* the finding in each case on the basis of the material before the Court was that the articles in question were not *marketable* and were not known to the market as such. The 'marketability' is thus essentially a question of fact to be decided on the facts of each case. There can be no generalisation. The fact that the goods are not in fact marketed is of no relevance. So long as the goods are marketable, they are goods for the purposes of Section 3. It is also not necessary that the goods in question should be generally available in the market. Even if the goods are available from only one source or from a specified market, it makes no difference so long as they are available for purchasers. Now, in the appeals before us, the fact that in Kerala these poles are manufactured by independent contractors who sell them to Kerala State Electricity Board itself shows that such poles do have a market. Even if there is only one purchaser of these articles, it must still be said that there is a market for these articles. The marketability of articles does not depend upon the number of purchasers nor is the market confined to the territorial limits of this country. The appellant's own case before the excise authorities and the CEGAT was that these poles are manufactured by independent contractors from whom it purchased them. This plea itself — though not pressed before us — is adequate to demolish the case of the appellant. In our opinion, therefore, the conclusion arrived at by the Tribunal is unobjectionable."

22. Emphasis on technical meaning has been highlighted in the case of **Commissioner of Central Excise** vs. **Wockhardt Life Sciences Limited** [(2012) 5 SCC 585] for resolving classification related disputes of goods. In this case, it has been held that a commodity cannot be classified in a

residuary entry if there is a specific entry, even if the specific entry requires the product to be understood in a technical sense.

23. "The common parlance test", "marketability test", "popular meaning test" are all tools for interpretation to arrive at a decision on proper classification of a tariff entry. These tests, however, would be required to be applied if a particular tariff entry is capable of being classified in more than one heads. So far as subject-dispute is concerned, we have already referred to Chapter note 1 of Chapter 57. This note stipulates that carpets and other floor coverings would mean floor coverings in which textile materials serve as the exposed surface of the Article when in use.

This feature of the car mats has not really been rejected by the revenue authorities as untrue in the order of the Commissioner, before whom assertion to that effect was made by the respondent.

24. The core issue in these appeals is as to whether car mats come under chapter-heading 57.03 or not. In the second appeal, the numerical representation of the product, as claimed by the assessee, was different but that difference is not of much significance. Revenue's case is that the goods are manufactured in such a way that these can be used as accessories of cars. The Tribunal found that though in common parlance the products involved may not be considered as carpets, in view of the wordings of the chapter, section notes, chapter notes and explanatory notes, the goods were classifiable under chapter heading 570390.90.

25. We do not find any error in such reasoning. Chapter 87 of the Central Excise Tariff of India does not contain car mats as an independent tariff entry. We have reproduced earlier the various parts and accessories listed against tariff entry 8708. All of them are mechanical components, and revenue want car mats to be included under the residuary sub-head "other" in the same list. The HSN Explanatory Notes dealing with interpretation of the rules specifically exclude "tufted textile carpets, identifiable for use in motor cars" from 87.08 and place them under heading 57.03. Revenue's argument is that the Explanatory Notes have persuasive value only. But the level or quality of such persuasive value is very strong, as observed in the judgments of this Court to which we have already referred. Moreover, the Commissioner himself has referred to the Explanatory Notes in the order-in-original while dealing with the respondent's stand. Thus, we see no reason as to why we should make a departure from the general trend of taking assistance of these Explanatory Notes to resolve entry related dispute. Now, on referring to these Explanatory Notes, we find that one category of carpets [Textile carpets (Chapter 57)] has been excluded specifically from

parts and accessories. In our opinion, the subject-item does not satisfy the third condition specified in Section XVII of the Explanatory Notes in relation to "III-Parts and Accessories". A plain reading of clause (C) thereof, which we have quoted above, excludes "textile carpets" (Chapter 57).

26. The main argument of the appellant is that because the car mats are made specifically for cars and are used also in cars, they should be identified as parts and accessories. But if we go by that logic, textile carpets could not have been excluded from Parts and Accessories. We have referred to such exclusion in the preceding paragraph. It has also been urged on behalf of the revenue that these items are not commonly identified as carpets but are different products. The Tribunal on detailed analysis on various entries, Rules and Notes have found they fit the description of goods under chapter heading 570390.90. We accept this finding of the Tribunal. Once the subject goods are found to come within the ambit of that sub-heading, for the sole reason that they are exclusively made for cars and not for "home use" (in broad terms), those goods cannot be transplanted to the residual entry against the heading 8708. As we find the subject-goods come under the chapter-heading 570390.90, and the other entry under the same Chapter forming the subject of dispute in the second order of the Commissioner, in our opinion, there is no necessity to import the "common parlance" test or any other similar device of construction for identifying the position of these goods against the relevant tariff entries.

27. For these reasons, we dismiss the appeals. The impugned decision of the Tribunal is sustained.

28. Any connected applications shall also stand disposed of. There shall be no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Dr. Vineet Kothari and R. Suresh Kumar JJ]

WA Nos. 3403, 3413,3414
and 2812 of 2019

The Commissioner of Commercial Taxes & Ors. ... Petitioner

Versus

The Ramco Cements Ltd ... Respondent

Date of Order : 9 March, 2020

GOODS AND SERVICES TAX – CENTRAL SALES TAX – INTER STATE SALES – DECLARATION IN FORM 'C' – GOODS – DEALER – REGISTERED DEALER – SALES TAX LAWS – DEFINITIONS – RESPONDENT DEALER/COMPANY ENGAGED IN THE BUSINESS OF MANUFACTURING OF CEMENT – PURCHASED HSD DIESEL IN THE COURSE OF ISS – CONCESSIONAL RATE AGAINST C FORMS UNDER CST – PAYING CONCESSIONAL RATE OF 2% - CENTRAL SALES TAX ACT AND TN VAT ACT CONTINUED TO REMAIN IN OPERATION QUA HSD DIESEL ETC. – PROVISIONS OF SECTION 8 OF CST ACT, RULES AND DECLARATION FORM HAS NOT UNDERGONE ANY AMENDMENT AFTER IMPLEMENTATION OF CGST ACT – WHETHER RESPONDENT DEALER/COMPANY ENTITLED TO 'C' FORMS IN RESPECT OF HSD DIESEL BY MANUFACTURER OF CEMENT?

CIRCULAR ISSUED BY REVENUE – PROHIBITING DOWNLOADING OF 'C' FORMS – REGISTRATION OF SUCH DEALER – WHETHER DEEMED TO BE CANCELLED – POWER OF COMMISSIONER TO ISSUE SUCH CIRCULAR?

The bone contention of the Revenue in the present Writ Appeal is that with the enactment of the Constitutional 101st Amendment and consequential GST Laws enacted in all the States with effect from 1.7.2017 and the consequential amendments effected in the CST Act, 1956 also and amendment in the definition of 'Goods' restricting the operation of CST Act for only six commodities like Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Aviation Turbine Fuel, Natural Gas and Liquor, the Assessee Company or whoever engaged in the manufacture of Cement and other things, which were now covered by the GST Laws were not entitled to purchase such Diesel, etc. Only the six specified goods can be purchased against the Declaration Form 'C' at concessional rate on the inter-State purchases of such goods and therefore, the learned Single Judge has erred in quashing the said Circular issued by the Commissioner of Commercial Taxes on 31.5.2018 prohibiting these dealers and manufacturers of Cement, etc. from downloading Online Declaration of Form 'C' from the Official Website of the Department was justified.

A conjoint reading of both sub-sections (1) and (2) of Section 7 of the CST Act, it is clear that the Respondents/Assessees and their likes can

continue to have registration under the provisions of the CST Act and the contention raised on behalf of the Revenue that they have lost their entitlement to be so registered is misconceived and liable to be rejected.

Sections 4, 5 and other provisions of the CST Act talk of both Sale or Purchase of goods in the course of inter-State Trade or Commerce. Therefore, the right to purchase, which is, essentially, a part of freedom of trade under Article 301 and 304 of the Constitution, cannot be taken away on the anvil of the argument raised by the learned counsel for the Revenue. Equally, the liability of these dealers to pay tax under local TNVAT Act on these six commodities also continues after 1.7.2017 if sale or purchase is made within the State. Therefore, their right to hold registration under CST Act, 1956 cannot be denied to them under Section 7 of the Act.

It may also be noted here that TNVAT Act, 2006, the State Sales Tax law has also not been been completely abolished with the introduction of GST Regime with effect from 1.7.2017. It has been restricted for those six items in terms of amended Entry 54 and to which the GST Regime is not extended. Therefore, the sale or purchase of those six items, under the State Sales Tax Act, is even indeed permitted. Therefore, the Respondent/Assessee and other Dealers continued to have liability to pay Sales Tax or VAT under the local State VAT law and therefore, they are entitled to continue their State law registration and on the anvil of that they are equally entitled to registration under the CST Act, 1956. Therefore, even if the conditions required to be complied under Section 7(1) are fulfilled by the Respondent/ Assessee, it is not correct in law to contend that their registration should, either pro tanto, be deemed to be cancelled under GST or it is, otherwise, also liable to be cancelled. The manufactured goods by them being governed by GST law is irrelevant for deciding their continued right to purchase Diesel, etc., against 'C' Forms. If resale or manufacturing of goods was to be the acid test for use of 'C' Forms, it would not have been allowed for the purposes like power generation, mining or even telenetwork communication operations.

Another ground raised by the learned counsel for the Revenue about the validity of the Circular issued by the Commissioner on 31.5.2018, which has been quashed by the learned Single Judge, is also without any merit. The provisions of the TNVAT Act contained in Section 48-A of the Act, which is quoted, does not empower the Commissioner to issue any such Circular or for general interpretation of laws for any such Dealers to obtain the Declaration in 'C' Forms and use them for specified purposes under Section 8(3)(b) of the CST Act, 1956.

The intention of the Legislature, by the series of Amendments, cannot be inferred in the manner canvassed by the learned counsel for the

Revenue so as to defeat the right of the Purchasing Dealers to purchase at the concessional rate against Declaration in 'C' form even the said six commodities. No law has prohibited any such Dealers, who purchase the six commodities to start even selling these six commodities and therefore, the Respondent/Assessee like M/s. Ramco Cements Limited can even sell any of those six commodities, subject to their complying with other licensing requirements, if any. Therefore, their act of purchasing any of these six commodities under CST Act cannot be adversely affected. POWER LIMITED v. STATE OF HARYANA (2018) 53 GSTR 24 (P&H) followed."

The Appellant State and the Revenue Authorities are directed not to restrict the use of 'C' Forms for the inter-State purchases of six commodities by the Respondent/Assessees and other registered Dealers at concessional rate of tax and they are further directed to permit Online downloading of such Declaration in 'C' Forms to such Dealers. The Circular letter of the Commissioner dated 31.5.2018 stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assessees throughout the State of Tamil Nadu.

Present for Appellants	:	Mr. Mohamed Shaffiq Special Government Pleader
Present for Dealer/Respondent	:	Mr. R.L. Ramani, Senior Counsel for Mr. B. Ravindran and Mr. N. Prasad for Mr. Inbarrajan

Judgment

Writ Appeals aggrieved by the order and Judgment of the learned Single Judge dated **26.10.2018**, whereby the learned Single Judge allowed the Writ Petitions filed by the Assessees, M/s.Ramco Cements Limited and another and quashed the impugned communication dated **31st May 2018** issued by the Commissioner of Commercial Taxes, Chepauk, Chennai and consequential Notices issued to the Assessees seeking to deny the benefit of purchases of HSD Diesel, Natural Gas in the course of inter-State Trade or Commerce against the Declaration of 'C' forms of the CST Act, 1956 at the concessional rate of 2%.

2. The Revenue also contends that had such HSD Diesel been purchased within the State of Tamil Nadu locally, the rate of tax at 28% would have been levied and it would not have resulted in a big financial loss to the State of Tamil Nadu.

3. The bone contention of the Revenue in the present Writ Appeal is that with the enactment of the Constitutional 101st Amendment and consequential GST Laws enacted in all the States with effect from **1.7.2017** and the consequential amendments effected in the CST Act, 1956 also and amendment in the definition of 'Goods' restricting the operation of CST Act for only six commodities like Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Aviation Turbine Fuel, Natural Gas and Liquor, the Assessee Company or whoever engaged in the manufacture of Cement and other things, which were now covered by the GST Laws were not entitled to purchase such Diesel, etc. these six specified goods against the Declaration Form 'C' at the concessional rate on the inter-State purchases of such goods made by them and therefore, the learned Single Judge has erred in quashing the said Circular issued by the Commissioner of Commercial Taxes on **31.5.2018** prohibiting these dealers and manufacturers of Cement, etc. from downloading Online Declaration of Form 'C' from the Official Website of the Department was justified.

4. The Assessees had approached the learned Single Judge against the aforesaid stand of the Revenue Department and the said communication dated 31.5.2018 and they succeeded before the learned Single Judge and aggrieved by the said Judgment and order of the learned Single Judge, the Revenue has come up before us in these Writ Appeals.

5. Various contentions were raised by Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the Revenue Department, which were equally and vehemently opposed by Mr.R.L.Ramani, learned Senior Counsel and Mr.N.Prasad appearing on behalf of the Assessee Companies.

6. In brief, the contentions on behalf of the Revenue Department may be summarized thus:-

a) That with the new Indirect Taxes Regime introduced in all the States of the country with effect from **1.7.2017** in the form of Goods and Services Tax Law (for short 'GST') in pursuance of the Constitutional 101st Amendment Act, 2016 and consequential Amendments in the CST Act, 1956 and the State Sales Tax Act and VAT Laws restricted only the six specified goods, the Dealers and Manufacturers of Goods other than six specified commodities to which, the GST Law does not extend like Petrol, Diesel, Liquor, etc., the registration of such Dealers dealing in other goods was liable to be cancelled and they could not be treated as Dealers 'liable to pay tax' under Section 7 of the CST Act, 1956 after

1.7.2017 and in the absence of such inability of these Dealers like the Respondent/Assessees to get registered under the CST Act, 1956 they would not be entitled to purchase these six commodities at concessional rate against the Declaration in Form 'C' in terms of Section 8(3)(b) of the CST Act, 1956, in the course of inter-State Trade or Commerce.

(b) That even though the old Registration Certificates of those Dealers under CST Act were not so far cancelled and they included the Diesel, Petrol, etc. as commodities to be purchased by them in the manufacture of other goods like cement etc., but, the Registration Certificates should be deemed to be, pro tanto, amended by the force of enactment of new Laws and in the absence of their eligibility to get registered under the CST Act in terms of Section 7(1) of the Act, they could not be permitted under Section 8(3)(b) of the Act to avail the benefit of concessional rate of tax on such purchases of Petrol, Diesel, etc. for use in manufacture by them of other goods like Cement etc., which are administered and subjected to levy of tax under the new GST Law and since the GST Law does not make any such provision for concessional rate of tax against the Declaration of 'C' forms, such Dealers like the Respondent/ Assessees cannot be allowed to make use of Declaration in Form 'C'.

(c) That the learned Commissioner was justified in issuing the impugned communication to all the Joint Commissioners on **31st May 2018** making the correct interpretation of the position of law after 1.7.2017 allowing the use of Declaration form "C", by the first four categories of the Dealers who dealt with the such six specified commodities only like major Oil Companies viz., IOC BPCL, HPCL etc., major Distilleries like TASMAC, Golden Vats, SNJ Distilleries, major Hotels like ITC, Crown Plaza, Oriental Hotels, etc. and major Clubs and Resorts and Cultural Associations like Presidency Club, Madras Boat Club, etc., who can buy one or more of those six commodities and sell it. However, the excluded category of the Dealers like Cement Industries and Spinning Mills, Tamil Nadu Power Company, Mines and Nuclear Power Corporation etc., for whom the levy of tax is now provided under the new GST Law, which was in operation with effect from **1.7.2017** and they were not so entitled to continue to purchase the aforesaid six commodities at the concessional rate against Form 'C' Declarations, therefore, the said bifurcation and classification of the Dealers by the Commissioner was justified and the proceedings initiated by

the Joint Commissioners accordingly against the Respondent/ Assessees and other similarly situated persons were also justified.

7. ***Per contra***, the learned counsel for the Assessee submitted that:-

(a) The controversy was no longer *res integra* and has been decided in favour of the Assessee atleast by seven High Courts like Punjab & Haryana High Court, Rajasthan High Court, Jharkhand High Court, etc. and one of the Judgments in similar circumstances of Punjab and Haryana High Court in the case of ***Carpo Power Limited vs. State of Haryana*** *in (CWP.No.29437 of 2017* decided on 28.3.2018) **((2018) 53 GSTR 24 (P&H))** had already been affirmed by the Hon'ble Supreme Court with the dismissal of the **SLP No.20572 of 2018 on 13.8.2018** and therefore, there was no merit in the present Writ Appeals filed by the Revenue and the same deserves to be dismissed.

(b) The learned counsel for the Assessee contend that not only the Registered Certificate granted in favour of the Respondent/ Assessees continue even after 1.7.2017 without any modification thereof and therefore, the Revenue Department was estopped from denying the said benefit of purchase of six commodities at concessional rate against the Declaration in 'C' form, but, the contention of the Revenue that the Assessees were not entitled to get themselves registered under CST Act after **1.7.2017** was wholly erroneous inasmuch as such entitlement of the Assessee Companies was available to them under Section 7(2) of the CST Act 1956 and irrespective of them being not 'liable to pay tax' under the provisions of Section 7(1) of the CST Act, as they were not selling those six commodities in the course of inter-State Trade or Commerce but, nonetheless their right to hold the registration under CST Act independently exists and their right to purchase any of those six commodities at concessional rate also equally continues.

(c) The learned counsel urged that if the operatability of the CST Act was restricted only to the specified six commodities inasmuch as the Sellers of those six commodities was concerned, the right of purchase in the course of inter State Trade or Commerce of any of these six commodities could not be defeated by the Revenue and there is no question of *pro tanto* amendment of Registration Certificates of the Assessees, as they are entitled to purchase these goods and their right has not been taken away, even by the

enactment of GST Law with effect from **1.7.2017**. Consequently, the Revenue Department has taken a wholly misconceived stand in the form of the Circular issued to the Joint Commissioners on **31.5.2018** so as to deny the said benefit to the Assessees.

(d) The learned counsel for the Assessee reiterated before this court that the impugned Circular has been issued by the learned Commissioner of Commercial Taxes on **31.5.2018** which causes serious prejudice to the Assessees like the Respondent/Assessees, without giving any opportunity of hearing to the Assessees and the same is also without jurisdiction as the law under Section 48-A of the TNVAT Act, 2006 does not confer any such power upon the Commissioner to interpret the law according to his wisdom and enforce the same according to his wishes throughout the State. The said exercise could not have been undertaken by the learned Commissioner and therefore, the impugned Circular dated **31.5.2018** has been rightly set aside by the learned Single Judge and consequently, the Notices issued to the Assessees also deserves to be quashed. They emphasised particularly the following impugned part of the Circular dated **31.5.2018** issued by the Commissioner giving different categorisation of the Dealers, which is violative of Article 14 of the Constitution of India. The said Circular dated **31.5.2018** of the Commissioner is quoted below in extenso:-

"COMMERCIAL TAXES DEPARTMENT

From	*To*
Dr. T.V. Somanathan, I.A.S.,	*All Joint Commissioners*
Commissioner of Commercial Taxes,	*(Territorial)*
Chepauk, Chennai 600 005.	

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*Letter No.CC4/678/2012 dated **31st May 2018***

Sir/Madam,

Sub: Commercial Taxes Department - *Computerisation* - ***Generation of 'C' Forms - Certain instructions*** - Regarding.

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*Even after implementation of Goods and Services Tax from July 2017, **Tamil Nadu Value Added Tax continues to be administered by the Department in respect of six goods viz.,***

Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Aviation Turbine Fuel, Natural Gas and Liquor as these are outside the purview of GST*. The definition clause of Goods in section 2(d) of* ***CST Act*** *has been amended suitably incorporating the* ***above six goods only*** *and therefore all the* ***dealers who are not dealing in those goods*** *are not permitted to make use of benefits provided under the CST Act, 1956.* ***Accordingly, any dealer who deals in the above goods, i.e., who effect purchase and sales and those who effect purchases of those goods and manufactures those goods are alone eligible to be assessed under the CST Act 1956*** *and they are mandated to file returns under CST Act 1956 in respect of inter-State transactions* ***and also under TNVAT Act 2006*** *in respect of intra-State transactions.*

From the above, it is thus made clear that ***any*** dealer who deals in those six goods are alone ***entitled to effect purchases from other State*** *by* availing the concessional rate of tax. In other words, those dealers who are not dealing in those goods are not eligible to purchase those six goods at the ***concessional rate*** *of tax at 2% by issue of C form* declarations as they are trading or manufacturing those goods that are administered under GST act 2017.

It is learnt from reliable sources *that certain dealers who are not dealing in those goods are effecting purchase of those six goods and effecting sales and also using it indirectly for the manufacturing process for which they are not entitled. For example, certain manufacturing units are effecting* ***purchases of HSD and using it for generation of power out of which they manufacture finished goods*** *that are and administered under* ***GST Act 2017****. In certain cases, the dealers are effecting purchases of petroleum products from other States and effect local sales and are not paying appropriate tax. Perusal of the data relating to generation of C forms pertaining to the quarter January 2018 to March 2018 revealed the* ***following categories of dealers involved****:-*

1. ***Major Oil Companies*** *that included IOC, BPCL, HPCL, shell, Reliance Industries, ONGC.*

2. ***Major Distilleries*** *that included Golden Vats, SNJ Distilleries and TASMAC.*

3. ***Major Hotels*** *that included ITC, Oriental Hotels, Crown Plaza, GRT Hotels, SAS Hotels Enterprises, TAJ GVK Hotels, Hablis Hotels, etc.*

4. Major Clubs, Resorts, Cultural Associations that included Presidency Club, Madras Boat Club, Madras Gymkhana Club, Ootacamund Club, Andhra Social Cultural Association, Ideal Beach Resorts, etc.

5. ***Other Dealers not related to the above category*** *being Spinning Mills, Blue Metal Crusher Unit, ILFS Tamil Nadu Power Company, Housing Promoters,* ***Cement Companies (Ramco Cement), Mines, Nuclear Power Corporation****, etc.*

The dealers mentioned in the serial number ***1 to 4 are entitled to purchase petroleum products and Alcoholic Liquors*** *as they are* ***dealers*** *in those six commodities. The dealers mentioned in* ***serial number 5 are not entitled*** *to purchase petroleum products* ***as the goods manufactured are being taxed under GST****. This appears to have resulted in* ***large loss of revenue*** *from July 2017 till date* ***as these dealers should have effected purchases locally by paying higher rate of tax****. The analysis made is only with reference to the transaction period from January 2018 and March 2018. Similar exercise has to be carried out for the previous period and this* ***should be monitored in future*** *unless/until those six goods are brought within the purview of GST.*

It is also brought to the notice of this office that certain authorized dealers of major Oil Companies may be effecting purchase of petroleum products by issue of C forms and effect local sales and may not be paying tax on their first sale inside the State of Tamil Nadu as per the rate specified in the Second Schedule to TNVAT Act 2006. This may have become more prevalent in the circumstances of rising prices of petroleum products.

In order to ***plug the leakage of revenue due*** to the State in respect of Non-GST goods, it becomes essential to ensure that

(i) all the registered dealers who have migrated to GST are not misusing the C form declaration for the purpose of effecting purchase of Petroleum products and using it for manufacture of other goods that are administered under GST Act 2017 and

(ii) Authorized dealers of major Oil Companies make payment of first Sale Tax at the rate specified in the Second Schedule to TNVAT Act 2006.

Hence, all the Joint Commissioners (Territorial) are requested to issue necessary instructions to all the assessing officers to take necessary action against:

1. Those dealers who use the declaration form C for purchase of those six goods at concessional rate and not paying tax on the sales by making proper assessment under Section 22(4) of TNVAT Act 2006

2. ***Those dealers who have migrated to GST and not entitled to purchase those six goods as per Section 8(2)*** *and Section 2(d) of CST Act 1956 by initiating action under Section* ***10-A*** *for the offence committed under section* ***10-a*** *of CST Act 1956.*

All the Joint Commissioners (Territorial) are also requested to issue necessary instruction to the assessing officers concerned that wherever approval is required for generation of C forms, they should be approved ***after verifying the eligibility of issue of those declaration in order to protect against loss of revenue to the State****.*

The receipt of this letter has to be acknowledged by all the Joint Commissioners by return of mail.

Sd. xxxx
31/05/18
For Commissioner of Commercial Taxes"

8. Both the learned counsel relied on the Case Laws also which would be dealt with by us a while later.

9. Having heard the rival submissions and upon careful reading of the relevant provisions of law and the scheme of the various enactments including the introduction of new GST Regime with effect from **1.7.2017** and the case laws cited at the Bar, we are of the considered opinion that there is no merit in the present Writ Appeals filed by the State and respectfully agreeing with the view taken by the various other High Courts and affirming the view of the learned Single Judge, we are inclined to dismiss the present Writ Appeals filed by the Revenue Department for the following reasons.

10. The first and foremost contention raised on behalf of the Appellant/ State that since the Respondents/Assessees have lost their entitlement to be registered under the provisions of the CST Act 1956 and the consequential changes in the Statute, they no longer remain as Dealer 'liable to pay' tax under the CST Act, as they do not sell any of the six specified commodities

like Fuel, Diesel, etc., is misconceived. The provisions of Section 7 of the CST Act are quoted below for ready reference-

*"**7. Registration of dealers--** (1) Every dealer **liable to pay tax under this Act shall**, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and even such application shall contain such* particulars as may be prescribed.

*(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, **or where there is no such law in force in the appropriate State or any part thereof**, **any dealer having a place of business in that State or part**, as the case may be, may, **notwithstanding that he is not liable to pay tax under this Act**, apply for registration under this Act to the authority referred to in subsection (1), and every such application shall contain such particulars as may be prescribed.*

Explanation** — For the purposes of this sub-section, **a dealer shall be deemed to be liable to pay tax** under the sales tax law of the appropriate State **notwithstanding that under such law a sale or purchase made by him is exempt from ***tax** or a refund or rebate of tax is admissible in* respect thereof.

(2-A) Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realisation of the tax payable under this Act or for the proper custody and use of the Forms referred to in clause

(a) of the first proviso to subsection (2) of section 6 or subsection (1) of section 6-A or sub-section (4) of section 8, he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a Certificate of Registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.

*(3) If the authority to whom an application under sub-section (1) or sub-section (2) is made is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder [and the condition, if any, imposed under sub-section (2-A), has been complied with, **he shall register the applicant***

and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of sub-section (1) of section 8.

(3-A) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in subsection (3-A), he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner ***such security****, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or subsection (2-A),* ***such additional security****, as may be specified in the order, for all or any of the aforesaid purposes.*

(3-B) No dealer shall be required to furnish any security and sub-section (2-A) or any security or additional security under sub-section (3-A) unless he has been given an opportunity of being heard.

(3-BB) The amount of security which a dealer may be required to furnish under sub-section (2-A) or subsection (3-A) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (3-A), by the authority referred to therein shall not exceed—

(a) *in the case of a dealer other than a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum* ***equal to the tax payable under this Act****, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished; and*

(b) in the case of a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter- State trade or commerce in the year in which such security or, as the case may be additional security is required to be furnished, had such dealer been not registered under this Act.

(3-C) Where the security furnished by a dealer under sub-section (2-A) or sub-section (3-A) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(3-D) The authority granting the certificate of registration may by order and for good and sufficient cause ***forfeit the whole or any part of the security*** *furnished by a dealer,—*

(a) for realising any amount of tax or penalty payable by the dealer;

(b) *if the dealer is found to have* ***misused any of the forms****: referred to in sub-section (2-A) to have failed to keep them in proper custody:*

Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

(3-E) Where by reason of an order under sub-section (3-D), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency is such manner and within such time as may be prescribed.

(3-F) The authority issuing the forms referred to in sub-section (2-A) may refuse to issue such forms to a dealer who has failed to comply with an order under that sub-section or sub-section (3-A), or with the provisions of sub-section (3-C) or sub-section (3-E), until the dealer has complied with such order or such provisions, as the case may be.

(3-G) The authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under this section, if it is not required for the purposes of this Act.

(3-H) Any person aggrieved by an order passed under sub-section (2-A), subsection (3-A), sub-section (3-D) or sub-section (3-G) may, within thirty days of the service of the order on him, but after

furnishing the security, prefer, in such form and manner as may be prescribed, an appeal against such order to such authority (hereinafter this section referred to as the "appellate authority") as may be prescribed:

Provided that the appellate authority may, for sufficient cause, permit such person to present the appeal--

(a) after the expiry of the said period of thirty days; or

(b) without furnishing the whole or any part of such security.

(3-I) The procedure to be followed in hearing any appeal under sub-section (3-H), and the fees payable in respect of such appeals shall be such as may be prescribed.

(3-J) The order passed by the appellate authority in any appeal under subsection (3-H) shall be final.

(4) ***A certificate of registration*** *granted under this section may —*

(a) *either on the application of the dealer to whom it has been granted or, where no such application has been made, after due notice to the dealer,* ***be amended by the authority*** *granting it if* he is satisfied that by reason of the registered *dealer* ***having changed the name, place or nature of his business*** *or the class or classes of* goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended; or

(b) ***be cancelled by the authority*** *granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that* ***he has ceased to carry on business or has ceased to exist*** *or* ***has failed without sufficient cause****, to comply with an order under subsection (3-A) or with the provisions of sub-section (3-C) or sub-section (3-E) or has failed to pay any tax or penalty payable under this Act, or in the case of a dealer registered under sub-section (2)* ***has ceased to be liable to pay tax under the sales tax law of the appropriate State*** or for any other sufficient reason.

(5) A registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which

granted his certificate of registration for the cancellation of such registration, and the authority shall, ***unless the dealer is liable to pay tax under this Act, cancel the registration accordingly****, and where he does so, the cancellation shall take effect from the end of the year."*

11. A careful reading of the provisions will make it clear that registration only under Section 7(1) of CST Act depends upon the 'liability to pay tax', which arises under Section 6 of the Act, which is also quoted below for ready reference:-

*"****6. Liability to tax on inter-State sales.—***

(1) Subject to the other provisions contained in this Act, ***every dealer*** *shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification,* ***be liable to pay tax under this Act on all sales of goods other than electrical energy*** *effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:*

Provided that a dealer ***shall not be liable to pay tax*** *under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a* ***sale in the course of export*** *of those goods out of the territory of India.*

(1-A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce ***notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State*** *if that sale had taken place inside that State.*

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to ***such goods*** *to a registered dealer, if the goods are* of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this subsection unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in subsection (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State ***exempt from tax generally or is subject to tax generally at a rate which is lower than three percent****, or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any ether name); and*

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this subsection.

(3) ***Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer*** *in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of—*

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter- State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be."

12. Section 8 of the CST Act, 1956 is also quoted below for ready reference:-

*"**8. Rates of tax on sales in the course of intet-State trade or commerce**.*

*(1) Every dealer, who in the course of inter-State trade or commerce, **sells to a registered dealer** goods of the description referred to in sub-section (3), **shall be liable to pay tax under this Act, which shall be three per cent of his turnover** or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:*

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section,

*(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), **shall be at the rate applicable to the sale or purchase of such goods inside*** the appropriate State under the sales tax law ***of that State**.*

Explanation.--For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(3) The goods referred to in sub-section (1),

(a) ***

*(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 of goods for sale*** *or* ***in the telecommunications net-work*** *or in* ***mining*** *or in* ***the generation or distribution of electricity*** or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

(5) Notwithstanding *anything contained in this section, the State Government may on the fulfilment of the requirements laid down in sub-section (4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,--*

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, to a registered dealer by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in subsection (1) as may be mentioned in the notification.

(6) ***Notwithstanding*** *anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce* ***to a registered dealer for the purpose of setting up****, operation, maintenance, manufacture, trading, production, processing, assembling,* ***repairing, reconditioning, re-engineering, packaging or for use as packing material*** *or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.*

(7) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods as ***specified in the certificate of registration*** *of the registered dealer referred to in that sub-section.*

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the *prescribed authority referred to in* ***sub-section***

(4) a declaration in the prescribed manner on the prescribed form *obtained from the authority specified by the Central Government under sub-section (6), duly filled in an signed by the registered dealer to whom such goods are sold.*

Explanation.--For the purposes of sub-section (6), the expression ”special economic zone” has the meaning assigned to it in clause (iii) to Explanation 2 to the proviso to section 3 of the Central Excise Act, 1944 (1 of 1944).”

13. It is true that the liability to pay tax arises under the provisions of the CST Act only upon seller who effects the taxable sale in the course of inter-State Trade or Commerce and only such Dealers can initially obtain the registration under Section 7(1) of the Act, but, the liability to pay tax on purchase of goods is an independent liability of Purchasing Dealer also to pay tax. Section 7(1) only casts an obligation on the Seller liable to pay tax as per Section 6 and to obtain registration. It does not talk of registration or cancellation there of any purchasing dealer. Section 7(2) provides independent right of any Dealer to obtain registration under the provisions of the CST Act. The said provisions of Section 7(2) of the Act are in two parts which are joined by the words "or" which means independent clauses. In the first category, the Dealer is liable to pay tax under the Sales Tax law of the appropriate State and in the second category, where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in the State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration under the Act. Therefore, the liability to pay tax under the provisions of CST fixed on the Seller is not a condition precedent or the only contingency for getting himself registered under the provisions of the CST Act. Even a person, who is only purchasing goods in the inter-State Trade or Commerce, who may not be liable to pay tax under the provisions of CST Act as a Seller can also secure registration under the provisions of the said Act and can continue with it. Even a dealer liable to tax under State Sales Tax law, which may include even new State GST Act, 2017, can obtain registration under CST Act. In the present case, the Assessee, a Cement Company, continues to be liable to pay tax under local TNVAT Act, 2006 if it sells or purchases any of these six goods also. The TNVAT Act also has not been completely repealed but now applies only to these six commodities after **1.7.2017**, as per Section 174 of the TNGST Act, 2017.

14. Therefore, on a conjoint reading of both sub-sections (1) and (2) of Section 7 of the CST Act, it is clear that the Respondents/Assessees and their likes can continue to have registration under the provisions of the CST Act and the contention raised on behalf of the Revenue that they have lost their entitlement to be so registered is misconceived and liable to be rejected. We, accordingly, reject the same.

15. The fact that the definition of 'goods' has been amended with effect from **1.7.2017** under the provisions of CST Act to restrict it to six commodities specified in Section 2(d) of the Act does not mean that the entire scope of the operation of CST Act has been amended. The rights of the purchasing Dealers of the goods including the rights to purchase at

a concessional rate against Declaration in 'C' forms continues unabated under Section 8(3)(b) of the Act which has not been amended in 2017. The scope of the term 'goods' as defined in Section 2(d) of the Act does not obliterate such seemless flow of the inter-State Trade or the operatability of the CST Act for both Selling Dealers as well as Purchasing Dealers throughout the country. The Legislature never intended to do so while restricting the applicability of the CST Act only to six specified commodities and take them out of GST Law and taking all other commodities except the six specified items in the GST Tax Law Regime. Such a view on the part of the Revenue is self defeatative and cannot be countenanced by the court. The freedom of trade including the right to purchase in the course of inter-State Trade or Commerce enshrined in Article 301 read with Article 304(b) is not taken away by GST Regime laws.

16. The contention raised on behalf of the State is that the words in Section 7(2) of the Act viz., "***or where there is no such law in force in the appropriate State or any part thereof***" were introduced by the CST (II Amendment) Act, 1958 (Act 31 of 1958) because there were some States, atleast six States/Union Territories, where there was no Sales Tax Act during 1958 when the said Amendment was made in the year 1958 and therefore, to entitle the Dealers of those States where there was no local Sales Tax law applicable also to obtain registration under the provisions of the CST Act, those words were added in Section 7(2) of the Act. The learned Special Government Pleader for the Revenue, Mr.Mohammed Shaffiq, therefore, submitted that where the proper Sales Tax Law of the State is available right from the beginning like in Tamil Nadu and therefore, the Dealers registered under the Sales Tax Law of the Tamil Nadu State cannot per se claim the registration under the CST Act even if they are not liable to pay tax as Seller under CST Act and therefore, the Registration Certificates already issued to them deserve to be treated as non est and void *pro tanto* upon such Amendment of Laws with effect from **1.7.2017** when the GST Laws introduced in the State with the consequential amendments in the CST Act. He relied upon the decision of *Modi Spinning Mills* (1965) 16 STC 310) to support this contention of *pro tanto* amendment. He also relied upon the decision of the Hon'ble Supreme Court in the case of *MAR-APPRAEM KURI COMPANY LIMITED* (2012) 7 SCC 106) wherein the Hon'ble Supreme Court, dealt with the case of (Central) Chit Funds Act, 1982 and also a parallel Statute in the case of Kerala State Act, (23 of 1975), the court held that the State Act was repugnant to the (Central) Chit Fund Act, 1982 and therefore, it should be deemed to have been impliedly repealed by the Central Chit Funds Act, 1982.

17. These contentions of the learned Special Government Pleader for the Revenue, though attractive at the first instance, also do not merit

acceptance by this court. The reason is that the CST Act deals with both the circumstances of Sales or Purchase in the course of inter-State Trade or Commerce. While the inter-State Sale or Purchase is at the bottom of the bedrock of this enactment, the Dealers can either by selling the goods in the course of inter State Trade or Commerce or by purchasing the goods in the course of inter-State Trade or Commerce can continue to do so of course for these six commodities as per the provisions of CST Act, 1956 as amended now. The mere restriction of the operation of the CST Act with respect to six commodities with effect from 1.7.2017 does not take away the right of the Purchasing Dealers to purchase such goods in the course of inter-State Trade or Commerce under the said Act and their registration cannot be said to be either *pro tanto* cancelled nor they can be cancelled as a matter of right by the Revenue Department. The right to deal with in those six goods still continues to vest in the Purchasing Dealers and therefore, this contention is misconceived. Can the Revenue deny the right to sell any of these six goods to these Assesses subject to their compliance with licensing requirements, if any? The answer would be no. Then how can they deny their right to purchase.

18. Sections 4, 5 and other provisions of the CST Act talk of both Sale or Purchase of goods in the course of inter-State Trade or Commerce. Therefore, the right to purchase, which is, essentially, a part of freedom of trade under Article 301 and 304 of the Constitution, cannot be taken away on the anvil of the argument raised by the learned counsel for the Revenue. Equally, the liability of these dealers to pay tax under local TNVAT Act on these six commodities also continues after 1.7.2017 if sale or purchase is made within the State. Therefore, their right to hold registration under CST Act, 1956 cannot be denied to them under Section 7 of the Act.

19. The next contention of the learned Special Government Pleader for the Revenue is that concessional rate of tax under Section 8(1) of the Act has to be read with the conditions specified in Section 8(3)(b) of the Act viz., against the Declaration in 'C' forms and therefore, such a provision for giving concessional rate of tax should be strictly construed and the said right should be deemed to have been taken away with the Amendment in law with the GST Regime coming into force.

20. This is also a contention equally devoid of merit. Even a strict, literal and plain construction of provisions of the Act does not, in the opinion of this court, disentitle the Purchasing Dealers to purchase these six goods at concessional rate against 'C' forms in the course of inter-State Trade or Commerce. Since the first contention of the State that the registration of such Purchasing Dealer itself is liable to be treated as void

is a misconceived contention, this second contention raised for denial of the concessional rate of tax to such Purchasing Dealers is equally unacceptable. Since the Purchasing Dealers can continue to hold their registration under the provisions of CST Act despite the GST law coming into force on **1.7.2017**, their right to purchase at concessional rate by using declaration in 'C' forms under Section 8(1) of the Act read with Section 8(3) (b) of the Act also continues unabated even after **1.7.2017** and therefore, there is no merit in the contention raised on behalf of the Appellant/ Revenue.

21. On the other hand, we find considerable force in the contention raised on behalf of the Assessees that the provisions of Section 8(3) of the Act have to be construed, ***ut res magis valeat quam pareat***, (it is better for a thing to have effect than to be made void) so as to make the provision workable. Section 8(3) of the Act cannot be construed to be rendered unworkable because the text of the said provision does require liability of the Dealer to be discharged by the persons who purchase those six specified goods in the course of inter-State Trade or Commerce and to provide a seemless, harmonious and smooth operation of the Amended CST Act, 1956, the right to purchase the six commodities against 'C' forms has to be continued in the hands of the Purchasing Dealers.

22. It may also be noted here that TNVAT Act, 2006, the State Sales Tax law has also not been been completely abolished with the introduction of GST Regime with effect from **1.7.2017.** It has been restricted for those six items in terms of amended Entry 54 and to which the GST Regime is not extended. Therefore, the sale or purchase of those six items, under the State Sales Tax Act, is even indeed permitted. Therefore, the Respondent/Assessee and other Dealers continued to have liability to pay Sales Tax or VAT under the local State VAT law and therefore, they are entitled to continue their State law registration and on the anvil of that they are equally entitled to registration under the CST Act, 1956. Therefore, even if the conditions required to be complied under Section 7(1) are fulfilled by the Respondent/Assessee, it is not correct in law to contend that their registration should, either *pro tanto,* be deemed to be cancelled under GST or it is, otherwise, also liable to be cancelled. The manufactured goods by them being governed by GST law is irrelevant for deciding their continued right to purchase Diesel, etc., against 'C' Forms. If resale or manufacturing of goods was to be the acid test for use of 'C' Forms, it would not have been allowed for the purposes like power generation, mining or even telenetwork communication operations.

23. Another ground raised by the learned counsel for the Revenue about the validity of the Circular issued by the Commissioner on **31.5.2018**, which has been quashed by the learned Single Judge, is also without any merit. The provisions of the TNVAT Act contained in Section 48-A of the Act, which is quoted below, does not empower the Commissioner to issue any such Circular or for general interpretation of laws for any such Dealers to obtain the Declaration in 'C' Forms and use them for specified purposes under Section 8(3)(b) of the CST Act, 1956.

> *"**48-A. Clarification and Advance Ruling**.-(1) The Government may constitute a State Level Authority for Clarification and Advance Ruling, (hereinafter in this section, referred to as the Authority) comprising* of the Commissioner of Commercial Taxes and two *Additional Commissioners **to clarify, any point concerning the rate of tax**, on an application by a registered dealer :*
>
> Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.
>
> ***(2) No application** shall be entertained where the question raised in the application,--*
>
> *(i) **is already pending** before any appellate or revising authority of the department or Appellate Tribunal or any Court; or*
>
> *(ii) relates to an issue which is designed **apparently for avoidance of tax** :*
>
> *Provided that no application shall be rejected under this sub-section without giving the applicant **a reasonable opportunity of being heard** and where the application is rejected, reasons for such rejection, shall be recorded in the order.*
>
> *(3) The order of the authority **shall be binding**,*
>
> *(i) **on the applicant** who has sought for the clarification or advance ruling;*
>
> *(ii) **in respect of the goods** in relation to which the clarification of advance ruling was sought ; and*
>
> *(iii) **on all the officers** working under the control of the Commissioner of Commercial Taxes.*

(4) The Authority shall have ***power to review, amend or revoke its clarification or advance ruling at any time*** *for good and sufficient cause after giving an opportunity of being heard to the affected parties.*

(5) An order giving effect to such review or amendment or revocation shall not be subject to the period of limitation."

24. Section 48-A of the TNVAT Act only empowers the Commissioner to issue Clarification and Advance Ruling only with regard to any point concerning the rate of tax applicable on particular transaction or commodities. Sub-section (2) on the other hand restricts the Clarifications to be issued where any such issue is pending before any regular Authorities in Appeal or revisional forums or any appellate forum or Tribunal or Court and also prohibits the Assessees to raise such issues and seek Clarifications for avoidance of tax. Sub-section (1) is very clear which empowers the Commissioner to issue Clarifications and Advance Rulings on any point concerning rate of tax only. Sub-section (2) is couched in negative to provide when such applications are not maintainable. Sub-section (3) makes such orders binding on the applicants and in respect of goods for which the Clarification of Advance Ruling was sought and it makes such order binding on all the Officers working under the control of such Commissioner.

25. Therefore, the scope of Section 48A is very limited and does not empower the said Commissioner to issue such general Circulars or any Guidelines to the lower Authorities in the State. Besides thus, being without jurisdiction and any statutory support, the impugned Circular dated 31.5.2018 is also passed in violation of principles of natural justice. There is no justification for creating any invidious classification by creating categories of Dealers, arbitrarily, in violation of Article 14 of the Constitution as has been done in the impugned Circular. When the first four categories of Dealers are entitled to use 'C' Forms, the Dealers specified in 5th category like Cement Industries etc., who have been denied such benefit, such classification or differentiation has no rational nexus to the object sought to be achieved by the said Circular. It undoubtedly causes serious injustice and denial of freedom of Dealers specified in the 5th category to purchase specified six commodities at the concessional rate against Declaration in 'C' Forms and therefore, any such Circular, which is not in the nature of an administrative order and being a quasi-judicial order and having civil and evil consequences, could not have been passed without affording an opportunity of hearing to the person(s) concerned and apparently that has not been done and therefore, on both these counts,

the impugned Circular fails in law and has been rightly quashed by the learned Single Judge. The mere target to achieve more revenue, as has been mentioned in the impugned Circular itself, also cannot be a reason to sustain such Circulars and tax collection, without authority of law is a bane under the Constitutional Scheme and therefore, we are of the opinion that the learned Commissioner has exceeded his jurisdiction to issue such a Circular. Such similar Circulars have been issued in other States also and some of the Judgments, which we are citing below, have quashed those Circulars. Thus, the Judgment under Appeal of the learned Single Judge deserves to be confirmed on all counts.

26. The contention raised on behalf of the Revenue that registration of the Respondent/Assessee deserves to be cancelled or should be impliedly deemed to be cancelled *pro tanto* upon Amendment of the law is wrong and also has no reason. Firstly, as we have already observed, the TNVAT does not get completely repealed and therefore, the Assessees are liable to pay tax under the TNVAT Act if such purchases are made within the State and therefore, their liability to hold their Registration Certificate would also equally continue. Secondly, the State GST enacted by the State Legislature is also the Sales Tax law of the Appropriate State under which for other commodities manufactured by the Respondent/Assessees, the liability to pay tax on sale of such goods continues and therefore, these Dealers, who had already obtained their registration under CST Act, 1956 and have now obtained registration both under new IGST Act and SGST Act, their registration under the old laws like CST Act, 1956 and State VAT law are also bound to continue even after 1.7.2017.

27. Therefore, what has been contended by the learned counsel for the Revenue can be applied equally against the Revenue Department and the registration of the Dealers in respect of six commodities deserves to continue under old laws like State VAT Act and CST Act, 1956. We should also note that grant of Registration Certificate under the old law as well as new law is not an administrative order, but, a quasi-judicial act or order, which confers certain rights on the Dealers and also certain obligations under such Registration Certificates. The provision for the amendment or cancellation of such Registration Certificates is also specified in the respective enactments and the same can be done only upon an opportunity of hearing granted to the Dealers concerned. Therefore, there is no scope of any implied cancellation or repeal of the Registration Certificates as was contended by the learned counsel for the Revenue. We cannot accept such a flimsy submission only to subserve the interest of more revenue and for which purpose the learned Commissioner has issued the impugned Circular dated **31.5.2018,** which we have already indicated above, does

not deserve to hold the field and is liable to be quashed. Therefore, viewed from any angle, all the contentions raised by the learned counsel for the Revenue Mr. Mohammed Shaffiq have no legal basis to be sustained and are, therefore, liable to be rejected. We, accordingly, reject the same.

28. It may be noted here that the decision to keep those six commodities out of GST Regime wherein separate Laws were enacted by the Parliament and the State Legislatures even by amending Entry 54 of the Seventh Schedule was a deliberate political decision and therefore, the GST Council was constituted of all the States for representation and not only separate GST Acts were enacted by the States, but separate Central IGST Act was also enacted by the Parliament akin to CST Act and the concept of 'sale' was substituted by the concept of 'supply', comprising of total and broader spectrum of transactions of sale of goods as well as rendering of services was included as a taxable event in the GST Law. However, the inter-State Trade or Commerce or International Trade or Commerce was kept as a field of taxation reserved for the legislation by Union Government only, in the 101st Amendment of the Constitution of India. The freedom of trade in the course of inter-State Trade or Commerce is thus a part of basic features of the Constitution of India and such freedom of Trade enshrined in the Constitution was liable to be protected, even with the new GST regime. Such freedom to purchase even at the concessional rate of tax continued in the amended and protected CST Act, 1956 and only substance of the amendment in the CST Act was to restrict it to the six specified commodities. The debates for even taking these six commodities in the GST Tax Regime is still continuing. But, till that happens by enactment of proper Statutes or proper Amendment of GST Laws, the said six commodities have been kept under the umbrella of CST At, 1956 by suitably amended definition of "goods" under Section 2(i) of the CST Act, 1956.

29. Therefore, the intention of the Legislature, by the series of Amendments, cannot be inferred in the manner canvassed by the learned counsel for the Revenue so as to defeat the right of the Purchasing Dealers to purchase at the concessional rate against Declaration in 'C' form even the said six commodities. No law has prohibited any such Dealers, who purchase the six commodities to start even selling these six commodities and therefore, the Respondent/Assessee like M/s.Ramco Cements Limited can even sell any of those six commodities, subject to their complying with other licensing requirements, if any. Therefore, their act of purchasing any of these six commodities under CST Act cannot be adversely affected.

30. Some discussion of the cited Case Laws now is considered opportune.

31. In *Carpo Power Limited vs. State of Haryana and others* ((2018) 53 GSTR 24 (P&H)), a Division Bench of Punjab and Haryana High Court held that since Section 8 of the CST Act, Rule 12 of the CST (R&T) Rules and Declaration form 'C' have not undergone any amendment, the Revenue Department cannot put any restriction on the usage of 'C' forms only in view of the amendment of definition of "goods" in Section 2(d) of the CST Act. They also highlighted the additional user of 'C' forms provided for purchase of goods against 'C' form in the Telecommunication Network which was added in the relevant Rule at a subsequent stage. The court even granted refund of the excess tax paid by the Assessee for the wrongful refusal to issue 'C' forms to the Assessee. The relevant portion of the decision is quoted below for ready reference:-

> *"25. The provisions of* ***Section 8 of the CST Act, Rule 12 of CST (R&T) Rules*** *and* ***Declaration*** Form C have not undergone any amendment after the implementation of the GST laws. There cannot be any occasion to restrict the usage of `C' *Form only for the purposes of re-sale of the six items mentioned in the amended definition of "goods" in* ***Section 2*** *(d) of the* ***CST Act****. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the telecommunications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under* ***Section 7*** *(2) of the* ***CST Act****.* ***Section 7*** *(2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does* ***section 7*** *(2) stipulate that an application for registration can be made or `C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-State sale.* ***A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by Section 7 (2) of*** the Act.
>
> *26. There is another aspect of the matter that the* ***registration certificate given to the petitioner under the CST Act till date has not been cancelled.*** *As per* ***Section 7*** *(4) of the* ***CST Act****, the registration certificate granted has to be amended or cancelled. The said provisions have not been invoked. In these circumstances, the writ petition is allowed.* ***It is held that the respondents are liable to issue `C' Forms in respect of the natural gas 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****. In the event of the petitioner having had to pay the*

oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the petitioner shall be entitled to refund and/or ***adjustment of the same*** *from the concerned* authorities who collected the excess tax through the oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/ form."

32. As already noted above, the said Judgment has been affirmed by the Hon'ble Supreme Court with the dismissal of **SLP No.20572 of 2018** (*State of Haryana v. Carpo Power Limited*, dated **13.8.2018**). The brief order of the Hon'ble Supreme Court dated 13.8.2018 reads as follows:-

"Heard the learned counsel for the petitioners and perused the relevant material. *We do not find* ***any legal and valid ground for interference****. The Special Leave Petition is dismissed."*

32. A learned Single Judge of Rajasthan High Court in *Hindustan Zinc Limited v. State of Rajasthan and others,* decided on 18.5.2018 ((2019) 64 GSTR 366 (Raj.)), followed the decision of the Punjab & Haryana High Court and issued directions to the Revenue Department to issue 'C' forms to purchase High Speed Diesel, Oil for mining purpose in the course of inter-State Trade or Commerce despite the GST Law introduced with effect from 1.7.2017. The relevant portion of the said order is quoted below for ready reference:-

"16. In the present case too, the Parliament has retained high speed diesel alongwith petroleum crude, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption crude which have been specifically mentioned in section 9 of the GST Act while defining the "goods". Besides, the registration under section 7(2) of the Act is still valid and has not been cancelled and can be cancelled only within the parameters of section 4 of the CST Act. Hence, this court finds that it is ***obligatory duty of the respondents to issue C form*** *to the petitioner-company and* any failure on the part of the respondents to *do so is without any authority of law.* ***Thus,*** this court finds nothing to distinguish the ***case of the petitioners*** *herein from that of the petitioner in the case of* ***Carpo Power Limited*** *((2018) 53 GSTR 24 (P&H)).*

17. Accordingly, the present writ petitions are allowed in the same terms as Carpo Power Limited ((2018) 53 GSTR 24 (P&H)). It is

held that the respondents are liable to issue C forms in respect of the high speed diesel procured for mining purposes through inter-State trade. In the event of the petitioners having had to pay any amount on account of the respondents wrongful refusal to issue C forms the ***petitioners shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax****. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioners in writing and the* petitioners furnishing the requisite documents/form."

34. Another learned Single Judge of Chhattisgarh High Court in Shree Raipur Cement Plant v. State of Chhattisgarh and others **(2018(IV) MPJR (SC) 45)***,* explaining the amendment in the Law and following the decision of the Division Bench of Punjab and Haryana High Court also concluded that the Assessee would be entitled to make inter-State Purchase of High Speed Diesel from other States as before and his Registration Certificate under the CST Act still holds the field. The relevant portion of the Judgment including the Amendment in Law as discussed by the learned Single Judge are quoted below for ready reference. We respectfully agree with the said view of the learned Single Judge of Chhattisgarh High Court. The relevant portion of the Judgment is quoted below for ready reference:-

"20. This definition of "goods" contained in ***Section 2(d)*** *of the CST Act, 1956 suffered amendment in the* ***Taxation Laws (Amendment) Act****, 2017 published in the Gazette of India on 5-5-2017. The amended definition of "goods" states as under: - "(d) "Goods" means-*

(i) petroleum crude;

(ii) high speed diesel;

(iii) motor spirit (commonly known as petrol);

(iv) natural gas;

(v) aviation turbine fuel; and

(vi) alcoholic liquor for human consumption"

21. Thus, the amended definition of goods under the ***CST Act****, 1956 includes high speed diesel and by virtue of the said amendment, the definition of "goods" given under the CST Act stands amended*

whereby high speed diesel was kept under the meaning of goods amongst other five items.

22. The Central Goods and Services Tax Act, 2017 was promulgated and brought into force with effect from ***1-7-2017****, which is an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto. Likewise, the Chhattisgarh Goods and Services Tax Act, 2017 (for short, 'the Chhattisgarh GST Act, 2017') was promulgated and brought into force with effect from* ***1.7.2017*** *which is also an Act to make a provision for levy and collection of tax on intra-State supply of goods or service or both by the State of Chhattisgarh and the matters connected therewith or incidental thereto. Thus, the CGST Act, 2017 and the Chhattisgarh GST Act, 2017, both have been introduced with effect from* ***1.7.2017*** *by the effect of which the statutes which were imposing indirect taxes were repealed and the only indirect taxes that prevailed are the Central GST and the State GST. The levy of goods and services tax on goods and services is being made by the Central Government under the provisions as promulgated under the CGST Act, 2017 and the State Government levy goods and services tax under the provisions as promulgated under the State GST Act. The objective of the Central GST Act and the Chhattisgarh GST Act is* stated as an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government/State Government and for matters connected therewith or incidental thereto.

23. At this juncture, it would be appropriate to notice the repeal and saving provision of the CGST Act, 2017 i.e., ***Section 174 of the CGST Act, 2017****, which provides as under: -*

> *"****174. Repeal and saving****.--(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the* ***Central Excise Act****, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparation (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special* Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise *(Textiles and Textile Articles) Act, 1978 (40 of 1978), and the* ***Central Excise Tariff Act****, 1985 (5 of 1986)*

(hereafter referred to as the repealed Acts) are hereby repealed.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

24. The aforesaid provision of the CGST Act, 2017 contains a provision pertaining to repeal and saving. It is pertinent to notice that ***Section 174 of the CGST Act, 2017 does not include the CST Act, 1956*** *for the purpose of repealing and as such,* ***the operation of the CST Act, 1956 is kept intact even after the enactment of the CGST Act, 2017 with effect from 1.7.2017****.*

25. Likewise, the Chhattisgarh GST Act, 2017 also makes a provision for repeal and saving. Section 174(1) of the Chhattisgarh GST Act, 2017 provides as under: -

*"****174. Repeal and saving****.--(1) Save* as otherwise provided in this Act, on and from the date of commencement of this Act,

(a) (i) ***the Chhattisgarh Value***

Added Tax Act, 2005 (2 of 2005) shall apply only in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution*.*

(b) (i) the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (52 of 1976);

(ai) the Chhattisgarh Hotel Tatha Vas Grihon Me Vilas Vastuon Par Kar Adhiniyam, 1988 (13 of 1988); and

(bi) the Chhattisgarh Entertainments Duty and Advertisements Tax Act, 1936 (30 of 1936), (hereinafter referred to as the repealed Acts) are hereby repealed."

26. The aforesaid provision of the ***State Act*** *clearly provides that the Chhattisgarh Value Added Tax Act, 2005 shall apply only in respect of goods included in Entry 54 of the State List of the*

Seventh Schedule to the Constitution. Entry 54 of the State List of the Seventh Schedule to the Constitution of India as amended by the Constitution (One Hundred and First Amendment) Act, 2016, states as under: -

> *"**54. Taxes on the sale of petroleum**, high speed diesel, motor spirit* (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not *including sale in the course of **inter-State trade of commerce** or **sale in*** the course of international trade or ***commerce** of such goods."*

*27. Thus, from the aforesaid analysis, it is quite vivid that the **Chhattisgarh Value Added Tax Act, 2005 has not been repealed qua the items specified under the amended Entry 54 of the State List of the Seventh Schedule to the Constitution**, whereby high speed diesel is included.*

28. Section 9(2) of the CGST Act, 2017 provides for levy and collections of GST subject to the provisions of sub-section (2) of Section 9 of the CGST Act, 2017. Sub-section (2) of Section 9 of the CGST Act, 2017 carves out an exception as under: -

> *"**9. Levy and collection.**--(1) xxx xxx xxx*
>
> (2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such *date as may be notified by the* Government on the recommendations of the Council."

29. Similarly, Section 9(2) of the Chhattisgarh GST Act, 2017 provides as under: -

> "9. Levy and collection.--(1) xxx xxx xxx
>
> (2) The State tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council."

30. Sub-section (2) of Section 9 of the CGST Act, 2017 and the Chhattisgarh GST Act, 2017 clearly provide that GST on crude oil,

high speed diesel, aviation turbine, motor spirit (petrol) shall be levied with effect from the date as may be notified by the Government on the recommendations of the GST Council. Therefore, the CGST Act, 2017 has kept the aforesaid six goods away from the ambit of the CGST Act, 2017 and no notification has been issued by the Central Government on the recommendation of the GST Council imposing GST on high speed diesel at a prescribed rate.

*31. Thus, the net effect of the aforesaid discussion is that after the promulgation of the CGST Act, 2017 and the **State Act**, the items mentioned in the amended Entry 54 of the State List of the Seventh Schedule to the Constitution are governed by the **CST Act**, 1956, as no notification has been issued even under Section 9(2) of the CGST Act, 2017 by the Central Government or by the State Government under Section 9(2) of the Chhattisgarh GST Act, 2017, on the recommendation of the GST Council, therefore, the inter- State trade of high speed diesel would be governed by the **CST Act**, 1956 and the petitioner is entitled to make inter-State purchases of high speed diesel from other States as before and his registration certificate under the **CST Act**, 1956 and the rules made thereunder still holds the field and is valid."*

35. Similarly, another learned Single Judge of Gauhati High Court in the case of ***Star Cement Meghalaya and others v. The State of Assam and others*** **((2018) 57 GSTR 369 (Gau.))** relied upon the provisions of Section 7(2) read with Section 8(3)(b) of the CST Act and held that the Assessee is entitled to make such purchase despite the Amendment of GST Law with effect from **1.7.2017**. The relevant portion of the said decision is quoted below for ready reference:-

*"16. Section 7(2) of the CST Act of 1956 entitles a dealer to get himself registered under the Act, **even if, he is not liable to pay sales tax under the CST Act of 1956, but on the other hand, is liable to pay sales tax under the AVAT Act of 2003.** If the analogy projected in Clause-9 of the circular dated 05.09.2017 that the registration under Section 7(2) of the CST Act of 1956 ceases to exist as the dealer is no longer liable to tax under the AVAT Act of 2003 is correct, the withdrawal of the registration under Section 7(2) of the CST Act of 1956 would be acceptable. In other words, if it is the conclusion of the authorities in the Govt. of Assam in the Taxation and Finance Department that from 01.07.2017, the petitioners are not liable to pay taxes under the AVAT Act of 2003,*

in such event, their registration under Section 7(2) of the CST Act of 1956 would also not be sustainable inasmuch as, under Section 7(2) of the Act any dealer liable to pay tax under the Sales Tax Law of the State, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration. The pre-requisite of being entitled for a registration ***under Section 7(2) of the*** CST Act of 1956 is that the dealer so registered is liable to pay tax under the sales tax law of the State, which in the ***present case would be AVAT Act of 2003****. Therefore, if according to the authorities in the State of Assam in the Taxation and Finance Department the petitioners are not liable to pay any tax under the AVAT Act of 2003, from* ***01.07.2017*** *onwards, the authorities may withdraw the registration under Section 7(2) of the CST Act of 1956, inasmuch as, the pre-requisite of Section 7(2) of being liable to pay tax under the state sales tax law ceases to exist.*

... ...

29. But the question that would arise would be if the petitioners continue to remain leviable for a tax under AVAT Act of 2003, which admittedly is a State law, they would also continue to remain entitled to have their registration under Section 7(2) of the CST Act of 1956 inasmuch as, if a dealer is leviable under the State law, he would also be entitled to be registered as a dealer under Section 7(2) of the *Act. From the said point of view* ***the cessation of their registration under Section 7(2) of the Act as provided in the circular dated 05.09.2017 would be unsustainable****.*

30. For a clarification we have to refer to the provisions of ***Clause-9 of the circular dated 05.09.2017*** *which inter alia provides that a dealer who is making interstate purchase of high speed diesel against Form-C for use in the manufacture or processing of a good, other than the aforesaid six goods retained under section 2(d) CST Act of 1956 would cease to be a dealer under section 7(2) of the Act with effect from* ***01.07.2017*** *as their liability to pay tax under the AVAT Act of 2003 had ceased to exist from* ***01.07.2017****.*

31. The circular dated ***05.09.2017*** providing for the withdrawal of the registration under section 7(2) of the CST Act of 1956 is based on the reason that such dealers involved in *interstate purchase of the six goods and using them for a manufacturing of a good other than the six goods, are no longer leviable to a*

*tax under the AVAT Act of 2003 from **01.07.2017**. But as already discussed hereinabove **section 174(1) of the AGST Act of 2017 clearly provides that the AVAT Act of 2003 continues to remain in force in respect of the six goods retained under Section 2(d) of the CST Act of 1956** and also included in the entry-54 of the State list of the Seventh Schedule of the Constitution of India.*

32. From the aforesaid provisions of Section 174(1) of the AGST Act of 2017 and also in view of there being no date notified either by the Central Government and the State Government under Section 9(2) of the CGST Act of 2017 and AGST Act of 2017, respectively and there being no date recommended by the Goods and Services Tax Council, as required under Section 12(5) of *the Constitution (One Hundred and First Amendment) Act, 2016 and also there being no such provision in the AVAT Act of 2003 that in the event any of the six retained goods are used for manufacture of a good other than the six goods, then no tax is leviable under the AVAT Act of 2003, **the provisions in the circular dated 05.09.2017** that from **01.07.2017** onwards, the dealers dealing interstate purchase of high speed diesel and using it for manufacture of a good other than the six good are no longer liable to pay a tax under the AVAT Act of 2003 **is incorrect and unacceptable**."*

36. The learned Single Judge of this court in the case of the Assessee itself in the present Judgment under Appeal also gave similar reasoning, which we affirm by this Judgment, also quashed the Circular dated **31.5.2018** issued by the learned Commissioner of Commercial Taxes on the ground of breach of principles of natural justice as the same was issued by the learned Commissioner without giving an opportunity of hearing to the Assessees. The relevant reasons given by the learned Single Judge which we affirm are also quoted below for ready reference:-

*"39. On the basis of aforesaid analysis, it is held that the petitioner is a registered dealer under the provisions of the CST Act, 1956 read with the Rules of 1957 and his registration certificate under the CST Act, 1956 read with the Rules of 1957 **continues to be valid for the purpose of inter-State sale and purchase of high speed diesel despite the petitioner having been migrated to the GST regime with effect from 1-7-2017**, as the definition of goods as defined in Section 2(d) of the CST Act, 1956 has been amended prior to coming into force of the CGST Act, 2017 from*

1-7-2017 *which includes high speed diesel. Further, under Section 9(2) of the CGST Act, 2017, the GST Council has not made any recommendation for bringing high speed diesel within the ambit of the CGST Act, 2017 and therefore the Central Government has not notified high speed diesel to be within the ambit and sweep of the CGST Act, 2017. Thus, the petitioner's registration certificate under the CST Act, 1956 is still valid for the goods defined in Section 2(d) of the CST Act, 1956, including high speed diesel, and the petitioner is entitled for issuance of C-Form for inter-State purchase / sale of high speed diesel against the said C-Form.* ***Accordingly, the respondents shall be liable and are directed to issue C-Form to the petitioner in respect of high speed diesel to be purchased by the petitioner and used in the course of manufacture of cement*** *and for that, it is further directed to* ***rectify and remove the error on their official website*** and entertain the petitioner's application submitted on-line on the official website seeking issuance of 'C' Form to the petitioner for said goods."

39. The above decisions of various High Courts, more particularly, the order passed by Punjab and Haryana High Court made in ***Caparo Power Ltd's case****,* ***confirmed by the Hon'ble Supreme Court****, would show that the respondents herein are not entitled to take a different stand, especially, when the facts and circumstances in all these cases before this court as well as before the other High Courts, as extracted supra, are one and the same. In other words, the issue involved in these cases as well as the cases before the other High Courts is one and the same, out of which, one decision was confirmed by the Apex Court as well. Therefore, I find that the impugned communications, apart from being without jurisdiction, are not sustainable also on the reasons and findings rendered by the Punjab and Haryana High Court on the same issue, confirmed by the Apex Court.*

40. In fact, though this Court has raised specific query to the learned Additional Advocate General as to how the above decisions rendered by the various High Courts are not applicable to the present facts and circumstances, especially when the issue is one and the same, she is not in a position to convince this Court in any manner and make any distinction on the facts and circumstances of the present case before this Court and the cases dealt with by other Courts.

41. The learned Additional Advocate General contended that these writ petitions are not maintainable as against the internal communication. I have already found that the ***letter dated 31.05.2018 cannot be brushed aside as a simple internal communication****, as the finding/conclusion made therein by the Commissioner of Commercial Taxes directly affects the rights of the petitioners conferred under Section 8(3)(b) of CST Act. Therefore, the petitioners are entitled to question the said communication dated* ***31.05.2018****. Even otherwise, it is to be seen that* ***such communication was issued by the Commissioner of Commercial Taxes without hearing the petitioners. Therefore, the unilateral decision arrived by the Commissioner of Commercial Taxes undoubtedly violates the principles of natural justice****. Likewise, the other two communications are also in violation of the principles of natural justice and therefore, the petitioners are entitled to challenge those communications as well. No doubt, under normal circumstances, this Court would remit the matter back to the respondents for reconsidering the issue after hearing the petitioners. I do not think that such remand is required in these cases under the facts and circumstances as discussed supra, more particularly,* ***when the fact remains that Section 8(3)(b) has not been amended*** *and based on which, the petitioners are entitled to avail the benefit under the said provision, while they purchase the* petroleum products by way of interstate sale against 'C' declaration forms."

37. A Division Bench of Orissa High Court headed by the Hon'ble Chief Justice in the case of ***Tata Steel Ltd.*** **v.** ***State of Orissa*** **((2019) 70 GSTR 99 (Orissa))**, after quoting the aforesaid decisions of various High Courts and reiterating the same legal position, has concluded that the Circular issued by the Government of India, Ministry of Finance dated **1st November 2018** addressed to the Commissioner of Commercial Tax of all States/Union Territories to give effect to the decision of the Division Bench of Punjab & Haryana High Court in *Carpo Power Limited* case (supra) as the same stood affirmed by the Hon'ble Supreme Court with the dismissal of the SLP on **13.8.2018**. The relevant portion of the above judgment is also quoted below for ready reference:-

"3. The aforesaid decision of Punjab and Haryana High Court was the subject-matter of S. L. P. to Appeal (C) No. ***20572 of 2018*** *before the Honourable Supreme Court, which came to be dismissed on* ***August 13, 2018*** *after which the Central Government has come*

out with the clarification by their letter dated ***November 1, 2018****, which reads as under:*

"F-No. S-29012/64/2018-ST-II-DoR
Government of India, Ministry of Finance,
Department of Revenue,
State Taxes Section.

.....

Room No. 275,
North Block, New Delhi.
Dated the ***1st November, 2018****.*

To:

The Commissioner of Commercial Tax of all States/Union Territories.

Subject: Regarding definition of goods in *sub-section (3)(b) of section 8 of the Central Sales Tax* Act, 1956 and issuance of Form-C.

Sir/Madam,

I am directed to refer to ***OM dated November 7, 2017*** *(copy enclosed) regarding* clarification of definition of goods in sub-section

(3)(b) of section 8 of the Central Sales Tax Act, 1956 and to say that Honourable Punjab and Haryana High Court has considered the issue of C forms in respect of Natural Gas purchased by the petitioner in one State and used in another State vide judgment dated ***March 28, 2018*** *in C.W.P. No. 29437/2017 filed by Carpo Powers Limited which has been upheld by the Honourable Supreme Court vide its order dated August 13, 2018 in SLP No. 20572/2018 in this matter.*

2. This matter has been examined in Department of Revenue *and it has been decided to forward copy of aforesaid judgment dated March 28, 2018 (copy enclosed) of Honourable High Court*

of Punjab and Haryana and order dated August 13, 2018 (copy enclosed) of Honourable Supreme Court ***for compliance in the respective States****.*

End : As above.

Yours faithfully,
(Sd.) (MAHENDRA NATH),
Under Secretary (Sales Tax Section -II).
Tele : 23092419."

....

5. Taking into consideration, we are of the opinion that the circular dated August 17, 2017, which is partially quashed by the Punjab and Haryana High Court and has been approved by the Honourable Supreme Court. Other High Courts also have taken a similar view. In that view of the matter, it will not be appropriate to now enforce the circular dated August 17, 2017 and the ***Circular of November 1, 2018 will prevail along with the judgments which are referred herein above****, the authorities are bound to implement all decisions referred to above and we are approving the ratio laid bound those decisions and we direct the State Government to follow and act in accordance with the ratio of those* decisions.

6. With the aforesaid observation and direction, this writ petition stands disposed of."

38. The Division Bench of Jharkhand High Court in *Tata Steel Limited v. State of Jharkhand ((2019) 70 GSTR 364 (Jharkhand))* decided on 23/28th August 2019 reiterated the same position. The relevant portion of the Head Note of the Law Reports is quoted below for ready reference:-

"The petitioners engaged in manufacturing process, or mining activities or engaged in power generation were bulk purchasers of "high speed diesel" which they required for their manufacturing process/mining activities/ generation of power, as the case might be, which was used in manufacturing, mining, or generation of the goods, which were their end-products available for sale. For implementation of the GST regime necessary amendment in entry 54 of the State List of the Seventh Schedule to the Constitution of India was *made. Necessary amendment was also made in Central Sales Tax Act in the definition of "goods" as defined under section*

2(d) of the Central Sales Tax Act. The said definition which was earlier having very wide scope was given a very restricted meaning including only six items. Admittedly, the petitioners' end-products did not come within the definition of "goods" as defined under section 2(d) of the Central Sales Tax Act, whereas "high speed diesel", which they required in their manufacturing process, came within the definition of "goods" as defined under the Central Sales Tax Act. A circular dated ***October 11, 2017*** *was issued by the State of Jharkhand, in its Commercial Taxes Department, denying the issuance of form C for all the items included in definition of "goods" given under section 2(d) of the Central Sales Tax Act, including "high speed diesel". The circular had been issued on the pretext that after coming into force of the Goods and Services Tax regime in the State with effect from* ***July 1, 2017****, all the six items which had been excluded in Jharkhand Goods and Services Tax Act, 2017, i.e., alcoholic liquor for human consumption, which is exempted under section 9(1) of the State GST Act, and petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel on which, the liability to pay tax under the State GST Act was deferred till the notification issued under section 9(2) of the said Act, were still governed by the Jharkhand Value Added Tax Act. The dealers dealing in the goods except the aforementioned six items, were no more liable to pay tax under the Jharkhand Value Added Tax Act, and as such, the registration under the Jharkhand Value Added Tax Act had come to an automatic end with effect from* ***July 1, 2017****. It was further stated in the said circular that some of the dealers who were not liable to pay tax under the Central Sales Tax Act, were still registered under section 7(1) of the Central Sales Tax Act, as they were liable to pay tax under the Jharkhand Value Added Tax Act. Since such dealers were not selling the aforesaid six goods, they were no more liable to pay tax under the Jharkhand Value Added Tax Act, and as such, their registrations under Section 7(2) of the Central Sales Tax Act as well, had become invalid with effect from* ***July 1, 2017****. As such, those dealers would not be entitled to inter-State purchase of the aforesaid six items, on the concessional rates of tax under the provisions of the Central Sales Tax Act, on the basis of form C. It was the stand of the State Government that* ***since the end-products of the petitioners after their manufacturing process, mining process, or power generation process, were not covered by the definition of "goods"*** *given under section 2(d) of the Central Sales Tax Act,* ***their registration under Section 7(2) of the Central Sales Tax Act came to an automatic end***

and hence they were not entitled for issuance of form C for claiming lesser rate of tax *on the inter-State purchase of "high speed diesel" made by them for their manufacturing, mining/power generation activities. Accordingly, the State Government decided not issue form C to such dealers for inter-State purchase of the aforesaid six goods.* ***An office memorandum dated November 7, 2017 was also issued by the Union of India*** *and its Ministry of Finance, Department of Revenue, State Tax Division, clarifying that the term "goods" referred to in section 8(3)(b) of the Central Sales Tax Act, would have the same meaning as defined and amended under section 2(d) of the Central Sales Tax Act, vide the Tax Laws Amendment Act, 2017. Pursuant to the decision in* ***Carpo Power Limited v. State of Haryana (2018) 53 GSTR 24 (P&H)****,* (CWP No.29437 of 2017, decided on March 28, 2018), and the subsequent dismissal of the SLA preferred against the judgment passed by the Punjab and Haryana High Court the Central *Government in its Ministry of Finance, Department of Revenue, New Delhi, issued letter dated* ***November 1, 2018****, addressed to Commissioners of Commercial Taxes of all the States/Union Territories on the subject regarding issuance of form C, and making further clarification to its earlier* ***OM dated November 7, 2017****, stating that in view of the judgment passed by the Punjab and Haryana High Court in Carpo Power Limited case* ***(2018) 53 GSTR 24 (P&H)****, which was upheld by the Supreme Court by its order dated* ***August 13, 2018 in SLP No.20572 of 2018****,* ***the Central Government issued letter dated November 1, 2018, addressed to Commissioners of all the States/Union Territories on the subject regarding issuance of for C, making further clarification to its earlier OM dated November 7, 2017*** *to the effect that the issue in* ***question had been set at rest in view*** *of the decision of the Punjab and Haryana High Court, in Carpo Power Limited case (2018) 53 GSTR 24 (P&H), as affirmed by the Honorable Supreme Court. Thereafter, a supplementary counter-affidavit had been filed on behalf of the respondent-State, in which, after considering the letter dated* ***November 1, 2018*** *issued by the Ministry of Finance, Government of India, the State Government had stuck to its earlier stand as taken in the circular dated* ***October 11, 2017****, denying the issuance of form C to the dealers, with respect to the six items, covered under section 2(d) of the Central Sales Tax Act. The petitioners filed writ petition submitting that the notification dated* ***October 11, 2017*** *was absolutely illegal. The State Government had taken the stand through its letter dated* ***August 21, 2019****, addressed to the learned Senior Standing Counsel-Jharkhand High Court that those*

dealers who had migrated to GST regime and who are not selling the aforesaid six goods covered under section 2(d) of the Central Sales Tax Act, were not covered under section 7(1) of the Central Sales Tax Act as well:

Held, allowing the petitions, that the use of the expression "goods" referred to in the first half of section 8(3)(b), i.e., on first three occasions could be understood in the sense as was defined in Section 2(d) of the Central Sales Tax Act, whereas the expression "goods" in the second half of the clause, i.e., on the fourth occasion could not be understood in the sense as defined in section 2(d) of the Central Sales Tax Act as it referred to the manufactured goods. ***In the case of the writ petitioners, their end-products need not be "goods" within the meaning of section 2(d) of the Central Sales Tax Act****. Also the registration of dealer under Section 7(2) of the Central Sales Tax Act is not subject to any liability of the dealer to pay the tax or not, the dealers are entitled to continue to be registered under Section 7(2) of the Act,* irrespective of the fact whether they are liable ***to pay any tax to State or not****. There was no* merit in the submission of the State that since the dealers were no more liable to pay tax under the Jharkhand Value Added Tax Act, in view of the fact that the word "goods" used in Section 2(i) of the Central Sales Tax Act defining the "sales tax law" would mean only those six goods as defined under section 2(d) of the Central Sales Tax Act and that their registration under Section 7(2) of the Act would come to an automatic end. That being the position, the very reasoning for issuance of the circular dated October 11, 2017 had no legs to stand in the eyes of law and could not be sustained. Accordingly, the circular dated October 11, 2017 issued by the State Government in its Commercial Taxes Department, which had been challenged in all these writ applications, was to be quashed.

PRINTERS (MYSORE) LTD. v. ASSTT. COMMERCIAL TAX OFFICER (1994) 93 STC 95 (SC), COMMISSONER OF SALES TAX v. MADHYA BHARAT PAPERS LTD. (2000) 117 STC 547 (SC) and CARPO POWER LIMITED v. STATE OF HARYANA (2018) 53 GSTR 24 (P&H) followed."

39. Therefore, if a Dealer has a right to sell as well the restricted six items under CST Act, one fails to understand as to how their right to purchase those goods at present time under the existing Registration Certificates can be taken away merely because they are not selling those goods. If sale of the goods was the only criteria of registration under the CST

Act, the consequent amendments would not have allowed concessional rate of tax for purchase of those six commodities for user in activities like Mining or Telecommunication Networks, where no such resale or use in manufacturing is involved. Therefore, such a right is equally available to other industries like Cement Industries and the same cannot be denied to them. That would result in an invidious classification in violation of Article 14 of the Constitution of India, which is neither envisaged nor is called for. Therefore, the contentions raised on behalf of the Revenue are not sustainable at all.

40. Consequently, we are of the opinion that the Writ Appeals filed by the Revenue have no merits and deserve to be dismissed and respectfully agreeing with the views expressed by other High Courts and confirming the view of the learned Single Judge in the impugned Judgment in Appeal before us we dismiss the present Writ Appeals filed by the State. No order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

41. The Appellant State and the Revenue Authorities are directed not to restrict the use of 'C' Forms for the inter-State purchases of six commodities by the Respondent/Assessees and other registered Dealers at concessional rate of tax and they are further directed to permit Online downloading of such Declaration in 'C' Forms to such Dealers. The Circular letter of the Commissioner dated **31.5.2018** stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assessees throughout the State of Tamil Nadu.

IN THE HIGH COURT OFDELHI AT NEW DELHI
[Hon'ble the Chief Justice, Siddharth Mridul and Talwant Singh, JJ]

W. P. Urgent 2 of 2020
(To be Numbered Subsequently)

COURT ON ITS OWN MOTION

DATE OF ORDER: 25.03.2020

INTERIM ORDERS – COVID-19 – FUNCTIONING OF HIGH COURT RESTRICTED ONLY TO VERY URGENT MATTERS – FROM 16.03.2020 TO 04.04.2020 – LOCKDOWN FOR 21 DAYS FROM 25.03.2020 – ROUTINE MATTERS ADJOURNED – SUO MOTO COGNIZANCE BY HON'BLE HIGH COURT – INTERIM ORDERS SUBSISTING AS ON 16.03.2020 – EXPIRED OR WILL EXPIRE THEREAFTER – AUTOMATICALLY EXTENDED TILL 15.05.2020

In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April.

Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Order

In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/dated 13.03.2020.

Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.

On 24.03.2020, the Government of India has issued order No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f. from 25.03.2020.

In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not

been in a position to appear in the said matters, including those where stay/ bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.

Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised.

This order be uploaded on the website of this Court and be conveyed to all the Standing Counsel, UOI, GNCTD, DDA, CIVIC AUTHORITIES, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all District Courts subordinate to this court.

IN THE HIGH COURT OFDELHI AT NEW DELHI

[Hon'ble the Chief Justice, Siddharth Mridul and Talwant Singh, JJ]

Writ Petition No. 3037 of 2020

Court on its own motion ... Petitioner

Versus

State & Ors. ... Respondents

DATE OF ORDER : 15.05.2020

INTERIM ORDERS – COVID-19 – RESTRICTIONS IMPOSED BY GOVT. OF INDIA – EXTENSION OF INTERIM ORDERS ISSUED BY HON'BLE COURTS VIDE ORDERS DATED 25.03.2020 – EXTENSION TO CONTINUE UPTO 15.06.2020.

Since some of the restrictions imposed by the Government of India are still in operation, and taking note of the extraordinary circumstances, in continuation of this Court's order dated 25th March, 2020, we hereby order that in all matters pending before this Court and Courts subordinate to this Court, wherein the interim orders issued, as mentioned in our order dated 25th March, 2020, were subsisting as on 15.05.2020 and expired or will

expire thereafter, the same shall stand automatically extended till 15.06.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Order

1. Proceedings of the matter has been conducted through video conferencing.

2. While taking suo motu cognizance of the extraordinary circumstances, on 25.03.2020, this Court has passed certain directions. The relevant part of the order reads as under:-

> "In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/ dated 13.03.2020.
>
> Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.
>
> On 24.03.2020, the Government of India has issued order No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f. 25.03.2020.
>
> In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.
>
> Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.
>
> Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such

proceeding, they would be at liberty to seek appropriate relief, as may be advised."

3. Since some of the restrictions imposed by the Government of India are still in operation, and taking note of the extraordinary circumstances, in continuation of this Court's order dated 25th March, 2020, we hereby order that in all matters pending before this Court and Courts subordinate to this Court, wherein the interim orders issued, as mentioned in our order dated 25th March, 2020, were subsisting as on 15.05.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.06.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

4. In case, the extension as mentioned hereinabove of the interim order causes any hardship of an extreme nature to any party to such proceeding, they are at liberty to avail appropriate remedy as per law.

5. This order be uploaded on the website of this Court today itself and be conveyed to all the Standing Counsel, UOI, GNCTD, DDA, Civic Authorities, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all District Courts subordinate to this Court.

6. Registry is directed to list this matter on 15.06.2020 for further directions.

IN THE HIGH COURT OFDELHI AT NEW DELHI

[Hon'ble the Chief Justice, Siddharth Mridul and Talwant Singh, JJ]

Writ Petition No. 3037 of 2020

Court on its own motion ... Petitioner

Versus

State & Ors. ... Respondents

DATE OF ORDER : 15.06.2020

INTERIM ORDERS – COVID-19 – RESTRICTIONS IMPOSED BY THE GOVERNMENT CONTINUE – INTERIM ORDERS SUBSISTING AS ON 16.03.2020 TO CONTINUE TILL 15.07.2020.

Now taking note of the prevalent situation in Delhi, Hon'ble Administrative and General Supervision Committee of this Court has been pleased to order that the regular functioning of this Court as well Courts subordinate to this Court shall continue to remain suspended till 30.06.2020.

In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 till 15th July, 2020 with the same terms and conditions.

Order

1. Proceedings of the matter has been conducted through video conferencing.

2. While taking suo motu cognizance of the extraordinary circumstances arising on account of COVID-19 pandemic, on 25.03.2020, this Court has passed certain directions. The relevant part of the order reads as under:-

> "In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/ dated 13.03.2020.
>
> Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.
>
> On 24.03.2020, the Government of India has issued order No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f. 25.03.2020.
>
> In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.
>
> Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.
>
> Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised."

3. Since some of the restrictions imposed by the Government of India were still in operation, and therefore, taking note of the extraordinary circumstances prevailing at that point of time, by order dated 15th May, 2020, we had extended our directions which were given in order dated 25th March, 2020 till 15th June, 2020.

4. Now taking note of the prevalent situation in Delhi, Hon'ble Administrative and General Supervision Committee of this Court has been pleased to order that the regular functioning of this Court as well Courts subordinate to this Court shall continue to remain suspended till 30.06.2020.

5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 till 15th July, 2020 with the same terms and conditions.

6. This order be uploaded on the website of this Court today itself and be conveyed to all the Standing Counsel, UOI, GNCTD, DDA, Civic Authorities, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all District Courts subordinate to this Court.

7. List this matter on 13th July, 2020 for further directions.

ITEM NO.9 Virtual Court 3 SECTION XIV

SUPREME COURT OF INDIA

Hon'ble Mr. Justice A.M. Khanwilkar, Hon'ble Mr. Justice Dinesh Maheshwari, Hon'ble Mr. Justice Sanjiv Khanna

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 7425-7428/2020

(Arising out of impugned final judgment and order dated 05-05-2020 in WPC No. 11040/2018 05-05-2020 in WPC No. 196/2019 05-05-2020 in WPC No. 8496/2019 05-05-2020 in WPC No. 13203/2019 passed by the High Court Of Delhi At New Delhi)

Union of India ... Petitioner (s)

Versus

Brand Equity Treaties Limited & Ors. Etc. Etc. ... Respondent(s)

(FOR ADMISSION and I.R. and LA No.53547/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.53551/2020-EXEMPTION FROM FILING AFFIDAVIT)

Date 19-06-2020 These petitions were called on for hearing today.

For Petitioner(s)	:	Mr. Tusher Mehta, S.G. Mr. Zoheb Hossein, Adv. Mr. B. Krishna Prasad, AOR
For Respondent(s)	:	Mr. Abhishek A. Rastogi, Adv. Ms. Rashmi Deshpande, Adv. Ms. Saman Ahsan, AOR Mr. Arvind Dater, Sr. Adv. (NP) Mr. Alok Yadav, Adv. Mr. Ayush Sharma, AOR

UPON hearing the counsel the Court made the following ORDER

Issue notice.

To be heard along with SLP(C) No. 26626 of 2019 and SLP (C) D. No. 38404 of 2019.

In the meantime, the operation of the impugned order shall remain stayed.

IN THE HIGH COURT OFDELHI AT NEW DELHI
[Sanjeev Narula and Vipin Sanghi, JJ]

Writ Petition No. 11040 of 2018

Brand Equity Treaties Ltd. and Ors. ... Petitioner

Versus

Union of India & Ors. ... Respondents

DATE OF JUDGMENT : 05.05.2020

TRAN-1 – FILING OF DECLARATION – GOODS AND SERVICES TAX – PRE GST LAW – CENVAT CREDIT AS OF 30.06.2017 – CREDIT TO BE AVAILED BY FILING FORM TRAN-1 – FAILURE TO FILE TRAN-1 WITHIN TIME ALLOWED IN THE RULE – OR ERROR OCCURRED WHILE FILING THE DECLARATION IN FORM TRAN-1 – TRAN-1 NOT FILED ON ADVISE OF THE COUNSEL – PERIOD PRESCRIBED – WHETHER DIRECTORY OR MANDATORY?

CENTRAL GOODS AND SERVICES TAX RULES – RULES 117 – WHETHER ARBITRARY, UNCONSTITUTIONAL AND VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF INDIA?

The available judicial guidelines and settled cases cover the cases of the Petitioners, and there can be no two views about this proposition and we would like to extend benefit to them.

Nevertheless, let's delve into the more fundamental question - Whether the Government could curtail the accrued and vested right, and restrict it to 90 days by a subordinate legislation?

What does the phrase "technical difficulty on the common portal" imply? There is no definition to this concept and the respondent seems to contend that it should be restricted only to "technical glitches on the common portal". We, however, do not concur with this understanding. "Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies.

The phrase "technical difficulty" is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

The purpose for which Sub-Rule (1A) to Rule 117 has been introduced has to be understood in the right perspective by focusing on the purpose which it is intended to serve. The purpose was to save and protect the rights of taxpayers to avail of the CENVAT credit lying in their account. That objective should also serve other taxpayers, such as the petitioners. The approach of the Government should be fair and reasonable. It cannot be arbitrary or discriminatory, if it has to pass the muster of Article 14 of the Constitution. The government cannot turn a blind eye, as if there were no errors on the GSTN portal. It cannot adopt different yardsticks while evaluating the conduct of the taxpayers, and its own conduct, acts and omissions. The extremely narrow interpretation that the respondents seek to advance, of the concept of "technical difficulties", in order to avail the benefit of Sub Rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act. We have, in our judgment in A.B. Pal Electricals (supra) emphasized that the credit standing in favour of the assessee is a vested property right under Article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same.

We also find merit in the submissions of the petitioners that Rule 117, whereby the mechanism for availing the credits has been prescribed, is procedural and directory, and cannot affect the substantive right of the

registered taxpayer to avail of the existing / accrued and vested CENVAT credit. The procedure could not run contrary to the substantive right vested under sub Section (1) of Section 140. While interpreting Order VIII Rule 1 CPC, the Supreme Court has observed that the time limit for filing written statement is directory in nature and not mandatory, and that "procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice".

There is no consequence provided in Rule 117 of GST Rules on account of failure to file GST TRAN-1. The argument of the respondents is that the consequence is provided in Sub-Section (1) of Section 140 by way of a pre-condition for being entitled to transit the CENVAT credit in his electronic credit register under the GST regime. We do not agree. Section 140 (1) is categorical. It states that the registered person "shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day….". Only the manner i.e. the procedure of carrying forward was left to be provided by use of the words "in such manner as may be prescribed". The limitation on the right to carry forward the CENVAT credit is substantively provided by the proviso to the said section. Those are the only limitations on the said statutory right. Under the garb of framing Rules – which are subordinate legislation, the width of those limitations could not have been expanded as is sought to be done by introduction of Rule (1A). In absence of any consequence being provided under Section 140, to the delayed filing of TRAN-1 Form, Rule 117 has to be read and understood as directory and not mandatory.

Therefore, we have no hesitation in reading down the said provision [Rule 117] as being directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed. This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates, have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of three years should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.

Accordingly, since all the Petitioners have filed or attempted to file Form TRAN-1 within the aforesaid period of three years they shall be entitled to

avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020.

Present for Appellants	:	Mr.Abhishek A. Rastogi, Advocate.
Present for Respondent	:	Ms. Shiva Lakshmi, CGSC for UOI. Mr. Amit Bansal, SSC with Mr. Aman Rewaria and Ms.Vipasha Mishra, Advocates for respondent No. 3.

Judgment

Sanjeev Narula, J

1. All the four writ petitions seek identical relief in the nature of a writ of Mandamus directing the respondents to permit the petitioners to avail input tax credit of the accumulated CENVAT credit as of 30th June, 2017 by filing declaration Form TRAN-1 beyond the period provided under the Central Goods and Services Tax Rules, 2017 (hereinafter, the "CGST Rules"). Additionally, petitioners also assail Rule 117 of the CGST Rules on the ground that it is arbitrary, unconstitutional and violative of Article 14 to the extent it imposes a time limit for carrying forward the CENVAT credit to the GST regime. However, all the petitioners have unanimously stated that if the Court were to give directions to the respondents to permit them to file the statutory Form TRAN-1 to avail the input tax credit, they would be satisfied and not press for the relief of challenging the vires of the provisions of the Act.

2. This Court has allowed numerous petitions, relating to availment of input tax credit on account of delayed filing of Form TRAN-1. The controversy in the present petitions is no different, but nonetheless respondents have strongly objected to the directions sought in the present petitions, contending that the factual situation in each one of the present cases is quite different, and does not merit the relief granted to other taxpayers. It is argued that the Court has allowed the petitions only in those cases, where the delay had been occasioned on account of technical glitches in the Goods and Services Tax Network (GSTN). The facts of the instant cases are substantially distinguishable, and do not indicate or allege any such error or glitch on the network of the respondents relating to the filing of the TRAN-1 forms. It is further contended that the pleadings disclose that the delay in their cases did not occur on account of any technical glitch on the portal, but arose owing to other technical difficulties at the end of the assessees i.e. the petitioners. Petitioners controvert the stand

of the respondent, and contend that they are entitled to similar relief, notwithstanding the fact that the cases of the petitioners may not be strictly covered by the Circular of the respondents specifically dealing with cases where technical glitches had restrained or blocked or caused difficulties to the taxpayers from filing of the TRAN-1 forms on the common GST portal.

3. Regardless of respondents' objection that there were no technical anomalies in the fling vis-a-vis the petitioners, we perceive no significant difference in the circumstances recounted in the cases before us in comparison to those decided earlier. Pertinently, since the cause for not filing the TRAN-1 Form within time is sufficiently explained and justified, we see no good ground or reason to deny the petitioners another opportunity to belatedly file their TRAN-1 forms. Nevertheless, since the respondents fervently contest the petitions, we permitted the learned counsels to make elaborate submissions as we feel that an authoritative decision is necessary to put the controversy to rest. Thus, this decision, exhaustively sets forth ourreasons for allowing the petitions.

4. The facts of each case are different, however, since the controversy is identical, it is not necessary to meticulously note the details of each case and it would suffice to take note of only the essential facts of each case.

W.P. No. 8496/2019

5. The petitioner is in the business of advertising, brand promotion and public relation management, as a part of Bennett Coleman Group of companies [Times Group]. It operates from various states throughout India, including New Delhi. It was registered under the provisions of Chapter V of the Finance Act, 1994 for service tax and was discharging its liability by way of filing service tax returns. The service tax return for the period from April, 2017 to June, 2017 was filed on 11th August, 2018 and the same exhibited an accumulated CENVAT credit of INR 72,80,5293. This accumulated CENVAT credit balance is inter alia attributable to the New Delhi premises of the petitioner. Petitioner had CENVAT credit reflected in the service tax return for the period April, 2017 to June, 2017 and was eligible to carry forward the said CENVAT credit amounting to Rs. 60,15,498/-. Petitioner contends that on 2nd January, 2018, based on the advice of its consultant, it was under the belief that it was eligible for refund under Section 142(3) of the CGST Act, and the consultant filed an online refund application. However due to technical glitch, an error appeared on the screen. Thereafter, on 13th February, 2018, when petitioners' consultant again tried to upload the refund application for CENVAT credit, yet again an error occurred and the message 'proxy error' was displayed on the screen. Petitioner's consultant visited the office of the Assistant Commissioner of GST to enquire about

the error and was informed that Petitioner was not eligible for the refund under Section 142 (3) of the Act. On being apprised of this legal position, physical copy of Form TRAN-1 was filed on 24th August, 2018 along with supporting invoices before Deputy/Assistant Commissioner of Central Excise, GST East Division. Petitioner was informed that the application would be verified and it would be intimated about the outcome. Thereafter, vide letter dated 30th August, 2018, additional documents as required by the respondents were also submitted, but nothing was heard in this regard. Eventually, petitioner filed writ petition W.P.(C) 3099/2019 before this Court praying for refund or carry forward of all the accumulated CENVAT credit. Vide order dated 28th March, 2019, respondents were directed to obtain instructions as to whether the refund/carry forward credit application could be processed and if GST council can consider such cases of hardship on individual basis.

6. Petitioner has now filed the present petition seeking writ in the nature of Certiorari impugning Rule 117(1) of CGST rules as ultravires Section 140(1) of the CGST Act and in the alternative, seeking directions to read down the provisions of Rule 117.

W.P. (C) 11040/2019

7. In this case, petitioner claims that in terms of the latest service tax return from April, 2017 to June, 2017, it had accumulated CENVAT credit balance of INR 72,80,529/-. Petitioner forms part of a bigger conglomerate and the tax operations are undertaken at group level. Owing to dependence at group level in the context of tax compliances and multiple entities involved, petitioner was unable to file the declaration in Form TRAN-1 within the prescribed due date. As a result, it was deprived of taking forward the accumulated credit in the GST regime.

W.P.(C) 196/2019

8. In terms of the last service tax return, petitioner had CENVAT credit of Rs. 6,04,47,033/-. It submitted form GST TRAN-1 online on 24th November, 2017 in order to avail the transitional credit. Thereafter, it received a letter dated 1st January, 2018 from the office of Assistant Commissioner GST seeking its response in relation to verification of input tax credit claimed in form TRAN-1. While collating the documents in response to the said communication, petitioner realised that credit of Rs.6,04,47,033/- was mistakenly not carried forward. Petitioner again tried to submit the said form on the GST common portal with a view to avail this credit. Additionally, petitioner replied to the aforenoted communication dated 1st January, 2018 explaining that it had inadvertently missed reflecting the correct CENVAT

credit in the Form, in conformity with the last service tax return. In support of its claim, petitioner also furnished the last service tax return [ST-3 form]. On 6th April, 2018, petitioner made another reference to the respondents highlighting the Circular issued by Central Board of Indirect Taxes and Customs wherein a mechanism was introduced to assist the taxpayers who had faced difficulties owing to technical glitches. Despite repeated follow ups, no reply was received from the respondents and finally, vide letter dated 9th May, 2018, respondents informed the petitioner that the credit of Rs. 6,04,47,033/- was not populated in TRAN-1 and, thus, the credit thereof cannot be extended to the petitioner.

W.P.(C) 13203/2019

9. In this case as well, petitioner contends that it had been trying to upload its claim for carrying forward the credit in form GST TRAN-1 but could not do so due to error in the system of the respondents. Petitioner enquired from other professionals and learnt that apart from it, large number of assessees were facing similar problems and could not upload the claim of input credit on account of system error/failure. Petitioner submits that on account of utter confusion and chaos that resulted in failure to upload Form GSTR TRAN-1, it could not upload the claim on the common portal within time. Petitioner also engaged in correspondence with the respondents, however there has been no effective resolution to its grievance.

Submissions of the Parties

10. The Learned counsels for the petitioners have strongly relied upon the judgment in ***A.B. Pal Electricals v Union of India*** **(W.P.(C) 6537/2019** (decided on 17.12.2019) and several others, which have been referred therein to canvass that the instant cases are squarely covered by the said decision. At the same time it is urged that since the GST system at the relevant point of time, and even presently, is in a nascent "trial and error" phase, petitioners should not be made to suffer on account of inefficiency in the systems of the respondents; by denying them the credit of the accumulated CENVAT credit on the due date. Besides, it was argued that the CENVAT credit accumulated in the erstwhile regime represents the property of the petitioner which is a vested right in their favour. Such accrued or vested right cannot be taken away by the respondents on account of failure to fulfil conditions which are merely procedural in nature. The accumulated CENVAT credit is the property of the assessee and a constitutionally protected right under Article 300A of the Constitution, which cannot be taken away by framing Rules without there being any substantive provision in this regard under the Act. On another note, it is urged that the time limit specified in Rule 117 of CGST Rules is procedural

in nature, and not a mandatory provision, and thus period provided therein cannot be enforced so as deprive the petitioners from availing their vested right. In support of this contention, reliance is placed upon the decision of the Supreme Court in the case of ***SCG Contracts India Pvt. Ltd. vs. KS Chamankar Infrastructure Pvt. Ltd. 2019*** SCC OnLine SC 226.

11. Mr. Amit Bansal, and other learned senior standing counsels for the Revenue, on the other hand, have strongly opposed the petitions. They have argued that the petitioners do not deserve any sympathy from this Court, as the facts of each case exhibit a casual approach on their part. Petitioners' failure to file the declaration Form TRAN-1 within the due date is not attributable to any technical glitches while uploading the forms. The delay is a result of their follies and do not warrant relief similar to what has been granted by this Court in several other cases. It is also pointed out that some of the petitioners attempted to file TRAN-1 for the first time after the expiry of the last date for filing TRAN-1, as admitted in the pleadings. The petitioners were negligent, and do not deserve any leniency. Mr. Bansal defended Rule 117 of the CGST rules by arguing that under Sub-section (1) of Section 164 of the CGST Act, Government is authorised to make rules for carrying out the provisions of the Act on recommendation of the Council. He submitted that the CGST Rules laid down by the Central Government, including the Rules impugned in the present petition, flow from the Act and are in consonance with the intention of the legislature. Mr. Bansal emphasized on the words "in such manner as may be prescribed" which are appearing in Sub-Section (1) of Section 140 as follows:

> "A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed"
>
> (emphasis supplied)

He submits that this provision empowers the Government to fix the time frame for availing the carry forward of input tax credit by transitioning the CENVAT credit into the GST regime. He further submits that benefit of taking credit is not a vested right of an assessee and certainly cannot be claimed in perpetuity. The same is subject to certain conditions, safeguards and limitations in such manner as may be prescribed. Mr. Bansal further argued that the input tax credit is in the nature of benefit/concession extended as per the scheme of this statute. The rules, therefore, can be framed to limit the benefit while extending the concession. In support of

his submissions, Revenue relied upon the case of ***Willowood Chemicals Pvt. Ltd. vs. Union of India 2018 (19 G.S.T.L 228 Gujarat),*** and ***ALD Automotive Pvt. Ltd. vs. Commercial Tax Officer 2018 (364) ELT 3 (SC)***.

Analysis and Conclusion

12. On 1st July, 2017, the new indirect tax regime was introduced in the country by way of enactments, including the Central Goods and Services Tax Act, 2017 (CGST Act). The CGST Act introduced transitionary provisions to enable the taxpayers to migrate from the erstwhile indirect tax regime to the new GST regime. Section 140 of the CGST Act deals with the transitionary provisions. Section 140 has several sub-clauses, however, since all the four petitioners are covered by sub clause (1) of the Section 140, we are focusing on the said provision alone, and the same reads as under:

> "140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:
>
> Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—
>
> (i) where the said amount of credit is not admissible as input tax credit under this Act; or
>
> (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
>
> (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government."

13. In pursuance of the above noted provision, respondent No.1 framed the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). Rule 117 of the said rules imposed a time limit of 90 days for availing benefit of the accumulated CENVAT credit as provided under Section 140 (1) in its input tax credit register under the CGST Act. The said Rule reads as under:

"117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.-

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit of eligible duties and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section: Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days. Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond [31st December, 2019], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]

(2) Every declaration under sub-rule (1) shall-

(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day- (i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and (ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;

(c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:—

(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof; (iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient."

14. The transition from the erstwhile regime to GST for the availment of the CENVAT credit was to be by way of a declaration to be submitted electronically in Form GST TRAN-1. The date prescribed for filing of the said Form was extended several times by way of orders issued from time to time, finally till 27th December, 2019. Several taxpayers however could not meet the deadline. This was on account of several factors - predominantly being inadequacies in the network of the respondents, which failed to meet the expectations and serve the needs of taxpayers. Thousands of taxpayers complained that there was low bandwidth and despite several attempts being made on the GST Network, they were unsuccessful in filing the statutory GST TRAN-1 Form online. Scores of complaints were made on the portal and it was also brought to the notice of the government. The technical difficulties faced by the taxpayer were acknowledged and an IT Grievance Redressal Committee was constituted and assigned the task of redressing the grievance of the taxpayers. The recommendations of the Grievance Redressal Committee were also brought to the notice of the GST Council and the matter was deliberated upon. Several cases got settled at the government level, however some cases were contested on the ground that taxpayers did not put forward any evidence to suggest that they faced any technical glitch on the portal that prevented them to submit the GST TRAN-1 Form within the prescribed time limit. Many such matters travelled to courts. Majority of them were allowed in favour of the taxpayers, and directions were issued to the respondents to permit the filing of TRAN-1 Form beyond the extended date. Some cases where such reliefs have been granted by this Court are ***M/s Blue Bird Pure Pvt. Limited vs. Union of India 2019 SCC OnLine 9250; SARE Realty Projects Pvt. Limited vs. Union of India [W.P.(C)*** 1300/2018decided on 1st August, 2018] ,Bhargava Motors vs. Union of India [W.P.(C) 1280/2019 decision

dated 13th May, 2019] ; ***Kusum Enterprises Pvt. Limited vs. Union of India*** [W.P.(C) 7423/2019 decided on 12th July, 2019]. It would also be worthwhile to note that in this period, the government also acknowledged that on account of technical difficulties, the taxpayers were indeed unable to file the statutory form within time and CBIC vide notifications issued from time to time, extended the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules. This period, as on date, is being extended by various notifications. Notably, vide Notification 48/2018-CT dated 10th September, 2018, the government inserted Sub-rule (1A) to Rule 117, whereby, on the recommendation of the Council, it is now permissible for the Commissioner to extend the date for submitting the declaration electronically in Form GST TRAN-1, by a further period in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension. The said Sub-rule, reads as under:

> "[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond [31st December, 2019], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension"

The insertion of Sub-rule 1(A) and, thereafter, extensions being granted for filing of GST TRAN-1, notwithstanding the period envisaged under sub rule (1) of Rule 117, demonstrates that the respondents recognize the fact that the registered persons were not able to upload GST TRAN-1 due to technical difficulties on the common portal. This also substantiates that the period for filing the TRAN-1 is not considered – either by the legislature, or the executive as sacrosanct or mandatory.

15. In the above factual background, in some of the cases that came up before this Court, the petitioners cited difficulties in filing the TRAN-1 Form which were of a different nature. In some cases, there were bonafide errors on the part of the taxpayer and in others, the difficulty arose on account of lack of understanding of the complete overhaul of the indirect tax system; or complicated filing procedure and the statutory forms resulting in erroneous information being stated therein. Even in such cases, to note a few, this Court has declined to make a differentiation and given the benefit of the doubt to the taxpayers, realizing that Respondent's network and

system, and the change, had posed multifarious problems that require a reasonable approach. One such petition has been preferred by the ***Sales Tax Bar Association*** [W.P (c) No. 9575/2017] narrating scores of technical problems being faced on the portal. We adopted a proactive approach in the said matter and have endeavoured to identify root cause for failure of the network to work seamlessly. In the said proceedings, we had also held a special hearing inviting the senior officials from the GSTN network as well as the officers of the Council and the policy makers. As a result of such deliberations, some headway has been made and recently we were informed that the respondents have revamped the GST redressal mechanism so as to address the problems at a grass-root level. The upshot of this experience is that the GSTN network, indeed, is riddled with shortcomings and inadequacies. This is palpably evident from the sheer number of cases being presented before us, in relation to such technical difficulties and inadequacies. The benchmark, in our view, is that the online system brought into force by the GSTN Ltd. should be able to perform all functions and should have all flexibilities/options, which were available in the pre-GST regime.The problems on the GSTN cannot be wished away, and have to be resolved in the right earnest. This requires sensitivity on the part of the Government which has, unfortunately, not been exhibited in adequate measure.

16. Now, coming back to the facts of the present cases. Are the facts before us such, as to deny the petitioners the relief extended to taxpayers covered by the category of "technical glitches or technical difficulties"? The facts of each case enumerated above indicate that the petitioners have, either, not been vigilant of the timelines, or have been victims of the chaos and confusion that was prevailing at the time when the GST regime was introduced. As a result, Petitioners may not have concrete evidence in their hand to convincingly exhibit that they faced a technical issue on the GSTN portal while uploading the declaration in GST TRAN-1. We were faced with a similar situation in the case of ***AB Pal Electricals Pvt. Ltd. vs. Union of India in W.P.(C) 6537/2019*** decided vide judgmentdated 17th December, 2019. In the said case, the assessee could not file the form within prescribed time for the reason that the Managing Director of the company was not keeping well, and as a result was unable to attend to the business affairs of the company for a long time. The personnel responsible for dealing with compliances required to be made by the company, constantly reported that the GST portal was not working properly and, therefore, they were unable to access the portal and file the requisite details. When the Managing Director recovered from his illness, he followed up with the authorities by submitting a representation seeking benefit of the CBIC's orders issued from time to time-extending the last date for submission of the TRAN-

1 Form. The case was considered by the GST Council, but it failed to redress his grievance and the matter reached before us. We considered the situation and accepted respondents' contention that the case of the petitioner could not be strictly considered as one covered by the situation of "technical glitches". Yet, we extended the benefit of the Circular to the said petitioner in the following terms:

> "4. Petitioner relies upon several decisions of this Court including ***M/s Blue Bird Pure Pvt. Ltd vs Union of India and Ors, 2019 SCC OnLine 9250 and Sare Realty Projects Private Limited vs Union Of India,W.P. (C) NO. 1300/2018, decided on 01.08.2018*** to urge that the Court has granted reliefs to several other parties who were in similar situation.
>
> 5. We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed herein is fully covered by the decision of this Court in ***M/s Blue Bird Pure Pvt. Ltd*** (supra) decided on 22.07.2019, wherein, following the decisions of this Court in ***Bhargava Motors v. Union of India***, decision dated 13th May, 2019 in WP (C) 1280/2018 and ***Kusum Enterprises Pvt. Ltd. v. Union of India***, 2019-TIOL-1509-HC-DEL-GST, the Court had directed the respondents to either open the online portal or to enable the petitioner to file the rectified TRAN-1 electronically or accept the same manually. The said decision has also been followed by this court in ***M/s Aadinath Industries & Anr vs Union of India, W.P. (C) 9775/2019***, decided on 20.09.2019; ***Lease Plan India Private Limited vs Government of National Capital Territory of Delhi and Ors, W.P.(C) 3309/2019,*** decided on 13.09.2019; ***Godrej & Boyce Mfg. Co. Ltd. Through its Branch Commercial Manager vs Union of India, W.P.(C) 8075/2019***, decided on 15.10.2019. The decision of this Court in ***Krish Automotors Pvt. Ltd. v UOI*** 2019-TIOL-2153-HC-DEL-GST has also been followed by the Punjab & Haryana High Court in ***Adfert Technologies Pvt Ltd v Union of India*** in CWP No. 30949/2018 (O&M) decided on 04.11.2019.The relevant paragraphs of ***M/s Blue Bird*** (supra) read as under:
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> > "10. Having carefully examined those decisions, the Court is unable to find any distinguishing feature that should deny the Petitioner a relief similar to the one granted in those cases. In those cases also, there was some error committed by the Petitioners which they were unable to rectify in the TRAN-1 Form and as a result of which, they could not file the returns in

TRAN-2 Form and avail of the credit which they were entitled to. In both the said decisions, the Court noticed that GST system is still in the 'trial and error phase' insofar as its implementation is concerned. It was observed in Bhargava Motors (supra) as under:

"10. The GST System is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN1 electronically for claiming the transitional credit or accept the manually filed TRAN1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".

11. In the present case also the Court is satisfied that the Petitioner's difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having its claim examined by the authorities in accordance with law. A direction is accordingly issued to the Respondents to either open the portal so as to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31st May, 2019. The Petitioner's claims will thereafter be processed in accordance with law.

12. With a view to ensure that in future such glitches can be overcome, the Court directs the Respondents to consider providing in the software itself a facility of the trader/dealer being able to save onto his/her system the filled up form and also a facility for reviewing the form that has been filled up before its submission. It should also permit the dealer to print out the filled up form which will contain the date/time of its submission online. The Respondents will also consider whether there can be a message that pops up by way of an acknowledgement that the Form with the credit claimed has been correctly uploaded."

> 11. Similar directions were issued by this Court in Kusum Enterprises Pvt. Ltd. (supra). 12. In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless."

6. The factual position in the present case is not any different. Though, the case of the petitioner cannot be strictly categorized as covered by "technical glitches", however, as held in **M/s Blue Bird** (supra), the GST System is still in a 'trial and error phase' as far as its implementation is concerned and although the failure was on the part of the Petitioner, the error was inadvertent. The petitioner does not have any evidence or proof in support of his submission that the personnel responsible for dealing with the compliances was unable to file the requisite Form due to non-functioning of GST Portal. However, we have noticed that in large number of matters, the petitioner have similarly complained that before the deadline, they were not able to access the GST Portal. This could be presumably because of low bandwidth, given the fact that before the deadline, a large number of tax payers all over the country, were trying to submit the declaration in form TRAN-1. In these circumstances, we would thus give the benefit of doubt to the petitioner.

7. At this juncture, it may be noted that as per Notification No.49/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it – such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form

GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Repsondents were not efficient. From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches.

8. We may further add that the credit standing in favour of an assessee is "property" and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.

9. Thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually on or before 31.12.2019. Respondents shall process the petitioner's claim in accordance with law once the Form GST TRAN–1 is filed. The petition is allowed in the aforesaid terms."

17. The above decision would also cover the case of the Petitioners, and there can be no two views about this proposition and we would like to extend similar benefit to them. Nevertheless, let's delve into the more fundamental question - Whether the Government could curtail the accrued and vested right, and restrict it to 90 days by a subordinate legislation? To answer this vexed query, let's first examine the legal provisions. Sub-section (1) of Section 140 which deals with the transitory provision, permits carry forward of the CENVAT credit. This presupposes that the amount of CENVAT credit of eligible duties has therefore accrued and is existing and reflected in the CENVAT credit register. Sub-Section (1) of Section 140 enables a registered person to carry forward such credit in the return relating to the period ending with the day (30th June, 2017) immediately preceding the appointed date which is 1st July, 2017 furnished by him under the existing law. The provisions of the Service Tax under Chapter V of the Finance Act stood repealed by virtue of the GST legislation as provided under Section 174 of the CGST Act. Thus, on the appointed date, the credits which existed under the previous regime were required to be transitioned to the new regime. This credit in every sense stood accumulated, acquired and vested on the appointed date as it was reflected in the said CENVAT credit register in the previous regime. On enactment of the CGST Act, no mechanism was provided for the refund of the credit that existed on the said date. The only mechanism was for utilization of such credit by migrating the same to the GST regime by way of filing declarationForm

TRAN-1. The manner and procedure to carry forward the said CENVAT credit under Sub-Section (1) of Section 140 was to be 'prescribed'. The word 'prescribed' has also been defined under Section 2(87) to mean "prescribed by Rules made under this act on the recommendation of the council". This brings us to Rule 117 of CGST Rules, the relevant provision prescribing the manner in which the CENVAT credit has to be transitioned. Initially, the time limit prescribed under Rule 117 for transitioning was 90 days, as explained above, was extended from time to time. Evidently, there is no other provision in the Act prescribing time limit for the transition of the CENVAT credit, and the same has been introduced only by way of Rule 117. This provision also contains a proviso, which vests power with the Commissioner to extend the period on the recommendations of the Council. Indeed, the Commissioner has exercised such power and time period which was initially to expire after 90 days, has been, as a matter of fact, extended till 29th December, 2017. In fact, as noticed above, under Sub-Rule (1A) of Rule 117, for a specific class of persons, the time limit has gone way beyond the period originally envisaged, and has still not expired. Thus, there is nothing sacrosanct about the time limit so provided. It is not as if the Act completely restricts the transition of CENVAT credit in the GST regime by a particular date, and there is no rationale for curtailing the said period, except under the law of limitations. The period of 90 days has no rationale and as noted above, extensions have been granted by the Government from time to time, largely on account of its inefficient network.

18. In above noted circumstances, the arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase "technical difficulty on the common portal" imply? There is no definition to this concept and the respondent seems to contend that it should be restricted only to "technical glitches on the common portal". We, however, do not concur with this understanding. "Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies. After all, a completely new system of accounting; reporting of turnover; claiming credit of prepaid taxes; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN

Ltd., the assessees also faced the challenges posed by low bandwidth and lack of computer knowledge and skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards – one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. Petitioners who are large and mega corporations - despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the Internet and the filing of TRAN-1 was entirely shifted to electronic means. The Nodal Officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/logged that would indicate that the taxpayers attempted to save/submit the filing of Form GST TRAN-1. Thus, the phrase “technical difficulty” is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

19. The introduction of Sub rule (1A) in Rule 117 is a patchwork solution that does not recognise the entirety of the situation. It sneaks in an exception, without addressing situations taken note of by us. This exception, as worded, is an artificial construction of technical difficulties, limiting it to those existing on the common portal. It is unfair to create this distinction and restrict it to technical snags alone. In our view, there could be various different types of technical difficulties occurring on the common portal which may not be solely on account of the failure to upload the form. The access to the GST portal could be hindered for myriad reasons, sometimes not resulting in the creation of a GST log-in record. Further, the difficulties may also be offline, as a result of several other restrictive factors. It would be an erroneous approach to attach undue importance to the concept of “technical glitch” only to that which occurs on the GST Common portal, as a pre-condition, for an assesee/tax payer to be granted the benefit of Sub- Rule (1A) of Rule 117. The purpose for which Sub-Rule (1A) to Rule 117 has been introduced has to be understood in the

right perspective by focusing on the purpose which it is intended to serve. The purpose was to save and protect the rights of taxpayers to avail of the CENVAT credit lying in their account. That objective should also serve other taxpayers, such as the petitioners. The approach of the Government should be fair and reasonable. It cannot be arbitrary or discriminatory, if it has to pass the muster of Article 14 of the Constitution. The government cannot turn a blind eye, as if there were no errors on the GSTN portal. It cannot adopt different yardsticks while evaluating the conduct of the taxpayers, and its own conduct, acts and omissions. The extremely narrow interpretation that the respondents seek to advance, of the concept of "technical difficulties", in order to avail the benefit of Sub Rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act. The legislature has recognized such existing rights and has protected the same by allowing migration thereof in the new regime under the aforesaid provision. In order to avail the benefit, no restriction has been put under any provisions of the Act in terms of the time period for transition. The time limit prescribed for availing the input tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of Article 14 of the Constitution. Further, we are also of the view that the CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act. We have, in our judgment in **A.B. Pal Electricals** (supra) emphasized that the credit standing in favour of the assessee is a vested property right under Article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same.

20. Now, let us also examine the case law relied upon by the Respondents. We find that the judgments cited by Mr. Amit Bansal are distinguishable on facts. In the case of ***ALD Automotive Pvt. Ltd. vs. Commercial Tax Officer*** (supra) reference was made to the judgment of the Supreme Court in ***Godrej & Boyce Mfg. Co. (P) Ltd. v. CST,*** (1992) 3 SCC 624. The relevant portion of the judgment is extracted herein below:

> "34. The input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Reference is made to the judgment of this Court in Godrej & Boyce Mfg. Co. (P) Ltd. v. CST [Godrej & Boyce Mfg. Co. (P) Ltd. v. CST, (1992) 3 SCC 624] . Rules 41 and 42 of the Bombay Sales Tax

Rules, 1959 provided for the set-off of the purchase tax. This Court held that the rule-making authority can provide curtailment while extending the concession. In para 9 of the judgment, the following has been laid down: (SCC pp. 631-32)

> "34. The input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Reference is made to the judgment of this Court in Godrej & Boyce Mfg. Co. (P) Ltd. v. CST [Godrej & Boyce Mfg. Co. (P) Ltd. v. CST, (1992) 3 SCC 624] . Rules 41 and 42 of the Bombay Sales Tax Rules, 1959 provided for the set-off of the purchase tax. This Court held that the rule-making authority can provide curtailment while extending the concession. In para 9 of the judgment, the following has been laid down: (SCC pp. 631-32) generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State.""

In the said case, the appellant-company was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu VAT Act)who was engaged in the business of leasing – management of the motor vehicles and resale of used motor vehicles. It claimed entitlement to input tax credit of the amount paid on the purchases made from the registered dealer of motor vehicle as per Section 19(2) of the Tamil Nadu VAT Act.As per Section 19(11), if a dealer had not claimed input tax credit for a particular month, the dealer could claim the input tax credit before the end of the financial year or before 90 days from the date purchase, whichever was later. When the petitioner filed its return for the assessment year 2007-08 - for want of tax invoices, the said input tax credit could not be claimed. Thereafter, he filed revised returns claiming input tax credit. This was

disallowed by the commercial tax officer, which was then assailed in the writ petition before the High Court. The High Court set aside the order confirming the proposal to disallow. The matter reached before the Apex court. Examining this controversy, the Court made the observations as noted in Para 32 above. In the said case, the input tax credit was not claimed and thus, in these circumstances, the Court concluded that the benefits envisaged in the taxing statue has to be extended as per the restrictions and conditions therein. Since the statute did not give any indication w.r.t extension of time for claim of input tax credit, the period could have been extended by authority. However, in the instant cases, the input tax credit had been claimed in the erstwhile regime and was being reflected in the CENVAT credit ledger. This credit, under the Section 140(1), has to be carried forward and in that sense, the vested right of the property of the petitioner stood accrued and the same cannot be taken away by the respondents by way of Rules. Likewise, the judgment of the Gujarat High Court in ***Willowood*** (supra) is also not relevant. Moreover, the Punjab and Haryana High Court in ***Adfert Technologies Pvt. Ltd. vs. Union of India*** [CWP No. 30949/2018 (O&M) decided on 04.11.2019], took note of the decision in Willowood (supra), and observed that the Gujarat High Court itself, as well as this Court in subsequent judgements, has taken a contrary view to that expressed in ***Willowood*** (supra) [Ref: ***Siddharth Enterprises v. The Nodal Officer*** 2019-VIL-442-GUJ, ***Jakap Metind Pvt Ltd v Union of India*** 2019-VIL-556-GUJ and ***Indsur Global Ltd. v. Union of India*** 2014 (310) E.L.T. 833 (Gujarat)].The Court therefore, proceeded to grant relief by permitting the taxpayer to file TRAN-1 Form electronically and manually beyond the stipulated date. We have been further informed that the decision of the Punjab and Haryana High Court was assailed before the Apex Court by Revenue in SLP 4408/2020 and , the same has resulted in a dismissal by order dated 28.02.2020. Even otherwise, the observations made in ***Willowood*** (supra) have to be read in light of the fact that the time limit for filing TRAN-1 has been extended multiple times and the implementation of the GST regime and the transition thereto has been inefficient and rough.

21. Lastly, we also find merit in the submissions of the petitioners that Rule 117, whereby the mechanism for availing the credits has been prescribed, is procedural and directory, and cannot affect the substantive right of the registered taxpayer to avail of the existing / accrued and vested CENVAT credit. The procedure could not run contrary to the substantive right vested under sub Section (1) of Section 140. While interpreting Order VIII Rule 1 CPC, the Supreme Court has observed that the time limit for filing written statement is directory in nature and not mandatory, and that “procedural law is not to be a tyrant but a servant, not an obstruction but

an aid to justice" [Ref: ***Salem Advocates Bar Association v. Union of India AIR*** 2003 SC 189]. Reference may also be made to ***Commissioner of Central Excise, Madras v Home Ashok Leyland*** (2007) 4 SCC 41, wherein it was observed that the Rule 57E of the Central Excise Rules, 1944 was a procedural provision, which provides procedure for adjustment of MODVAT credit available to the taxpayer and, hence, the right available under the substantive provision cannot be deprived for non-compliance with the procedural provision. There is no consequence provided in Rule 117 of GST Rules on account of failure to file GST TRAN-1. The argument of the respondents is that the consequence is provided in Sub-Section (1) of Section 140 by way of a pre-condition for being entitled to transit the CENVAT credit in his electronic credit register under the GST regime. We do not agree. Section 140 (1) is categorical. It states that the registered person "shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day….". Only the manner i.e. the procedure of carrying forward was left to be provided by use of the words "in such manner as may be prescribed". The limitation on the right to carry forward the CENVAT credit is substantively provided by the proviso to the said section. Those are the only limitations on the said statutory right. Under the garb of framing Rules – which are subordinate legislation, the width of those limitations could not have been expanded as is sought to be done by introduction of Rule (1A). In absence of any consequence being provided under Section 140, to the delayed filing of TRAN-1 Form, Rule 117 has to be read and understood as directory and not mandatory. Further, even in ***ALD Automotive Pvt. Ltd. v Commercial Tax Officer*** **(2019) 13 SCC 225**, while dealing with the question of whether the provision prescribing time limit for claim of Input Tax Credit is directory or mandatory in nature, it was observed that *"whether particular provision is mandatory or directory has to be determined on the basis of object of particular provision and design of the statute" and "such interpretation should not be put which may promote the public mischief and cause public inconvenience and defeat the main object of the statute".* Therefore, in the present cases, the purport of the transitory provisions is to allow a smooth migration from the erstwhile service tax regime to the new GST regime and the interpretation must be in consonance with the said purpose.

22. We, therefore, have no hesitation in reading down the said provision [Rule 117] as being directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed. This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates,

have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of *three years* should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.

23. Accordingly, since all the Petitioners have filed or attempted to file Form TRAN-1 within the aforesaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020. Respondents are directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually. Respondents shall thereafterprocess the claims in accordance with law. We are also of the opinion that other taxpayers who are similarly situated should also be entitled to avail the benefit of this judgment. Therefore, Respondents are directed to publicise this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 till date are permitted to do so on or before 30.06.2020.

24. All the petitions are allowed in the above terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Manmohan and Sanjeev Narula, JJ]

W. P. (C) 13151 of 2019

SKH Sheet Metals Components ... Petitioner

Versus

Union of India & Ors. ... Respondents

DATE OF JUDGMENT : 16.06.2020

TRAN-1 DECLARATION – FILING THEREOF – GOODS AND SERVICES TAX – CENVAT CREDIT AS OF 30.06.2017 – TIME LIMIT FIXED IN RULES – HON'BLE HIGH COURT HOLDS IT TO BE DIRECTORY – PROVISIONS OF THE ACT POST JUDGMENT AMENDED RETROSPECTIVELY – THE AMENDMENT CAME INTO FORCE AFTER THE DECISION OF HON'BLE HIGH COURT – PRAYER THAT THE JUDGMENT NO LONGER HOLDS GOODS – OTHER GROUNDS AND REASONS IN THE JUDGMENT ALLOWING CLAIM – JUSTIFICATION THEREOF.

To deny the Petitioner relief sought by them, only explanation alluded to in the counter affidavit is that benefit of the judgment of this Court in ***Brand Equity*** *(supra) is no longer available. It is argued that in view of retrospective amendment to Section 140 of the CGST Act, 2017,introduced by the Finance (Amendment) Act, 2020, there has been a relevant change in circumstances and thus the above-said decision is no longer valid. The power to prescribe a time limit for filing TRAN-1 has been provided by the insertion of words "within such time" in Section 140 with retrospective effect from 1st July, 2017. It has been argued that now that the amendment specifically provides for prescribing a time limit for filing TRAN-1 Form, the period so provided under Rule 117 would have legal sanctity and therefore the factor which weighed with this Court to hold that the limitation period provided under Rule 117 for filing TRAN-1 is merely directory and not mandatory, no longer holds good.*

The above amendment to Section 140 came to be notified on 18th May 2020, vide notification No. 43/2020 dated 16th May 2020. Thus, the said amendment came into force after the date of the decision in ***Brand Equity*** *(Supra). The said amendment was also not cited before the Court to contest the petitions. With that being said, since, there is no specific challenge to the amendment introduced by Section 128 of the Finance (Amendment) Act, 2020, we do not want to venture into legality of the said provision viz-a-viz the judgment of* ***Brand Equity*** *(Supra).*

Nevertheless, all things considered, in spite of the amendment, we can say without hesitation that the said decision is not entirely resting on the fact that statute [CGST Act] did not prescribe for any time limit for availing the transition of the input tax credit. There are several other grounds and reasons enumerated in the said decision and discussed hereinafter, that continue to apply with full rigour even today, regardless of amendment to Section 140 of the CGST Act.

The reasoning given in the judgment still holds good. Additionally,

We would like to observe that the rule suffers from the vice of vagueness and concept of "technical difficulty on common portal" and its applicability has not been adequately defined anywhere. Because of absence of any defining words, there is no predictability about the application of this Rule for the class of cases to which it would apply, as is demonstrated in the case in hand. In absence of a criteria, the application of the provision would suffer from arbitrariness.

Now, when we examine the timelines framed by the Central Government, we must remain focused on the importance of the aforenoted provisions, in relation to the object that is intended to be achieved. At the same time, we

also have to examine the consequences that would follow if we construe a provision to be directory and not mandatory. The purpose of the timelines prescribed is just to hasten the migration of taxes from the erstwhile regime to the new GST laws and for swift streamlining of the ITC. The timeline introduced by Rule 117 is purely procedural and as discussed above the same was not treated as sacrosanct. The Central Government has continuously extended the same, by carving out an exception under Rule 117 (1A). Moreover, under none of the provisions of the Act, we can infer the intention of the legislature to create this distinction by way of subordinate legislation. We also cannot decipher any intent to deny extension of time to deserving cases where delay in filing was on account of human error. This interpretation would run counter to the object sought to be achieved under Section 140 of the Act which is the governing provision and exhibits the true legislative intent. The situation before us is not wherethe statute fixes any timelines for transitioning of credit. After the retrospective amendment of Section 140, we can interpret that the power to fix the timeline and its extension has been prescribed to the Central Government which was done vide Rule 117. This Rule provides for a time period of 90 days and also stipulates that the same can be extended for a further period not exceeding 90 days. However, under Rule 117 (1A), multiple extensions beyond 180 days have been granted for taxpayers who faced "technical difficulties on common portal". Yet, deserving „non-technical" cases like the present one have been ignored and this exclusion is arbitrary and irrational. Moreover, if we were to look for a provision in the statute that would stipulate a consequence for failure to adhere to the timelines, we would find none. Rule 117 of the CGST rules also does not indicate any consequence for non-compliance of the condition. Both the Act and Rules do not provide any specific consequence on failure to adhere to the timelines. Since the consequences for non-consequence are not indicated, the provision has to be seen as directory. Pertinently, non-observance of the timelines would prejudice only one party- the registered person/taxpayer. If we interpret the timelines to be mandatory, the failure to fulfil the obligation of filing TRAN-1 within the stipulated period, would seriously prejudice the taxpayers, for whose benefit section 140 has been provided by the legislature. In view of the above discussion, interpreting the procedural timelines to be mandatory would run counter to the intention of the legislature and defeat the purpose for which the transitionary provisions have been provided and have to be construed as directory and not mandatory.

Present for Appellants	:	Mr. Dharnendra K. Rana, Advocate with Ms. Anshika Aggarwal, Advocate.
Present for Respondent	:	Mr. Sreemithun, Advocate for UOI. Mr.Harpreet Singh, Standing Counsel for GST

Judgment

Sanjeev Narula, J

1. The Petitioner has invoked Article 226 of the Constitution of India for seeking a writ of mandamus directing the Respondents to allow it to avail the short transitioning of Input Tax Credit ('ITC') amounting to Rs. 5,51,33,699/- by either updating the electronic credit ledger at their back end,in accord with the details of credit submitted by the Petitioner or allowing them to revise the Form GST TRAN-1, in conformity with the returns filed under the existing laws that stand repealed by the Central Goods and Service Tax Act, 2017 ("CGST Act").

Brief Factual Background

2. Petitioner- SKH Sheet Metals Components Private Limited, set up its unit at Pune, Maharashtra for manufacture of final products and sale to OEMs. The indirect tax structure prevailing in India, prior to 1st July, 2017, comprised of multifarious duties and taxes imposed by the Centre as well as States. Excise duty was levied under Central Excise Act, 1994 ('Excise Act") on manufacture of excisable goods; service tax was imposed under Finance Act, 1994 ("Finance Act") on provision of services in the taxable territory. Similarly, sale of goods was exigible to Value Added Tax ('VAT") imposed under respective State VAT enactments and Central Sales Tax ('CST") under Central Sales Tax Act, 1956 ('CST Act"), depending on whether the goods were sold intra-state or inter-state. [hereinafter the legislations referred hereinabove are being collectively referred to as 'Existing Laws"]. In this regard, Petitioner obtained registration with the jurisdictional authorities under various legislations listed hereinabove. It also availed CENVAT credit of specified duties and taxes paid on inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004 ('Credit Rules') and input tax credit of VAT paid on purchases in terms of Maharashtra VAT Act, 2002 ('MVAT Act"). Petitioner periodically filed returns by way of forms specified under the above-noted legislations, and declared the details of input balance of credit, credit availed during the return period, and closing balance of credit available for carry forward for the next period. For the period ending 30th June, 2017, the closing balance of credit available for carry forward, as declared by the Petitioner, reflects the figures tabulated hereunder:

Return	Amount (Rs.)
ER-1	3,86,54,605/-

ST-3	1,64,79,081/-
Form 231	1,01,24,382/-
TOTAL	6,52,58,081/-

3. The indirect tax regime had its watershed moment with the advent of the Goods and Service Tax, which has become operational by way of several enactments [hereinafter referred as 'GST laws"], w.e.f. 1st July, 2017 ('Appointed Date") and existing laws stand repealed. The GST laws framed by the parliament and the state legislatures, recognize the fact that taxpayers had ITC under the existing laws, and provide for elaborate transitional arrangements to save the pending as well future claims relating to existing law made before, on or after the appointed day. In order to achieve this objective, GST laws permit the registered persons to migrate the amount of CENVAT Credit that was carried forward in the returns under the existing laws in the electronic credit ledger under GST laws.

4. Petitioner asserts that it is entitled to transitional credit of Rs. 6,52,58,081/- comprising of Central Excise Cenvat credit of Rs. 3,86,54,605/-, Service Tax Cenvat credit of Rs. l,64,79,081/- and Input MVAT credit of Rs. l,01,24,382/. In order to avail the credit in the electronic credit ledger under the GST laws, on 27th August, 2017, much before the last date specified by the Central Government, the Petitioner filed a Form prescribed for this purpose, known as 'GST TRAN-l". However, on submission of the said Form, Petitioner realized that as against the total credit of Rs. 6,52,58,081/-, only Rs. l,01,24,382/- was reflected on the common GST portal. The CENVAT credit of Rs. 5,51,33,6991/-comprising of Central Excise and Service Tax of Rs.3,86,54,605/- and Rs.1,64,79,0811/- respectively was not displayed in the electronic credit ledger.

5. Vide email dated 9th October, 2017, Petitioner brought the mismatch to the notice of the Respondents, and the difficulty faced in utilization of the entire credit, since the Cenvat under Central Excise and Service Tax had not been replicated in the Electronic Credit Register. Respondents suggested that since the common portal itself enables the taxpayers to make necessary amendments, Petitioner could avail the said option to rectify the error. Around this time, Respondents issued Order number 9/2017 – GST, extending the date of filing for GST TRAN-1 till 27 December 2017. Petitioner claims that it filed a revised declaration in the nature of Form GST TRAN-I on 27th December, 2017 and reflected the correct figures under column 5(a) of the Form, however, the amount was still not transferred to the electronic credit register and was shown as "blocked credit". Petitioner then registered a complaint dated 5th February, 2018,

with the GST helpdesk. GST helpdesk duly acknowledged the complaint, generated „request ID" and informed the Petitioner that they were working on the issue and the status thereof shall be updated and intimated.

6. Thereafter, the Petitioner vide letter dated 6th February, 2018, made further representations to the Assistant Commissioner of CGST as also to Principal Commissioner of CGST, Pune Commissionerate. However, the said complaint did not translate into any positive outcome. In the meantime, CBIC issued a circular granting relief to taxpayers who had faced IT glitches at the stage of filing original or revised return on the Goods and Service Tax Network („GSTN„) portal. Petitioner worked towards availing the benefit of the said circular and submitted a representation dated 12th April, 2018 to the Deputy Commissioner of CGST as also Principal Commissioner of CGST, but this attempt also turned out to be futile. Subsequently, Respondents issued a trade notice No. 33/2018 dated 19th April, 2018 intimating about the formation of IT Grievance Redressal Committee („ITGRC") for the purpose of resolution of difficulties faced by taxpayers in filing returns Forms. In order to avail the benefit of the said notice, Petitioner, yet again pursued the matter with the Respondents and vide email dated 24th April, 2018, submitted another representation in the prescribed format. In response thereto, the Office of Principal Commissioner, CGST vide email dated 25th April, 2018 sought clarification on various points which were promptly provided on 26th April, 2018. The receipt of the said communication was acknowledged by the authorities vide email dated 4th May, 2018, stating that "*it is acknowledged that the grievance received by you to this office has been forwarded to the Nodal Officer, GSTN, to take necessary action against your complaint at their end".* However, the aforesaid representations also did not bring forth any favorable outcome. Nevertheless, Petitioner continued to follow up with the Respondents, seeking rectification of the problem. Petitioner"s AR also made personal visits to the Office of the Principal Commissioner of CGST and each time he was informed that the issues raised by the Petitioner were being examined and shall be resolved after due and proper verification.

7. When all the efforts made by the Petitioner failed, it filed a Writ Petition No. 712/2018 before Bombay High Court. During the course of hearing, the counsel representing the Respondents informed the Court that GST Council in its 32nd meeting had resolved that ITGRC which was originally mandated to consider cases relating to technical glitches, would now also consider cases involving human errors and it would be appropriate for the Petitioner to make a representation before the Jurisdictional Commissioner who upon examination and satisfaction of the grievance of

the Petitioner, shall forward the case to Respondent No. 2 for undertaking appropriate action. The note produced by the Respondents *inter alia* reads as under:

> "Petitioners can make a representation to the jurisdictional Commissioner about the issue. The same will be examined and the jurisdictional Commissioner if prima facie satisfied, will forward the same to the Secretariat GST Council with a copy to ITGRC. A decision will be taken at that level and communicated to the Petitioners."

8. After considering the contents of the note and the minutes of 32nd GST Council meeting, Bombay High Court vide order dated 27.02.2019 disposed of the petition with direction to the Petitioner to file a representation before concerned Authorities in terms of the 32nd GST Council meeting. The said is extracted hereunder:

> "*1.* ***In the light of the note placed on record by Shri Mishra annexing therewith the Office Memorandum dated 19th February, 2019 issued by the Government of India, Goods and Service Tax Council seeking to address certain non technical issues, namely, human errors and putting in place a mechanism to take corrective measures, we do not think anything survives in this writ petition****. It is disposed of.*
>
> 2. However, the learned counsel for the petitioner brings to our notice that the cut-off date mentioned in this Office Memorandum is 25th February, 2019 whereas this Office Memorandum is dated 19th February, 2019. This period is hopelessly inadequate for accessing the authorities and by emode.
>
> ***On instructions, Shri Mishra says that if the petitioner forwards its requests or grievances within a period of one week from today, the concerned authorities will attempt to redress them and will not throw them out only on the ground that they are received beyond the cut-off date.*** *The statement made by Shri Mishra, on instructions, is accepted as an undertaking to this Court*."
>
> (Emphasis Supplied)

9. Accordingly, Petitioner filed yet another representation before Respondent No. 4. This representation was acknowledged by the Respondents vide communication dated 13th May, 2019 intimating him that

representation had been forwarded to Respondent No. 3, vide letter dated 14th March, 2019. Ultimately, vide letter dated 12th July, 2019 the case of the Petitioner was rejected by ITGRC and the prospect and possibility of a resolution were finally put to rest. The relevant portion of the letter is extracted here in below:

> "Your representation pertaining to TRAN-1 credit was forwarded to this office by the Nodal Officer, CGST, Pune-I Commissionerate vide e-mail dated 27/04/2018. It was submitted to the IT Grievance Redressal Committee (ITGRC) for appropriate decision in the matter. As per the decision received from ITGRC, your case has not been approved. The decision has already been communicated by this office to the Nodal Officer, CGST, Pune-I Commissionerate vide e-mail dated 20/03/2019."

10. Since the letter rejecting the Petitioner"s case did not elucidate any reasons for rejection, the Petitioner vide letter dated 1st August, 2018 requested Respondents to provide them reasons for denial. No response was received to the said letter. Petitioner then filed an RTI application requesting for the reasons for rejection. This request was turned down in the following manner:

> "This information sought under RTI does not fall under definition of Information transitional credit as per section 2(f) of the RTI Act, 2005. The CIC vide its decision No. CIC/POWER/A/2017/105911 dated 01.12.2017 held that '...RTI Act is not the proper law for redressal of grievances and that there are other appropriate fora for resolving such matters... '
>
> Hence, no further action is required in the matter."

11. In the above factual background, Petitioner has filed the present writ petition, invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

Submissions of the Parties

12. Learned counsel for the Petitioner narrated the factual background and argued that the Respondents have acted in a most unreasonable manner by denying the Petitioner benefit of transitional provision without any cogent reason. Petitioner is seeking transition of ITC that had accrued and vested in its favour under the erstwhile regime. Petitioner had acted promptly and filed the statutory GST TRAN-I form within the specified time.

However, since there was a bona fide error in filling the same, the Petitioner filed a revised return correcting the same and yet, the entire credit is still not exhibited in the electronic credit ledger. The short transitioning is due to some problem at Respondent‟s end. The issue was flagged, but was not rectified on account of frivolous and baseless reasons. He further argued that Petitioner has been tirelessly following up with the Respondent and submitted a litany of complaints and representations, however all of those have fallen on deaf ears. The conduct of the Respondents reflects their narrow mindset and attitude in resolution of troubles faced by taxpayers. They are only interested in finding ways and means to deny the Petitioner the benefit which is legitimately due to it. Learned counsel for the Petitioner also relied upon several decisions such as ***Blue Bird Pure Private Limited*** (Delhi High Court) W.P.(C) 3798/2019, ***Adfert Technologies Private Limited*** (P&H High Court) CWP No. 30949/2018(O&M), ***Vertiv Energy India Private Limited*** (Delhi High Court) W.P.(C) 10811/2018, ***Lease Plan India Private Limited*** (Delhi High Court) W.P.(C) 3309/2019, ***Godrej & Boyce Manufacturing Company Limited*** (Delhi High Court) W.P.(C) 8075/2019, ***Jakap Metind Private Limited*** (Gujarat High Court) R/Special Civil Application No. 19951/2018 and ***Siddharth Enterprises*** (Gujarat High Court) R/Special Civil Application No. 5758/2019 to argue that the several Courts have permitted the similarly situated taxpayers to file the Form GST TRAN-1 beyond stipulated period of time. This Court has also come to the rescue of several taxpayers who had faced difficulties in filing the statutory form GST TRAN-1 on the GSTN portal, within the period specified. The Courts have in fact, gone a step further and extended benefit even to those taxpayers, who may not have faced ‘technical glitch on the portal’ but were otherwise prevented in filing the TRAN-1 form on account of certain human errors or factors and reasons which were beyond their control. In this regard, learned counsel for the Petitioner specifically relied upon the decisions of this Court in the case of ***M/s Blue Bird Pure Pvt. Ltd. vs. Union of India &Ors.*** 2019 SCC OnLine Del 9250 as also the case of ***A.B. Pal Electricals Pvt. Ltd. v. Union of India*** [W.P.(C) 6537/2019] decided vide judgment dated 17th December, 2019. The above-noted cases, were not strictly covered by the concept of “technical glitches”, however, considering the fact that GST system was still in a trial and error phase as far as its implementation is concerned, Court agreed to the fact that certain taxpayers were having genuine difficulties in filing returns and claiming input tax credit through GSTN portal and allowed filing of the TRAN-1 Form beyond the stipulated date. Learned Counsel also relied upon the detailed decision rendered by this Court recently in a batch of cases titled as ***Brand Equity Treaties Ltd. And Ors. v. Union of India***, [2020] 116 taxmann.com 415 (Delhi). He

argued that Petitioner"s case is identical to one of the cases decided in the said batch i.e. ***Micromax Informatics Ltd. v Union of India*** [WP(C) No. 196/2019], where the Court had taken note of facts similar to this case and allowed belated filing of TRAN-1. In the said case, the Court also held that Rule 117 of the GST Rules is directory in nature in so far as it prescribes the time limit for transitioning of credit and it cannot result in forfeiture of rights of taxpayers, if the same is not availed within the period prescribed therein. Accordingly, this Court allowed taxpayers to avail the input tax credit by permitting them to file TRAN-1 form on or before 30th June, 2020. Learned counsel for the Petitioner further submitted that irrespective of the said decision, since admittedly the TRAN-1 form in the case of the Petitioner was filed well before the specified date, notwithstanding the benefit granted by the Court in the said judgment, the Petitioner is entitled to transition the credit.

13. Mr. Harpreet Singh, Senior Standing Counsel for GST on the other hand opposed the petition and submitted that the Petitioner is not entitled to the benefit being sought in the present petition. Mr. Harpreet Singh argued that the Petitioner can also not avail the benefit of the judgment of this Court in the case of ***Brand EquityTreaties Ltd.*** (supra), as recently, with the passing of the Finance (Amendment) Act, 2020 which has been given presidential assent on 27th March, 2020, Section 140 of the CGST Act has been retrospectively amended. He submits that vide Section 128 of the Finance (Amendment) Act, 2020, the words “within such time” have been inserted in Section 140 (1) and this amendment has been given retrospective effect from 1st July, 2017. Thus, the Central Government has been granted the power to prescribe the time limit for filing TRAN-1. The absence of power to prescribe a time limit for filing TRAN-1 was a critical factor that weighed with this Court in the case of ***Brand Equity Treaties*** (supra) to hold that the limitation period under Rule 117 for filing TRAN-1 is merely directory and not mandatory. But, by virtue of retrospective amendment, there has been a change in circumstances and the benefit of the judgment in the case of ***Brand Equity*** (supra) is no longer available to the Petitioner. Mr. Harpreet Singh further argued that ITGRC set up vide circular No. 39/13/2018 dated 3rd April 2018, examined Petitioner"s case, but did not find any merit, for granting relaxation, considering the fact that there was no technical glitch faced by the Petitioner while uploading the TRAN-1 Form. The case of the Petitioner fell in the category “*the taxpayer has successfully filed TRAN-I, but no technical error has been found*”. Since the Petitioner did not encounter any technical glitch on the portal, his request to file a revised TRAN-1 form beyond the limitation period was not accepted. Mr. Harpreet Singh further argued that pursuant to the directions given by Bombay High Court in Petitioner"s earlier writ

petition No. 712/2019, its representation was considered again by ITGRC. However, since the discrepancy in electronic credit ledger is because of a human error, the benefit of the aforenoted circular has not been extended to the Petitioner.

Analysis And Findings

14. The issue raised by the Petitioner is not new, but a recurrent one. Petitioner before us made an attempt to transition the available credit under the existing laws by filing Form TRAN-1, but the electronic credit ledger under the GST laws does not reflect the entire credit. The ITC seems to have vanished in the rigmarole of the statutory GST Forms. The credit actually available for transition and what was actually transferred, can be explained by the following tabulation:

Form TRAN-I filed on 27.8.2017 under Section 140(1) of CGST Act for transitioning closing balance of credits in erstwhile returns		Credit actually transitioned in Electronic Credit Ledger of the Petitioner	Credit not transitioned to the Electronic Credit Ledger of the Petitioner
Erstwhile Return	**Amount (Rs.)**	**Amount (Rs.)**	**Amount (Rs.)**
ER-1 (Excise)	3,86,54,605/-	1,01,24,382/-	5,51,33,699/-
ST-3 (Service Tax)	1,64,79,094/-		
Form 231 (Maharashtra VAT)	1,01,24,382/-		
TOTAL	6,52,58,081/-	1,01,24,382/-	5,51,33,699/-

15. The aforesaid error occurred while filing the requisite TRAN-1 , as apparently Petitioner failed to fill in the correct details in the right column, which is evident from the screenshot of Form GST TRAN-1, annexed along with the petition. The same is extracted hereinbelow:

Sr. No.	Registration no. under existing law	Tax period	Date of filing of the return	Balance CENVAT credit	CENVAT Credit admissible as ITC
1.	AACCV0528KXM001	062017	10/07/2017	3,86,54,605.00	1,01,24,382.00
2.	AACCV0528KST001	062017	13/08/2017	1,64,79,094.00	0.00

16. When we make a comparison of the figures reflected in the screenshot with those in the statutory returns, it is revealed that the credit

which was reflected in Form 231 under the Maharashtra VAT Act of Rs. 10,124,382/-instead of being added to the remaining amount reflected in the tax returns under the Excise Act (ER-1) and Service Tax Act (ST-3), was instead erroneously reflected under the heading "*CENVAT Credit admissible as ITC*". Thus, for this clerical mistake, there has been short transitioning of the credit, as a result whereof , Petitioner stands to lose huge amount of ITC, totaling to Rs. 5,51,33,699/- that stood vested in it‟sfavour under the erstwhile regime.

The GST system and its procedural fallibility and shortcomings

17. The stand of the Respondent, in a nutshell, is that since Petitioner has committed this mistake, it ought to suffer for the same. Let us assume that indeed the mistake happened purely on account of a human error, for which Petitioner alone is worthy of blame. Does it mean that for this blunder, the law will provide no restitution and it is a *fait accompli* for the Petitioner? In our view, that should never be the case and law should provide for a remedial avenue. In our view, the stand of Central Government, focusing on condemning the Petitioner for the clerical mistake and not redressing the grievance, is unsavory and censurable. Tax laws, as it is, are complex and hard to interpret. Moreover, no matter how well conversant the taxpayers may be with the tax provisions, errors are bound to occur. Therefore, if the tax filing procedures do not provide for an appropriate avenue to correct a bona fide mistake, the same would lead to the taxpayers avoiding compliances. We cannot ignore the fact that the necessary Forms under GST are difficult to identify and the Government had to put efforts to assist the citizens in understanding the procedures. Till date, GST awareness campaigns and citizen outreach programmes are in place to acquaint the taxpayers with the GST filing procedures. Particularly, with the entire system being online, the interface between the taxpayers and authorities is entirely electronic. This requires some basic fundamental knowledge for using the technology. Since GST law is a major tax reform in indirect taxation, the difficulties faced in filing of the statutory forms is understandable. In this process, human errors cannot be ruled out and if they occur, the solution is not to criticize the taxpayer for the fault, but instead, the Government should endeavour to find a resolution. The government should support its citizens by making the burden of compliance and payment as simple as possible. The intent and efforts of the Government should be to extend proper assistance, information and education to taxpayers so that they fulfil their obligations. This should be the critical area of focus in the area of tax administration which would ensure compliance with tax laws and also build confidence amongst taxpayers. Indeed, by explaining the significance of payment of taxes, and the role

that a taxpayer plays in building the nation, the Government endeavors to encourage and motivate the citizens to be tax compliant. If we strive to achieve this goal, it is necessary that we must also provide appropriate channels for resolution of their genuine problems. A successful resolution, a positive response and an effective, timebound redressal mechanism is crucial for building confidence amongst the taxpayers and for successful tax administration. We have in a series of decisions, discussed as to how the advent of GST law created challenges for the taxpayers because of the lack of understanding of procedures provided therein. In fact, in the recent decision in ***Brand Equity*** (supra), this aspect has been discussed elaborately and we need not reiterate the same.

The Finance (Amendment) Act, 2020 and its impact; Judgment in Brand Equity (supra)

18. To deny the Petitioner relief sought by them, only explanation alluded to in the counter affidavit is that benefit of the judgment of this Court in ***Brand Equity*** (supra) is no longer available. It is argued that in view of retrospective amendment to Section 140 of the CGST Act, 2017, introduced by the Finance (Amendment) Act, 2020, there has been a relevant change in circumstancesand thus the above-said decision is no longer valid. The power to prescribe a time limit for filing TRAN-1 has been provided by the insertion of words "within such time" in Section 140 with retrospective effect from 1st July, 2017. It has been argued that now that the amendment specifically provides for prescribing a time limit for filing TRAN-1 Form, the period so provided under Rule 117 would have legal sanctity and therefore the factor which weighed with this Court to hold that the limitation period provided under Rule 117 for filing TRAN-1 is merely directory and not mandatory, no longer holds good.

19. The above amendment to Section 140 came to be notified on 18th May 2020, vide notification No. 43/2020 dated 16th May 2020. Thus, the said amendment came into force after the date of the decision in ***Brand Equity*** (Supra). The said amendment was also not cited before the Court to contest the petitions. With that being said, since, there is no specific challenge to the amendment introduced by Section 128 of the Finance (Amendment) Act, 2020, we do not want to venture into legality of the said provision *viz-a-viz* the judgment of ***Brand Equity (Supra).***

20. Nevertheless, all things considered, in spite of the amendment, we can say without hesitation that the said decision is not entirely resting on the fact that statute [CGST Act] did not prescribe for any time limit for availing the transition of the input tax credit. There are several other grounds and

reasons enumerated in the said decision and discussed hereinafter, that continue to apply with full rigour even today, regardless of amendment to Section 140 of the CGST Act.

Arbitrary distinction of timelines under Rules 117 & 117 (IA)

21. Petitioner"s case has been rejected on the ground of being "non-technical" human error and the benefit of Rule 117(1A) has not been given. Let us elaborate on this aspect and note some of the relevant provisions. Here, we are concerned only with sub-section (1) of section 140 and Rule 117 and 117(1A). The same are extracted below:

"**Amended Section 140 of the CGST Act**

140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law ***within such time*** *and in such manner as may be prescribed:*

"Rule 117 and Rule 117 (1A)

117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day*.-(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in* ***FORM GST TRAN-1****, duly signed, on the common portal specifying therein, separately, the amount of input tax credit of eligible duties and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section:*

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in ***FORM GST TRAN-1*** *by a further period not beyond [31st December, 2019], in respect of registered persons who could not submit the said*

declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]"

22. The first proviso of Rule 117, stipulates that the Commissioner on the recommendations of the Council can extend the period of ninety days for filing TRAN-1, by a further period, not exceeding ninety days. As also noticed in ***Brand Equity*** (supra), the Government amended the rules and introduced Sub-rule (1A) empowering the Commissioner to extend the date for submitting the declaration electronically in Form GST TRAN-I by a further period (not beyond 31.12.2019). This sub-rule is applicable to registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the GST Council had made a recommendation for such extension. This Sub-rule (1A) begins with a non-obstante clause - "notwithstanding anything contained in Sub Rule (1)". Thus, by introducing the said provision, notwithstanding the embargo introduced under Rule 117 (1) of the CGST Rules, the Government opened a narrow window for registered persons who faced technical difficulties on the common portal while filing Form TRAN-1. The Central Government has been consistently extending the time period for filing the Form TRAN-1 even beyond 31.12.2019 for those taxpayers who are covered by Rule 117 (1A). Recently in view of the order No. 01/2020-GST dated 7th February, 2020 issued by Government of India, Ministry of Finance, the period was extended upto 31st March 2020. Thus, when we contrast the time limit stipulated under Rule 117 (1) and Rule 117(1A), we find that the time limit of 90 days is not sacrosanct. In ***Brand Equity (supra),*** that court has observed that the government has not ascribed any meaning to the words "*technical difficulties on the common portal*" and it cannot be interpreted in a restrictive manner. The relevant portion is extracted hereinbelow:

"18. In above noted circumstances, the arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase "technical difficulty on the common portal" imply? There is no definition to this concept and the respondent seems to contend that it should be restricted only to "technical glitches on the common portal". We, however, do not concur with this understanding. "Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application. Further, technical

difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent‟s follies. After all, a completely new system of accounting; reporting of turnover; claiming credit of prepaid taxes; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN Ltd., the assessees also faced the challenges posed by low bandwidth and lack of computer knowledge and skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards – one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. Petitioners who are large and mega corporations - despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the Internet and the filing of TRAN-1 was entirely shifted to electronic means. The Nodal Officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/logged that would indicate that the taxpayers attempted to save/submit the filing of Form GST TRAN-1. Thus, the phrase “technical difficulty” is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

19. The introduction of Sub rule (1A) in Rule 117 is a patchwork solution that does not recognise the entirety of the situation. It sneaks in an exception, without addressing situations taken note of by us. This exception, as worded, is an artificial construction of technical difficulties, limiting it to those existing on the common portal. It is unfair to create this distinction and restrict it to technical snags alone. In our view, there could be various different types of technical difficulties occurring on the common portal which may not be solely on account of the failure to upload the form. The access to the GST portal could be hindered for myriad reasons, sometimes not resulting in the creation of a GST log-in record. Further, the difficulties may also be offline, as a result of several other restrictive factors. It would be an erroneous approach to attach undue importance to the concept of "technical glitch" only to that which occurs on the GST Common portal, as a pre-condition, for an assesee/tax payer to be granted the benefit of SubRule (1A) of Rule 117. The purpose for which Sub-Rule (1A) to Rule 117 has been introduced has to be understood in the right perspective by focusing on the purpose which it is intended to serve. The purpose was to save and protect the rights of taxpayers to avail of the CENVAT credit lying in their account. That objective should also serve other taxpayers, such as the petitioners. The approach of the Government should be fair and reasonable. It cannot be arbitrary or discriminatory, if it has to pass the muster of Article 14 of the Constitution. The government cannot turn a blind eye, as if there were no errors on the GSTN portal. It cannot adopt different yardsticks while evaluating the conduct of the taxpayers, and its own conduct, acts and omissions. The extremely narrow interpretation that the respondents seek to advance, of the concept of "technical difficulties", in order to avail the benefit of Sub Rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act. The legislature has recognized such existing rights and has protected the same by allowing migration thereof in the new regime under the aforesaid provision. In order to avail the benefit, no restriction has been put under any provisions of the Act in terms of the time period for transition. The time limit prescribed for availing the input tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of Article 14 of the Constitution. Further, we are also of the view that the CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of

the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act. We have, in our judgment in A.B. Pal Electricals (supra) emphasized that the credit standing in favour of the assessee is a vested property right under Article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same. ".

23. The aforesaid reasoning still holds good. Additionally, we would like to observe that the rule suffers from the vice of vagueness and concept of "technical difficulty on common portal" and its applicability has not been adequately defined anywhere. Because of absence of any defining words, there is no predictability about the application of this Rule for the class of cases to which it would apply, as is demonstrated in the case in hand. In absence of a criteria, the application of the provision would suffer from arbitrariness. It would be apposite to note that the GST Council in its 32nd meeting expanded the mandate of ITGRC to include those cases where the taxpayers who had been victims of the system failure, whether technical or otherwise. This becomes evident from the office memorandum of GST Council, dated 19th February 2019, relevant portion whereof is extracted hereinbelow:

"***In 32nd GST Council Meeting, it was decided that the*** ITGRC shall also consider certain nontechnical issues viz. errors apparent on the face of record, where the following conditions are satisfied:

i. *TRAN-1, including revision thereof, has been filed on or before 27th December, 2017 and there is an error apparent on the face of the record (**such cases of error apparent on the face of the record will not cover instances where there is a mistake like wrong entry of an amount e.g. Rs. 10,000 /- entered for Rs.1,00,000/-); and***

ii. The case has been recommended to the ITGRC through GSTN by the concerned jurisdictional Commissioner or an officer authorised by him in this behalf in case of credit of Central taxes/duties, by the Central authorities and in the case of credit of State taxes, the State authorities, notwithstanding the fact that the taxpayer is allotted to the Central or the State authority)."

(Emphasis Supplied)

This indicates that the GST Council recognized that there could be errors apparent on the face of the record that could be non-technical in

nature and merit leniency. In line with the spirit of the decision of the GST Council and the blurring thin line between technical and non-technical difficulty, keeping in view that entire filing is electronic, we find the restrictive applicability of Rule 117 (1A) to be arbitrary, as is demonstrated in the facts of the present case.

Concept of ITC and its significance; Whether procedural timelines for TRAN-1 are directory and mandatory?

24. We must not lose sight of the real intention of the Legislature that emerges by reading the scheme of the CGST, especially the transitional provisions and those dealing with ITC. GST seeks to consolidate multiple taxes into one, and thus it is imperative to have provisions to ensure that the transition to the GST regime is very smooth and hassle-free and no ITC (Input Tax Credit)/benefits earned in the existing regime are lost. In fact, an uninterrupted and seamless chain of ITC is the heart and soul of Goods and Services Tax. This mechanism is built-in to avoid cascading of taxes. Respondents themselves claim *„one of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Governments would be part of the same tax regime, credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage."*(Ref: GST Flyer; CBIC Website) Significantly, for the cases covered under Section 140 (1) of the CGST act, ITC under the existing laws is a vested right. This credit stood vested in favour of the taxpayer and would have been utilized for payment of outgoing taxes under the respective legislations, but for the repeal of the existing laws. In order to claim this credit, declaration in form GST TRAN-1 is required to be furnished on the common portal within ninety days from the appointed day i.e. 1st July, 2017 or within such extended time. Thus, the closing balance of the CENVAT credit /VAT in the last returns filed under the existing law can be taken as credit in electronic credit ledger. Such credit would be available only when returns for the previous last six months have been filed under the existing laws. Thus, on analysis of the provisions of Central Goods and Service Tax Act and the Rules framed thereunder, the mind of the legislature on input tax credit becomes clear. The transitional provisions and the language of section 140 of the Act in particular, even after amendment, manifests the intention behind the said provision is to save the accrued and vested ITC under the existing law. If the legislature has provided for saving the same by allowing a migration under the new tax regime, we have to interpret the rules keeping this objective in focus. This is the reason courts have held that CENVAT credit which stood accrued to the Petitioner is a vested right and is protected

under Article 300A of the Constitution of India and could not be taken away by the Respondents, without authority of law, on frivolous grounds which are untenable.

25. Now, when we examine the timelines framed by the Central Government, we must remain focused on the importance of the aforenoted provisions, in relation to the object that is intended to be achieved. At the same time, we also have to examine the consequences that would follow if we construe a provision to be directory and not mandatory. The purpose of the timelines prescribed is just to hasten the migration of taxes from the erstwhile regime to the new GST laws and for swift streamlining of the ITC. The timeline introduced by Rule 117 is purely procedural and as discussed above the same was not treated as sacrosanct. The Central Government has continuously extended the same, by carving out an exception under Rule 117 (1A). Moreover, under none of the provisions of the Act, we can infer the intention of the legislature to create this distinction by way of subordinate legislation. We also cannot decipher any intent to deny extension of time to deserving cases where delay in filing was on account of human error. This interpretation would run counter to the object sought to be achieved under Section 140 of the Act which is the governing provision and exhibits the true legislative intent. The situation before us is not where the statute fixes any timelines for transitioning of credit. After the retrospective amendment of Section 140, we can interpret that the power to fix the timeline and its extension has been prescribed to the Central Government which was done vide Rule 117. This Rule provides for a time period of 90 days and also stipulates that the same can be extended for a further period not exceeding 90 days. However, under Rule 117 (1A), multiple extensions beyond 180 days have been granted for taxpayers who faced “technical difficulties on common portal”. Yet, deserving „non-technical‟ cases like the present one have been ignored and this exclusion is arbitrary and irrational. Moreover, if we were to look for a provision in the statute that would stipulate a consequence for failure to adhere to the timelines, we would find none. Rule 117 of the CGST rules also does not indicate any consequence for non-compliance of the condition. Both the Act and Rules do not provide any specific consequence on failure to adhere to the timelines. Since the consequences for non-consequence are not indicated, the provision has to be seen as directory. Pertinently, non-observance of the timelines would prejudice only one party- the registered person/taxpayer. If we interpret the timelines to be mandatory, the failure to fulfil the obligation of filing TRAN-1 within the stipulated period, would seriously prejudice the taxpayers, for whose benefit section 140 has been provided by the legislature. In view of the above discussion, interpreting the procedural timelines to be mandatory would run counter to the intention

of the legislature and defeat the purpose for which the transitionary provisions have been provided and have to be construed as directory and not mandatory.

The Form was originally filed well within the prescribed time limit

26. There is another factor that persuades us to come to the aid of the Petitioner. In the instant case, the Form TRAN-1 was filed promptly, within the stipulated period. Immediately, when the Petitioner noticed that the entire credit had not been transitioned, it started corresponding with the Respondent with the hope that the matter would be resolved and the mistake would be rectified. The facts narrated above recount various representations and efforts made by the Petitioner in this direction. It saw a glimmer of hope when Respondents recognized that taxpayers had faced technical glitches on the GSTN portal and created an IT Grievance Redressal Committee to redress such issues. However, Petitioner was not extended the benefit. Thereafter, when another representation was submitted, pursuant to the Bombay High Court order, Petitioner‟s case was differentiated. It is contended that since Petitioner faced no technical glitch at the stage of filing of the Form, the case does not qualify for any relaxation. The decision of ITGRC is contrary to the decision of the 32nd meeting of GST Council and the office memorandum dated 19th February 2019 referred above. GST Council categorically expanded the mandate of ITGRC and observed that it would also look into cases where "*there is an error apparent on the face of the record (such cases of error apparent on the face of the record will not cover instances where there is a mistake like wrong entry of an amount e.g. Rs. 10,000 /- entered for Rs.1,00,000/-).* The facts before us meet the above criteria. Visibly there is an error apparent on the face of record. The ITC reflected in the returns has been shown as „blocked credit‟ and is not a mistake in the entry of figures. Yet, before us, Respondents determinedly defend their action. They continue to deny full credit, by further arguing that the mistake is because of human error and revision is time barred and should be treated as a case of fresh-filing. This contention is wholly misplaced. TRAN-1 Form was filed within the stipulated period and revision thereof , to correct an error, will relate back to the said date of filing. We do not see any convincing reason to hold that as on date, the revision of the said return, will be time-barred and treated to be a fresh return. The revised data can be easily verified and correlated with the tax returns filed in the erstwhile regime. In fact, Rule 120A of CGST Rules is an enabling provision that can be resorted to, by the taxpayers to revise the Form GST TRAN-1 on the common portal within the time specified in the rules or such further period as may be extended by the Commissioner. In the present case, the mistake was

clerical in nature. It is the Respondents who have, for specious reasons, denied this opportunity to the Petitioner. Therefore, the revision cannot be treated as a fresh filing , especially, keeping in view the spirit of the spirit of 32nd meeting of GST Council, referred above

Non-disclosure of reasons for denying claim of the Petitioner and arbitrariness in rejection.

27. There is yet another reason that entitles the Petitioner to the relief sought in the present petition. Petitioner‟s case was considered and rejected by the IT Grievance Redressal Committee, despite the recommendation of the Jurisdictional Commissionerate. It is also pertinent to note that the Respondents had given an undertaking before the Bombay High Court in Writ Petition No. 712/2019 that the grievance of the Petitioner will be redressed and its case will not be thrown out only on the ground that it was received beyond the cut-off date. Armed with the order of the Court, when the Petitioner submitted a fresh representation, Respondents, without giving any cogent reasoning, as is evident from the letter dated 12th July, 2019, reproduced in para 9 above, rejected the same. The said letter also exhibits complete non-application of mind. For the last three years, Petitioner has made countless complaints and representations. Respondents have consistently denied the Petitioner an opportunity to revise the return without disclosing the reasons for arriving at this decision except for a cryptic one-line rejection order. Petitioner has called upon the Respondents time and again to intimate specific reasons for rejection of its case. It also filed an RTI application in this regard. However, the Respondents have resolutely held on to their stand. For some mysterious reason, the grounds for rejection are being withheld, as if, the same are some guarded secret. The approach of the Respondents is grossly unjust and disappointing and we disapprove the same. Petitioner, as a matter of right, should know the specific reasons for the rejection of his case so that it can assail the same. Respondents had an opportunity to disclose such reasons in the counter affidavit, and we are surprised to note that despite that, they have chosen to remain silent on the main issue. Instead, they have relied upon the amendment to Section 140 to prevail upon us that we should not grant the benefit to the Petitioner in terms of our decision in ***Brand Equity*** (supra).

28. The stand taken today runs counter to the assurance given before Bombay High Court and is also not borne out, from the record. It has been argued that the discrepancy in the figures has crept in because of human error and there is no provision in the Act or the rules that can be relied upon by the Petitioner to reclaim the shortfall. The restriction that prevents

the Petitioner from taking the entire credit by revising the return, based on the footing of a “human error” and not “technical difficulty on common portal” is thus wholly unreasonable, being irrational and arbitrary and therefore, violative of Article 14 of the Constitution. One-line, non-speaking order relied upon to justify the rejection cannot be countenanced. Viewed from another angle, one can construe Petitioner"s difficulty as technical in nature, as the short credit is reflected as blocked credit on the portal, with no provision to rectify the same electronically. In absence of any clause defining “technical difficulty on common portal”, as discussed above, Petitioner"s case would even be covered by Rule 117 (1A) of the CGST Rules. GST laws required taxpayers to embrace transformative new ways. The use of technology can be daunting for many taxpayers who hitherto before, were largely dependent on conventional manual filings of returns. In order to overcome the resistance to change and encourage transformation and remodeling of the entire accounting structure at taxpayers" end, the electronic mode should be user friendly. Sadly, the Respondents have not helped the situation, despite all the good intentions they may have. They have further compounded the problems for the taxpayers by being adamant about their stand and exhibited no flexibility in approach. The exactness required in compliance of tax provisions should not be construed so rigidly that permissible flexibility is completely disregarded. In effect, the ITC has been expropriated without any lawful sanction. The ITC that was shown in the returns under the existing laws were taxes that stood paid to the respective Governments for goods or services and were available for adjustment or utilization in accordance with law. Now, on account of a clerical mistake the said taxes paid are being appropriated, without cause, putting the Petitioner in serious jeopardy by subjecting it to further taxation under GST without the benefit of ITC. The case before us demonstrates how the tax department has miserably fallen short of the expectation. It is regrettable that Respondents have failed to address the basic and fundamental problem faced by the Petitioner that occurred while filing a Form, seemingly on account of a bona fide or inadvertent mistake. Instead of offering a restitutive solution they have stonewalled all the attempts made by the Petitioner The injustice and prejudice caused to the Petitioner is profound and it"s disillusionment and despair is evident. Therefore, we cannot uphold the stand of the respondent which is founded on some illogical understanding of the Rules. We have time and again made adverse remarks on the procedural working of the GST system in several decisions. We may just add that we do not derive any pleasure when we make such observations, as comments of the Court affect the reputation of the administration in the country. Such remarks are made only when we are constrained to do so. The case before us is one where there is a complete lack of understanding and fairness on the part of the

Tax Department.The fact that Respondents have done nothing to solve the problem faced by the Petitioner, fueled with the adamant stand before us, contributes to skepticism of GST technical infrastructure, which we feel should and can be easily avoided. Only if Respondents were to engage with the taxpayers with a genuine intention to solve the problems, confidence in the system can be built up and such matters would not reach courts.

29. For the aforegoing reasons, the Petition deserves to be allowed. Petitioner is permitted to revise TRAN-1 Form on or before 30.06.2020 and transition the entire ITC, subject to verification by the Respondents. We issue a writ mandamus to the Respondents to either open the online portal so as to enable the Petitioner to file revised declaration TRAN-1 electronically, or to accept the same manually. Respondents shall thereafter process the claims in accordance with law

30. The petition is allowed in above terms.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[N.V. Ramana, Mohan M. Shantanagoudar and Ajay Rastogi, JJ]

Civil Appeal No. 673 of 2012

South East Asia Marine Engineering
and Constructions Ltd. (SEAMEC Ltd.) ... Appellant

Versus

Oil India Ltd. ... Respondent

DATE OF JUDGMENT: 11.05.2020

FORCE MAJEURE – CONTRACT / AGREEMENT – WELL DRILLING AND OTHER AUXILIARY OPERATIONS – DURING SUBSISTENCE OF CONTRACT, PRICES OF HIGH SPEED DIESEL, ONE OF THE ESSENTIAL MATERIALS INCREASED – CONTRACTOR RAISED A CLAIM SAYING THAT INCREASE IN PRICE OF HSD, AN ESSENTIAL COMPONENT TRIGGERED THE CHANGE IN LAW (I.E. CLAUSE 32) – CONTRACTEE REJECTED CLAIM – DISPUTE REFERRED TO ARBITRAL TRIBUNAL – THEN TO HIGH COURT – AND FINALLY TO SUPREME COURT.

ARBITRAL AWARD – SET ASIDE BY HIGH COURT – AMBIT AND SCOPE OF THE COURTS JURISDICTION U/S 34 OF THE ARBITRATION ACT?

It is a settled position that a Court can set aside the awardonly on the grounds as provided in the Arbitration Act as interpreted by the Courts.It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning.

The High Court, in its reasoning, suggests that Clause 23 is akin to a force majeure clause. We need to understand the utility and implications of a force majeure clause. Under Indian contract law, the consequences of a force majeure event are provided for under Section 56 of the Contract Act, which states that on the occurrence of an event which renders the performance impossible, the contract becomes void thereafter.

When the parties have not provided for what would take place when an event which renders the performance of the contract impossible, then Section 56 of the Contract Act applies. When the act contracted for becomes impossible, then under Section 56, the parties are exempted from further performance and the contract becomes void.

However, there is no doubt that the parties may instead choose the consequences that would flow on the happening of an uncertain future event, under Section 32 of the Contract Act.In India, the Contract Act had already recognised the harsh consequences of such frustration to some extent and had provided for a limited mechanism to ameliorate the same under Section 65 of the Contract Act.

The aforesaid clause provides the basis of restitution for 'failure of basis'. We are cognizant that the aforesaid provision addresses limited circumstances wherein an agreement is void ab initio or the contract becomes subsequently void.

Coming back to the case, the contract has explicitly recognized force majeure events in clause 44.3 in the following manner:

For purpose of this clause "Force Majeure" means an act of God, war, revolt, riots, strikes, bandh, fire, flood, sabotage, failure or destruction of roads, systems and acts and regulations of the government of India and other clauses (but not due to employment problem of the contract) beyond the reasonable control of the parties.

Further, under Clause 22.23, the parties had agreed for a payment of force majeure rate to tide over any force majeure event, which is temporary in nature.

Having regard to the law discussed, we do not subscribe to either the reasons provided by the Arbitral Tribunal or the high Court. Although, the Arbitral Tribunal correctly held that a contract needs to be interpreted taking into consideration all the clauses of the contract, it failed to apply the same standard while interpreting clause 23 of the contract.

We also do not completely subscribe to the reasoning of theHighCourt holding that Clause23wasinsertedinfurtheranceof the doctrine of frustration. Rather, under Indian contractlaw,the effect of the doctrine of frustration is that it discharges all the parties from future obligations. In order to mitigate the harsh consequences of frustration and to uphold the sanctity of the contract, theparties with their commercial wisdom, choseto mitigate the risk under Clause 23 of the contract.

The interpretation of Clause 23 of the Contract Act of the Arbitral Tribunal, to provide a wide interpretation cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In the case at hand, this basic rule was ignored by the Tribunal while interpreting the clause.

The contract was entered into between the parties in furtherance of a tender issued by the Respondent herein. After considering the tender bids, the Appellant issued a Letter of Intent. In furtherance of the Letter of Intent, the contract (Contract No. CCO/FC/0040/95) was for drilling oil wells and auxiliary operations. It is important to note that the contract price was payable to the 'contractor' for full and proper performance ofits contractual obligations. Further, Clauses 14.7 and 14.11 of the Contract states that the rates, terms and conditions were to be in force until the completion or abandonment of the last well being drilled.

It can be said that the contract was based on a fixed rate. The party, before entering the tender process, entered the contract after mitigating the risk of such an increase. If the purpose of the tender was to limit the risk of price variations, then the interpretation placed by the Arbitral Tribunal cannot be said to possible one, as it would completely defeat the explicit wording and purpose of the contract. There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into margin, while bidding in the tender. Such price fluctuations cannot be brought under Clause 23 unless specific language point to the inclusion.

The other contractual terms also suggest that the interpretation of the clause, as suggested by the Arbitral Tribunal, is perverse. For instance, Item 1 of List II (Consumables) of Exhibit C (Consolidated Statement of Equipment and Services Furnished by Contractor or Operator for the Onshore Rig Operation), indicates that fuel would be supplied by the contactor, at his expense. The existence of such a clause shows that the interpretation of the contract by the Arbitral Tribunal is not a possible interpretation of the contract. For the aforesaid reasons, we are not

inclined to interfere with the impugned judgment and order of the High Court setting aside the award. The appeal is accordingly dismissed. There shall be no order as to costs.

Present for Appellants	:	Mr. D.K. Devesh, Advocate
Present for Respondent	:	Mr. K.R. Sasiprabhu, Advocate.

Judgment

N. V. Ramana, J.

Civil Appeal No. 673 of 2012

1. The present appeal arises out of impugned judgment and order dated 13.12.2007 in Arbitration Appeal No. 11 of 2006 passed by the Gauhati High Court, wherein the High Court allowed the appeal preferred by the Respondent under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter the *"Arbitration Act*"), and set aside the arbitral award dated 19.12.2003.

2. Brief facts necessary for the disposal of this case are as follows: appellant was awarded the work order dated 20.07.1995 pursuant to a tender floated by the Respondent in 1994. The contract agreement was for the purpose of well drilling and other auxiliary operations in Assam, and the same was effectuated from 05.06.1996. Although, the contract was initially only for a period of two years, the same was extended for two successive periods of one year each by mutual agreement, and finally the contract expired on 04.10.2000.

3. During the subsistence of the contract, the prices of High Speed Diesel ("HSD"), one of the essential materials for carrying out the drilling operations, increased. Appellant raised a claim that increase in the price of HSD, an essential component for carrying out the contract triggered the "change in law" clause under the contract (*i.e.*, Clause 23) and the Respondent became liable to reimburse them for the same. When the Respondent kept on rejecting the claim, the Appellant eventually invoked the arbitration clause *vide* letter dated 01.03.1999. The dispute was referred to an Arbitral Tribunal comprising of three arbitrators.

4. On 19.12.2003, the Arbitral Tribunal issued the award in A.P No. 8 of 1999. The majority opinion allowed the claim of the Appellant and awarded a sum of Rs. 98,89,564.33 with interest @10% per annum from the date of the award till the recovery of award money. The amount was subsequently revised to Rs. 1,32,32,126.36 on 11.03.2005. The Arbitral

Tribunal held that while an increase in HSD price through a circular issued under the authority of State or Union is not a "law" in the literal sense, but has the "force of law" and thus falls within the ambit of Clause 23. On the other hand, the minority held that the executive orders do not come within the ambit of Clause 23 of the Contract.

5. Aggrieved by the award, the Respondent challenged the same under Section 34 of the Arbitration Act before the District Judge. On 04.07.2006, the learned District Judge, upheld the award and held that the findings of the tribunal were not without basis or against the public policy of India or patently illegal and did not warrant judicial interference.

6. The Respondent challenged the order of the District Judge by filing an appeal under Section 37 of the Arbitration Act, before the High Court. By the impugned judgment, the High Court, allowed the appeal and set aside the award passed by the Arbitral Tribunal.

7. The High Court held that the interpretation of the terms of the contract by the Arbitral Tribunal is erroneous and is against the public policy of India. On the scope of judicial review under Section 37 of the Arbitration Act, the High Court held that the Court had the power to set aside the award as it was passed overlooking the terms and conditions of the contract. Aggrieved by the same, the appellant has filed this present appeal by the way of special leave petition against the impugned judgment.

8. Learned Counsel for the Appellant assailing the impugned order contends that

a. The High Court has imparted its own personal view as to the intent for inclusion of Clause 23 and has sat in appeal over the award of the Arbitral Tribunal. The construction of Clause 23, he submitted, is a matter of interpretation and has been correctly interpreted by the Arbitral Tribunal based on the authorities cited before it.

b. If two views are possible on a question of law, the High Court cannot substitute one view and deference should be given to the plausible view of the Arbitral Tribunal. Learned counsel has relied upon a judgment of this Court in **McDermott International Inc. v. Burn Standard Co. Ltd.** [*(2006) 11 SCC 181*] to support his contention.

c. The question of law decided by the Arbitral Tribunal is beyond judicial review and thus the High Court could not have interfered with a reasoned award which was neither against public policy of India nor patently illegal.

In response, the learned counsel for the Respondent, supporting the findings of the High Court, submits that

a. the award passed by the Arbitral Tribunal is contrary to the terms of the contract and essentially rewrites the contract. The Arbitral Tribunal has to adjudicate the dispute within the four corners of the contract and thus awarding additional reimbursement not contemplated under Clause 23 is perverse and patently illegal.

b. Overlooking the terms and conditions of a contract is violative of Section 28 of the Arbitration Act and thus the tribunal has exceeded its jurisdiction.

c. This is not a case where the Arbitral Tribunal accepted one interpretation of the terms of the contract where two interpretations were possible. Findings of the Tribunal are perverse and unreasonable as the Tribunal did not consider the contract as a whole and failed to follow the cardinal principle of interpretation of contract.

d. The Arbitral Tribunal has rewritten the contract in the guise of interpretation and such interpretation being in conflict with the terms of the contract, is in conflict with the public policy of India.

10. We have heard the learned counsels for the parties and perused the materials on record.

11. In order to answer the questions raised in this appeal we first need to delve into the ambit and scope of the court's jurisdiction under Section 34 of the Arbitration Act. Section 34 of the Arbitration Act provides as under–

> **Application for setting aside arbitral award.** — (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).
>
> (2) An arbitral award may be set aside by the Court only if—
>
> (a) the party making the application furnishes proof that—
>
> (i) a party was under some incapacity, or
>
> (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of subclause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under subsection (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

12 It is a settled position that a Court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the Courts. Recently, this Court in **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd**. [*2019 SCC Online SC 1656*] laid down the scope of such interference. This Court observed as follows

"26. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. **We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award**. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

(**emphasis supplied**)

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in ***Dyna Technologies*** (supra) observed as under

"27. Moreover, umpteen number of judgments of this Court have categorically held that the Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. **The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.**"

(**emphasis supplied**)

14. However, the question in the present case is whether the interpretation provided to the contract in the award of the Tribunal was reasonable and fair, so that the same passes the muster under Section 34 of the Arbitration Act?

15. In the present case, respondent has argued that the view taken by the Arbitral Tribunal was not even a possible interpretation, therefore the award being unreasonable and unfair suffers from perversity. Hence, the respondent has pleaded that the award ought to be set aside. In this context, we may state that usually the Court is not required to examine the merits of the interpretation provided in the award by the arbitrator, if it comes to a conclusion that such an interpretation was reasonably possible.

16. We begin by looking at the clause, i.e Clause 23 which is extracted below:

SUBSEQUENTLY ENACTED LAWS:

> Subsequent to the date of price of Bid Opening *if there is a change in or enactment of any law or interpretation of existing law*, which results in additional cost/reduction in cost to Contractor on account of the operation under the Contract, the Company/Contractor shall reimburse/pay Contractor/Company for such additional/reduced cost actually incurred.

17. The Arbitral Tribunal held that this clause must be liberally construed and any circular of the Government of India would amount to a change in law. The Arbitral Tribunal observed:

> "According to Rule of Construction of any document harmonious approach should be made reading or taking the document as a whole and exclusion should not be readily inferred unless it is clearly stated in the particular clause of the document. This is according to Rule of Interpretation. A consistent interpretation should be given with a view to smooth working of the system, which the document purports to regulate. The word, which makes it inconsistent or unworkable, should be avoided. This is known as beneficial construction and a construction should be made which suppress the mischief and advance the remedies. So, the increase in the operational cost due to enhanced price of the diesel is one of the subject matters of the contract as enshrined in Cl. 23. It may be said that Cl. 23 may be termed as ''Habendum Clause". In the deed of the contract containing various granting clauses and the habendum signifying the intention of, the grantor.

That Cl. 23 requires liberal interpretation for interpreting the expression 'law' or change in law etc. will also be evident from the facts that the respondents Oil India Ltd. through its witness Mr. Pasrija has clearly stated that the change in diesel price or any other oil price was never done and by way of any statutory enactment either by Parliament or by State Legislature So, it is clear that at the time when the Cl. 23 was incorporated in the agreement the Oil India Ltd. was very much aware that change in oil price was never made by any Statutory Legislation but only by virtue of Government Order, Resolution, Instruction, as the case may be, on accepting that a condition of the appropriate committee namely O.P.C. it is also clear to apply when there is change in oil price, here HSD, by the Government and its statutory authority as enacted in the above without resorting any statutory enactment. Therefore that the interpretation of expression 'law' or change in law etc. requires this extended meaning to include the statutory law, or any order, instruction and resolution issued by the Central Government in its Ministry of Petroleum and Natural Gas."

The majority award utilizes 'liberal interpretation rule' to construe the contract, so that the price escalation of HSD could be brought under the Clause 23 of the contract. Further the Arbitral Tribunal identifies the aforesaid clause to be a 'Habendum Clause', wherein the rights granted to the appellant are required to be construed broadly.

18. On the other hand, the High Court in the impugned order, interpreted the same clause as follows:

"**27**…I am of the firm view that clause 23 was inserted in the agreement to meet such uncertain and unforeseen eventualities and certainly not for revising a fixed rate of contract. I also find that both parties had agreed to keep "force majeure" clause in the agreement. Under this doctrine of commercial law, a contract agreement can be rescinded for acts of God, etc. Under clause 44.3 of the agreement, 'force majeure" has been clearly defined, which includes acts and regulations of the Government to rescind a contract. In this way, clause 23 is very close and akin to the "force majeure clause". Besides this, I may also declare that clause 23 is pari materia to the "doctrine of frustration and supervening impossibility". In other words, under clause 23 rights and obligations of both the parties have been saved due to any change in the existing law or enactment of a new law or on the ground of new interpretation of the existing law. In my opinion, clause 23 must

have been made a part of the agreement keeping in mind section 56 of the Indian Contract Act, 1872 sans any other intention."

19. The High Court, in its reasoning, suggests that Clause 23 is akin to a force majeure clause. We need to understand the utility and implications of a *force majeure* clause. Under Indian contract law, the consequences of a *force majeure* event are provided for under Section 56 of the Contract Act, which states that on the occurrence of an event which renders the performance impossible, the contract becomes void thereafter. Section 56 of the Contract Act stands as follows:

> 56. **Agreement to do impossible act**.—An agreement to do an act impossible in itself is void.
>
> **Contract to do act afterwards becoming impossible or unlawful**—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

20. When the parties have not provided for what would take place when an event which renders the performance of the contract impossible, then Section 56 of the Contract Act applies. When the act contracted for becomes impossible, then under Section 56, the parties are exempted from further performance and the contract becomes void. As held by this Court in ***Satyabrata Ghose v. Mugneeram Bangur & Co.***, AIR 1954 SC 44:

> **"15.** These differences in the way of formulating legal theories really do not concern us so long as we have a statutory provision in the Indian Contract Act. In deciding cases in India the only doctrine that we have to go by is that of supervening impossibility or illegality as laid down in Section 56 of the Contract Act, taking the word "impossible" in its practical and not literal sense. **It must be borne in mind, however, that Section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties."**
>
> (emphasis supplied)

However, there is no doubt that the parties may instead choose the consequences that would flow on the happening of an uncertain future event, under Section 32 of the Contract Act.

21. On the other hand, the common law at one point interpreted the consequence of such frustration to fall on the party who sustained loss before the frustrating event. The best example of such an interpretation can

be seen in the line of cases which came to be known as 'coronation cases'. In ***Chandler v. Webster***, [1904] 1 KB 493, Mr. Chandler rented space from Mr. Webster for viewing the coronation procession of King Edward VII to be held on 26th June 1902. Mr. Chandler had paid part consideration for the same. However, due to the King falling ill, the coronation was postponed. As Mr. Webster insisted on payment of his consideration, the case was brought to the Court. The Court of Appeals rejected the claims of both Mr. Chandler as well as Mr. Webster. The essence of the ruling was that once frustration of contract happens, there cannot be any enforcement and the loss falls on the person who sustained it before the *force majeure* took place.

22. This formulation was overruled by the House of Lords in the historic decision of ***Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.***, [1942] UKHL 4, wherein the harsh consequences of frustration as per the old doctrine was moderated by the introduction of the law of restitution. Interestingly, Lord Shaw in ***Cantiare San Rocco SA (Shipbuilding Company) v. Clyde Shipbuilding and Engineering Co. Ltd.***, [1924] AC 226, had observed that English law of leaving the loss to where it fell unless the contract provided otherwise was, he said, appropriate only 'among tricksters, gamblers and thieves'. The UK Parliament took notice of the aforesaid judgment and legislated Law Reform (Frustrated Contracts) Act, 1943.

23. In India, the Contract Act had already recognized the harsh consequences of such frustration to some extent and had provided for a limited mechanism to ameliorate the same under Section 65 of the Contract Act. Section 65 provides as under:

> **Obligation of person who has received advantage under void agreement, or contract that becomes void**
>
> When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

The aforesaid clause provides the basis of restitution for 'failure of basis'. We are cognizant that the aforesaid provision addresses limited circumstances wherein an agreement is *void ab initio* or the contract becomes subsequently void.

24. Coming back to the case, the contract has explicitly recognized *force majeure* events in Clause 44.3 in the following manner:

> For purpose of this clause "Force Majeure" means an act of God, war, revolt, riots, strikes, bandh, fire, flood, sabotage, failure or destruction of roads, **systems and acts and regulations of the Government of India and other clauses** (but not due to employment problem of the contractor) beyond the reasonable control of the parties.

Further, under Clause 22.23, the parties had agreed for a payment of *force majeure* rate to tide over any *force majeure* event, which is temporary in nature.

25. Having regards to the law discussed herein, we do not subscribe to either the reasons provided by the Arbitral Tribunal or the High Court. Although, the Arbitral Tribunal correctly held that a contract needs to be interpreted taking into consideration all the clauses of the contract, it failed to apply the same standard while interpreting Clause 23 of the Contract.

26. We also do not completely subscribe to the reasoning of the High Court holding that Clause 23 was inserted in furtherance of the doctrine of frustration. Rather, under Indian contract law, the effect of the doctrine of frustration is that it discharges all the parties from future obligations. In order to mitigate the harsh consequences of frustration and to uphold the sanctity of the contract, the parties with their commercial wisdom, chose to mitigate the risk under Clause 23 of the contract.

27. Our attention was drawn to ***Sumitomo Heavy Industries Limited v. Oil and Natural Gas Corporation Limited***, (2010) 11 SCC 296, where this Court interpreted an indemnity clause and found that an additional tax burden could be recovered under such clause. Based on an appreciation of the evidence, the Court ruled that additional tax burden could be recovered under the clause as such an interpretation was a plausible view that a reasonable person could take and accordingly sustained the award. However, we are of the opinion that the aforesaid case and ratio may not be applicable herein as the evidence on record does not suggest that the parties had agreed to a broad interpretation to the clause in question.

28. In this context, the interpretation of Clause 23 of the Contract by the Arbitral Tribunal, to provide a wide interpretation cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In the case at hand, this basic rule was ignored by the Tribunal while interpreting the clause.

29. The contract was entered into between the parties in furtherance of a tender issued by the Respondent herein. After considering the tender

bids, the Appellant issued a Letter of Intent. In furtherance of the Letter of Intent, the contract (Contract No. CCO/FC/0040/95) was for drilling oil wells and auxiliary operations. It is important to note that the contract price was payable to the 'contractor' for full and proper performance of its contractual obligations. Further, Clauses 14.7 and 14.11 of the Contract states that the rates, terms and conditions were to be in force until the completion or abandonment of the last well being drilled.

30. From the aforesaid discussion, it can be said that the contract was based on a fixed rate. The party, before entering the tender process, entered the contract after mitigating the risk of such an increase. If the purpose of the tender was to limit the risks of price variations, then the interpretation placed by the Arbitral Tribunal cannot be said to be possible one, as it would completely defeat the explicit wordings and purpose of the contract. There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into margin, while bidding in the tender. Such price fluctuations cannot be brought under Clause 23 unless specific language points to the inclusion.

31. The interpretation of the Arbitral Tribunal to expand the meaning of Clause 23 to include change in rate of HSD is not a possible interpretation of this contract, as the appellant did not introduce any evidence which proves the same.

32. The other contractual terms also suggest that the interpretation of the clause, as suggested by the Arbitral Tribunal, is perverse. For instance, Item 1 of List II (Consumables) of Exhibit C (Consolidated Statement of Equipment and Services Furnished by Contractor or Operator for the Onshore Rig Operation), indicates that fuel would be supplied by the contactor, at his expense. The existence of such a clause shows that the interpretation of the contract by the Arbitral Tribunal is not a possible interpretation of the contract.

33. For the aforesaid reasons, we are not inclined to interfere with the impugned judgment and order of the High Court setting aside the award. The appeal is accordingly dismissed. There shall be no order as to costs.

CIVIL APPEAL NO. 900 OF 2012

In view of the judgment pronounced in C.A. No. 673 of 2012, the aforesaid matter is disposed of in the aforesaid terms.

Inspection; Detention; Seizure of Goods/Vehicles – Legal Ramifications Under GST Acts

Sushil Verma, Advocate

Any transportation of goods (i.e. a 'movement' of goods) of more than Rs 50,000 by a registered person must be accompanied by an e-way bill. The proper officer has the power (authorized by the Centre or State) to intercept goods in transit. The person in charge of a vehicle carrying goods exceeding Rs. 50,000 is required to carry the prescribed documents (i.e. invoice and an e-way bill).On interception, the documents and goods can be inspected by the proper officer.

2. There is a subtle difference between Detention, Seizure and Confiscation that we need to appreciate. Difference between Detention & Seizure and Confiscation

Detention is not allowing access to the owner of the goods by a legal order. However the ownership of goods still lies with the owner. It is likely to be issued when it is suspected that the goods are liable to confiscation.

Seizure is taking over of actual possession of the goods by the department. Seizure can be made only after inquiry/investigation that the goods are liable to confiscation.

Confiscation of the goods is the ultimate act after proper adjudication. Once confiscation takes place, the ownership as well as the possession goes out of the hands of the original owner and into the hands of the Government Authority.

Section 129 of the CGST Act provides for detention, seizure and release of goods and conveyances in transit while section 130 of the CGST Act provides for the confiscation of goods or conveyances and imposition of penalty.

3. As per Section 67 of CGST/SGST Act, Inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or

an officer higher in rank can give such authorization only if *he has reasons to believe* that the person concerned has done one of the following:

i. suppressed any transaction of supply;

ii. suppressed stock of goods in hand;

iii. claimed excess input tax credit;

iv. contravened any provision of the CGST/SGST Act to evade tax;

v. a transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

4. Authorization can be given to an officer of CGST/ SGST to carry out inspection of any of the following:

i. any place of business of a taxable person;

ii. any place of business of a person engaged in the business of transporting goods whether or not he is a registered taxable person;

iii. any place of business of an owner or an operator of a warehouse or godown.

5. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place.

6. Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

Although the officer is not required to state the reasons for such belief before issuing an authorization for search, he has to disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case. However, it would be better if the materials / information etc. are recorded before issue of search warrant or before conducting search.

7. The written authority to conduct search is generally called search warrant. The competent authority has to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:

i. the violation under the Act,

ii. the premise to be searched,

iii. the name and designation of the person authorized for search,

iv. the name of the issuing officer with full designation along with his round seal,

v. date and place of issue,

vi. serial number of the search warrant,

vii. period of validity i.e. a day or two days etc.

8. As per section 130 of SGST/SGST Act, goods become liable to confiscation when any person does the following:

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax;

(ii) does not account for any goods on which he is liable to pay tax under this Act;

(iii) supplies any goods liable to tax under this Act without having applied for the registration;

(iv) contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax.

9. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under CGST/SGST Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied

10. Section 67(10) of CGST/SGST Act prescribes that searches must be carried out in accordance with the provisions of Code of Criminal Procedure, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.

11. Access can also be obtained in terms of Section 65 of CGST/SGST Act. This provision of law is meant to allow an audit party of CGST/SGST or C&AG or a cost accountant or chartered accountant nominated under section 66 of CGST/SGST Act, access to any business premises without issuance of a search warrant for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. However, a written authorization is to be issued by an officer of the rank of Commissioner of CGST or SGST. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.

12. Under Section 129 of CGST/SGST Act, an officer has power to detain goods along with the conveyance (like a truck or other types of vehicle) transporting the goods. This can be done for such goods which are being transported or are stored in transit in violation of the provisions of CGST/SGST Act. Goods which are stored or are kept in stock but not accounted for can also be detained. Such goods and conveyance shall be released after payment of applicable tax or upon furnishing security of equivalent amount.

13. Rules 138 to 138D of the Central Goods and Services Tax Rules, 2017 lay down, in detail, the provisions relating to e-way bills. As per the said provisions, in case of transportation of goods by road, an e-way bill is required to be generated before the commencement of movement of the consignment. Rule 138A of the CGST rules prescribes that the person in charge of a conveyance shall carry the invoice or bill of supply or delivery

challan, as the case may be; and in case of transportation of goods by road, he shall also carry a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

14. Once the goods and vehicles are stopped for inspection/search; on completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection. (g) Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in FORM GST MOV-05 and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance. (h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section (1) of section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in FORM GST MOV-05. Further, the order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act. (i) Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount

payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings

CBEC circular dated 13/04/2018- the above paras 14 and 15 are adopted from this Circular. Useful for our practice.

15. Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in FORM GST MOV-05. The order in FORM GST MOV09 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the Page 4 of 32 electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act

16. In case the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV10, proposing confiscation of the goods and conveyance and imposition of penalty. (l) Where the proper officer is of the opinion that such movement of goods is being effected to evade payment of tax, he may directly invoke section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance in FORM GST MOV-10. In the said notice, the quantum of tax and penalty leviable under section 130 of the CGST Act read with section 122 of the CGST Act, and the fine in lieu of confiscation leviable under sub-section (2) of section 130 of the CGST Act shall be specified. Where the conveyance is used for the carriage of goods or passengers for hire, the owner of the conveyance shall also be issued a notice under the third proviso to sub-section (2) of section 130 of the CGST Act, proposing to impose a fine equal to the tax payable on the goods being transported in lieu of confiscation of the conveyance. (m) No order for confiscation of goods or conveyance, or for imposition of penalty, shall be issued without giving the person an opportunity of being heard.

17. In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment of tax, penalty

and fine imposed and get the goods or conveyance released within the time specified in FORM GST MOV11, the proper officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government

18. Whenever an order or proceedings under the CGST Act is passed by the proper officer, a corresponding order or proceedings shall be passed by him under the respective State or Union Territory GST Act and if applicable, under the Goods and Services Tax (Compensations to States) Act, 2017. Further, sub-sections (3) and (4) of section 79 of the CGST Act/ respective State GST Acts may be referred to in case of recovery of arrears of central tax/State tax/Union territory tax. (t) The procedure narrated above shall be applicable mutatis mutandis for an order or proceeding under the IGST Act, 2017. (u) Demand of any tax, penalty, fine or other charges shall be added in the electronic liability ledger of the person concerned. Where no electronic liability ledger is available in case of an unregistered person, a temporary ID shall be created by the proper officer on the common portal and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.

Legal Analysis

The provisions of Section 122 **of the Act envisage various offences for which penalty is leviable and in terms of** Section 122 **(2) of the Act, the maximum penalty would be a sum of Rs.10,000/- or 10% of the tax due from such person, whichever is higher. In the case of willful mis-statement or suppression of facts to evade tax, such penalty would be equal to Rs.10,000/- or the tax due, whichever is higher. In terms of** Section 125 **of the Act, extracted below, the maximum penalty shall not exceed to Rs.25,000/**

Section 129 **and Section 130 of the GST Acts are provisions enacted to curb evasion of tax under the GST Acts. They are drastic measures whereby goods can be seized en-route and they would be released only on payment of tax, huge penalty and huge redemption fine.**

Section 130 (Confiscation of goods etc.) of the GST Acts can be invoked in the 5 circumstances as envisaged under the said provision which are all pertaining to evasion of tax. Hence for invoking the said provision it has to be primarily alleged and proved that there was intention to evade payment of tax in respect of the goods in question. Authorities nnvoking

the provisions of Section 130 of the GST without there being any allegation of evasion of tax and demanding maximum redemption fine equal to the value of goods should be termed as wholly without jurisdiction, arbitrary and illegal.

The plain reading of Section 129 **of the Act would indicate that the same talks about detention, seizure and release of goods and conveyances in transit. On the other hand,** Section 130 **talks** about confiscation of goods or conveyances and levy of tax, penalty and fine thereon. Both the sections, therefore, should be interpreted harmoniously keeping in mind the object and purpose behind the enactment thereof. For the purpose of invoking Section 129 **of the Act, all that is required is «contravention of the provisions of the Act or the Rules», whereas specific circumstances are set out in sub-section (1) of** Section 130 **for invoking the provisions relating to confiscation which are basically related to «intent to evade payment of tax**

The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. However, at the same time, the aggregate of fine and penalty leviable shall not be less than the amount of penalty as leviable under section 129(1) While section 129 **is applicable on transporters,** section 130 **primarily covers the owner.**

Even in so far as Section 129 of the GST Acts is concerned the said provision allows detention of goods and subsequent release thereof on payment of applicable tax and penalty equal to 100% of tax payable on such goods if there is contravention of the provisions of the GST Acts and the rules made thereunder. Thus the provision is also as such applicable when tax is payable on the transaction. When tax under the GST Act is already paid in advance, for example, at the time of clearance of the goods for home consumption through import of goods from outside the country, the said provision may be inapplicable.

Once such a notice under Section 130 of the Act is issued right at the inception, i.e, right at the time of detention and seizure, then the provisions of Section 129 of the Act pale into insignificance.

For the purpose of release of the goods and conveyance detained while in transit for the contravention of the provisions of the Act or the rules, the section provides for release of such goods and conveyance on payment of the applicable tax and penalty or upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) to Clause (1) of Section 129. Section 129(2) also provides that the provisions of sub-section (6)

of Section 67 shall mutatis mutandis apply for detention and seizure of goods and conveyances. The goods so seized under sub-section(2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.»

It is a possible view that the contravention of provisions of the GST Act as contemplated under Section 129 of the GST Act is a substantial contravention which would have the result of leakage of tax revenue. Hence it is provided that in case of such contravention the goods can be released only on payment of tax and 100% penalty. In my view the said provision cannot be applied to technical contraventions where the taxable person is in a position to establish that the breach is technical in nature with no possibility of tax evasion.

Purposive interpretation of Section 129 of the GST Acts requires its application only to cases where it is established that there was intention or in any case possibility of evasion of tax in respect of the goods being transported. Even if some document such as e-way bill is missing at the time of verification, this would at the most only create a rebuttable presumption that there was intention to evade payment of tax. If the taxable person is able to establish that there was no intention of evading payment of tax then the provisions of Section 129 of the GST Acts is not permissible.

Section 130 of the Act provides for specific situations or causes leading to the confiscation of goods/conveyances. There are five precise causes for confiscation of goods and/ or conveyances specified in this section as set out above. In all the aforesaid eventualities, the goods or conveyance shall be liable for confiscation. However the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.

The Central Board of Indirect Taxes and Customs, New Delhi, has issued a Circular in F.No.CBEC/20/16/03/2017-GST, dated 14.09.2018, in regard to the procedure to be followed in the ‘Interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances’.

95. Our attention is drawn to paragraphs 3, 4, 5 and 6 of the said Circular, extracted below:-

"…. 3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding http://www.judis.nic.in Rs 50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

Way forward:

The analysis of sections 67, 122, 129 & 130 is legally endless and, therefore, the readers will have to read them further and it is not possible to dwell on all the legal ramifications by these sections and their inter-play in this Article. The key question is what happens to the goods and the vehicles? All the High Courts in the country where the taxpayers file writ petitions under Article 226 of Constitution of India inter-feared in the orders passed by authorities u/s 129/130 and ordered the release of the goods/vehicles with our without conditions. Especially the Allahabad High Court where a series of writ petitions were disposed of. However, the Government of Uttar Pradesh carried the matter to the Hon'ble Supreme Court in the case of The State of Uttar Pradesh vs. Kay Pan Fragrance Pvt. Ltd. Hon'ble Supreme Court examined the issue in detail specially with regard to seizure orders passed u/s 67(2) and laid down a principle of law that where a complete mechanism is predicated in the CGST Act and the Rules for release of disposal of the seized goods and for which reason, the High Court should not have entertained the writ petitions questioning the seizure of goods and to issue directions for its release. Hon'ble Supreme Court held that High Court should have relegated the assessees before the appropriate Authority for complying with the procedure prescribed in section 67 of the Act including provisional release of the seized goods. Hon'ble Supreme Court was of the vehement view that there is no reason

why any other indulgence should have been shown to the assesses who were owner of the seized goods. The Supreme Court further held that the interim orders passed by Allahabad High Court had erroneously extricated the assessees concerned from paying the applicable tax amount in cash which is contrary to the provision of section 67(6) of the CGST Act.

In a far reaching judgment the Hon'ble Supreme Court held that the orders passed by the High Court which are contrary to the provisions contained in the Act shall not be given effect by the Authorities. Instead, the Hon'ble Supreme Court directed that the authorities shall process the claims of the concerned assesses afresh as per the expressed stipulations in section 67 of the Act r/w the relevant rules in that regard. The Supreme Court further went on to hold that in terms of their judgment in this case, the competent authority shall call upon every assesee to complete the formalities **strictly** as per the requirements of the stated provisions; and the Courts went on to further hold that the authorities can disregard the order passed by High Courts in his case, if the same deviates from the statutory compliance.

This judgment, in my view, is not only correct but also will have far reaching consequences on those taxpayers/unregistered taxpayers who try to circumvent the legal process of taxation. High Courts have virtually been barred from issuing interim orders for release of goods where order u/s 67(6) has been passed by the authorities. Therefore, the taxpayers have no alternative but to comply to the prescribed authorities even for provisional release of goods and face the consequences of payment of tax etc. in cash or in any other mode as is prescribed.

Refund under GST – Detailed Analysis

Parveen Kumar Mahajan, Advocate

Refund is very important term under the GST for the person who is eligible to claim the refund and for the GST Authority who issues the refund order. Both persons i.e. who claim the refund and who issues refund should have fully conversant with the provisions and law in regard of Refund under the GST.

A. Allowable Refunds

1. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
2. Refund of tax paid on export of services with payment of tax;
3. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
4. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
5. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
6. Refund to supplier of tax paid on deemed export supplies;
7. Refund to recipient of tax paid on deemed export supplies;
8. Refund of excess balance in the electronic cash ledger;
9. Refund of excess payment of tax;
10. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
11. Refund on account of assessment/provisional assessment/ appeal/any other order;
12. Refund on account of “any other” ground or reason; and
13. Refund, as per section 54 (2) of the CGST Act, of tax paid on inward supplies of goods or services or both by UNO etc. notified under section 55.

B. Exceptions, Withholding and Non-Payment of Refund

Exceptions according to provisos to Section 54 (3) of the CGST Act –

- ➢ No refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:
- ➢ No refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Withholding of Refund under section Section 54 (10) of the CGST Act –

- ➢ Defaulted in furnishing any return;
- ➢ Defaulted in payment of any tax, interest or penalty and
- ➢ The Proper Officer is authorised to deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Withholding of Refund under section Section 54 (11) of the CGST Act –

- ➢ Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

Withholding of Refund Casual Taxable Person or Non-Resident Taxable Person – Section 54 (13) of the CGST Act

- ➢ The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

Non Payment of Refund – Section 54 (14) of the CGST Act

➢ No refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees. Sub-sections 5 and 6 are about application of refund claiming refund amount less than one thousand rupees. It is clarified vide circular 125/44/2019 that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively.

C. Time Period and GST Form for apply of refund by the person other than the person (UNO etc.) notified under section 55

➢ **GST Form -** GST Form GST RFD-01

➢ **Time Period -** Before the exipry of Two Years from the Relevant Date

➢ **Relevant Date -** Such date explained vide Para 2 of the Explanation to the Section 54 of the CGST Act. The same is reproduced as under:

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange 55[or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3) (accumulation of tax due to inverted tax structure) , the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

D. Time Period and GST Form for apply of refund by the person (UNO etc.) notified under section 55.

According to Section 54 (2) of the CGST Act the person (UNO etc.) notified under section 55 shall apply the refund through GST Form GST RFD-10 before the expiry of six months from the last day of the quarter in which such supply was received. Such supply means inward supply on which the tax has been paid.

E. Procedure, Processing and Sanction of Refund – Application Filed Online

At present i.e. with effect from 26-09-2019 refund procedure is fully electronic. All steps of submission and processing in regard of refund shall be undertaken electronically. The GST Policy Wing issues a Circular 125/44/2019-GST by which detail set of guidelines and processing of refund to be done electronically have been laid down.

Gist of the Circular 125/44/2019 is given as under:

➢ **Form GST RFD-01 and Documents-**

a) The application shall be, inter alia, filled with statements/ declarations/undertakings.

b) Documents/tax invoices shall be required for processing of the refund application be uploaded with the form.

c) A comprehensive list of documents is provided at Annexure-A (given below at para J) of the Circular.

d) No other document needs to be provided at the stage of filing of the refund application except which are required and stated in Annexure-A.

e) Four Attachments maximum size of 5 MB may be uploaded with the Refund Application.

f) Neither the refund application in FORM GST RFD-01 nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

➢ **Application Reference Number (ARN) and Acknowledgement -**

a) The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, and has completed uploading of all the supporting documents/ undertaking.

b) The application shall be deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN.

c) The time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the date of ARN.

d) The acknowledgement (FORM GST RFD-02) for the complete application or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically.

➢ **Refund Application for a tax period or by clubbing successive tax periods-**

Refund application may be filed for a tax period either monthly or quarterly. Quarterly return filers can only file refund application

quarterly. The applicant may club successive tax periods with the refund application but he cannot club tax period of different financial years. For example refund application pertaining to 2018-19 can not be clubbed with refund pertaining to 2019-20.

➢ **Deficiency Memos**

a) A Deficiency Memo shall be issued within 15 days from the date of generation of ARN.

b) Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any ground, may be subsequently issued for the said application.

c) A fresh application would be filed after correction/rectification of deficiencies as pointed out.

d) Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

e) A rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

➢ **Provisional Refund**

a) Ninety percent of provisional refund may be granted against claim for refund on account of zero rated supply of goods or services or both.

b) The provisional refund shall be issued within seven days from the date of acknowledgement through GST form GST RFD-04.

c) The proper officer may issue final order for total refund in place of provisional refund within seven days from the date of acknowledgement through GST form GST RFD-06 if the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required.

Provisional Refund amount is higher than the Final Refund Amount

a) For example, consider a situation where an applicant files a refund claim of Rs.100/- on account of zero-rated supplies. The proper officer, after prima-facie examination of the application, sanctions Rs. 90 as provisional refund through FORM GST RFD-04 and the same is electronically credited to his bank account. However, on detailed examination, it appears to the proper officer that only an amount of Rs. 70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice to the applicant, in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

   (a) the amount claimed of Rs. 30/- should not be rejected as per the relevant provisions of the law; and

   (b) the amount of Rs. 20/- erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

b) If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then an amount of Rs. 70/-will have to be sanctioned in FORM GST RFD-06, and an amount of Rs. 20/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of FORM GST DRC-07. Further, if the application pertains to refund of unutilized/accumulated ITC, then Rs. 30/-, i.e. the amount rejected, shall have to be re-credited to the electronic credit ledger of the applicant through FORM GST PMT-03 subject to undertaking received from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same has been finally decided against the applicant.

➢ **No adjustment or withholding of refund**

No adjustment or withholding of refund, as provided under subsections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

➢ **Disbursal of Refunds by the same Jurisdiction who sanctions the Refund and interest on Refund amount**

a) The Government has now decided that that for a refund application assigned to a Central tax officer, both the sanction order (FORM GST RFD-04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order (FORM GST RFD-04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

b) If the refund amount would have not been credited to the bank account of the Applicant within sixty days from date of receipt o f application (ARN), interest @ 6% shall have to pay on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax.

F. Guidelines for Refunds

➢ **For refunds of unutilized Input Tax Credit pertaining to exports without payment of tax, supplies made to SEZ Unit/ SEZ Developer without payment of tax and accumulation due to inverted tax structure.**

a) Form GSTR-2A shall have to be uploaded with refund application for the period for which the refund is claimed.

b) The Applicant shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B (given below at para J).

c) Self-certified copies of invoices which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the refund application.

d) The proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A.

➢ **For refund of tax paid on deemed exports**

a) The third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies.

Notification 49/2017 requires following evidences in the case of refund pertaining to Deemed Exports

b) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.

c) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him and he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

d) In case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B of GST RFD-01 for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies.

➢ **Refund of TDS/TCS deposited in excess**

a) Where tax so deducted or collected is deposited under the wrong head (e.g. an amount deducted as Central tax is deposited as Integrated tax/State tax), thereby creating excess balance in the cash ledger of the deductor or the collector as the case may be. It is clarified that such excess balance may be claimed by the tax deductor or the collector as the excess balance in electronic cash ledger.

b) In case where tax deducted or collected in excess is also paid while discharging the liability in FORM GSTR 7 or FORM GSTR 8, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, the deductee can

adjust the same while discharging his output liability or he can claim refund of the same under the category “refund of excess balance in the electronic cash ledger.

➢ **Refund of Integrated Tax paid on Exports**

The refund of Integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules. The shipping bill filed by an exporter is deemed to be an application for refund in such cases, but the same is deemed to have been filed only when the export manifest or export report is filed and the applicant has filed the return in FORM GSTR-3B for the relevant period duly indicating the integrated tax paid on goods exported in Table 3.1(b) of FORM-GSTR-3B . In addition, the exporter is expected to furnish the details of the exported goods in Table 6A of FORM GSTR-1 of the relevant period. Only where the common portal is able to validate the consistency of the details so entered by the applicant, the relevant information regarding the refund claim is forwarded to Customs Systems. Upon receipt of the information from the common portal regarding furnishing of these details, the Customs Systems processes the claim for refund and an amount equal to the Integrated tax paid in respect of such export is electronically credited to the bank account of the applicant.

G. Clarifications on issues related to making zero-rated supplies

a) Export of goods have been made before furnishing of LUT Bond. In such cases the delay in furnishing of LUT may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

b) The Exporter would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

It is emphasized that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a

period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case.

c) Where the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, the lower of the two values should be taken into account while calculating the eligible amount of refund.

d) It is clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

e) It is clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of Integrated tax; LUT/bond is not required.

H. Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure

It is clarified that while processing the refund of unutilized ITC on account of inverted tax structure the Tax Authorities cannot deny refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply. For example multiple inputs such as inputs @ 5% and inputs @ 18% are used for outward supply which gst rate is 12%. While computing the refund both inputs i.e. rate of 5% and rate of 18% will be considered.

I. Clarifications in regard of Input Tax Credit

a) Supplies for export at concessional rate 0.5% and 0.1% respectively. It is clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure.

b) It is clarified that the input tax credit of invoices issued in August, 2019, “availed” in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

c) It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be

available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

J. Annexure appended to Circular 125/44/2019

Annexure-A

List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application

S. No.	Type of Refund	Declaration/Statement/ Undertaking/ Certificates to be filled online	Supporting documents to be additionally uploaded
1	Refund of unutilized ITC on account of exports without payment of tax	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Statement of invoices (Annexure-B)
		Statement 3 under rule 89(2)(b) and rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
2	Refund of tax paid on export of services made with payment of tax	Declaration under second and third proviso to section 54(3)	BRC/FIRC /any other document indicating the receipt of sale proceeds of services
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Copy of GSTR-2A of the relevant period
		Statement 2 under rule 89(2)(c)	Statement of invoices (Annexure-B)
			Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period

			Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
3	Refund of Unutilized ITC on account of Supplies made to SEZ units/developer without payment of tax	Declaration under third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Statement 5 under rule 89(2)(d) and rule 89(2)(e)	Statement of invoices (Annexure-B)
		Statement 5A under rule 89(4)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Declaration under rule 89(2)(f)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/ services for authorized operations under second proviso to ule 89(1)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
4	Refund of tax paid on supplies made to SEZ units/ developer with payment of tax	Declaration under second and third proviso to section 54(3)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/ services for uthorized operations under second proviso to rule 89(1)
		Declaration under rule 89(2)(f)	Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
		Statement 4 under rule 89(2)(d) and rule 89(2)(e)	Self-declaration regarding nonprosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
		Undertaking in relation to sections 16(2)(c) and section 42(2)	

		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
5	Refund of ITC unutilized on account of accumulation due to inverted tax structure	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Declaration under section 54(3)(ii)	Statement of invoices (Annexure-B)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 1 under rule 89(5)	
		Statement 1A under rule 89(2)(h)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
6	Refund to supplier of tax paid on deemed export supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Notification No.49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
7.	Refund to recipient of tax paid on deemed export supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	

		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
8	Refund of Excess payment of tax	Statement 7 under rule 89(2)(k)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
9	Refund of tax paid on intra-state supply which is subsequently held to be an inter-state supply and vice versa	Statement 6 under rule 89(2)(j)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
10	Refund on account of assessment / provisional assessment / appeal / any other order	Undertaking in relation to sections 16(2)(c) and section 42(2)	Reference number of the order and a copy of the Assessment / Provisional ssessment / Appeal / Any other Order
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	Reference number/ proof of payment of predeposit made earlier for which refund is being claimed
11	Refund on account of any other ground or reason	Undertaking in relation to sections 16(2)(c) and section 42(2)	Documents in support of the claim
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Type	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of Eligible ITC	Whether Invoices included in GSTR-2A
			Invoice No.	Date	Value	Inputs / Input Services/ Capital Goods							
1	2	3	4	5	6	7	8	9	10	11	12	13	14

K. Relevant Sections and Rules in regard of Refund

S. No.	Sections/ Rules	Sub-Sections/ Sub-Rules	Particulars
1	54	(1)	Refund Procedure and limitation period to apply for refund
		(2)	Refund in regard of UNO etc.. persons notified under section 55
		(3)	Mention type of persons who can claim refund of any unutilised input tax credit
		(4)	Documents prescribed to be accompanied with Refund Application
		(5)	Order for Refund and credited to the Fund referred to in section 57
		(6)	Provisional Refund on refund application on account of zero-rated supply of goods or services or both
		(7)	Limitation period of sixty days to make an order for refund
		(8)	List of refund which shall be paid to the
			Applicant instead of being credited to the Fund

		(8A)	Disburse the refund of the State Tax
		(9)	Refund shall be made only in accordance of the provisions of the sub-section 8. No other matter whatsoever shall be considered.
		(10)	Withhold payment of Refund
		(11)	Withhold the Refund
		(12)	Entitlement of interest on payment of Refund
		(13)	Withholding of Refund in regard of Casual Taxable Person or Non-Resident Taxable Person
		(14)	Non-Payment of Refund if amount of refund less than Rs.1000/=
		Explanation	Of Refund and of Relevant Date
2	55		Notify persons such as UNO etc.. for entitlement for claim of refund subject to conditions prescribed
3	56		Interest on Delayed Refunds
Rules			
S. No.	**Sections/ Rules**	**Sub-Sections/ Sub-Rules**	**Particulars**
1	89 Application for Refund	(1)	Procedure to file refund application and mention form nos.
		(2)	Prescribed documents to be accompanied with refund application
		(3)	Refund amount debit to the Electronic Credit Ledger
		(4)	Formula for grant of refund of input tax credit in the case of zero-rated supply without payment of tax
		(4A)	Allow Refund on supplies received on which the supplier has availed the benefit of the Government of India
		(4B)	Allow Refund on supplies received on which the supplier has availed the benefit of the Government of India

		(5)	Formula for grant of refund on account of inverted duty structure
2	90 Acknowledge-ment	(1)	Acknowledgement in form GST RFD-02 made available for application relates to claim for refund from the electronic cash ledger
		(2)	Acknowledgement in form GST RFD-02 made available for application for refund other than claim for refund from the electronic cash ledger
		(3)	Deficiency Memo in Form GST RFD-03
		(4)	Deficiency communicated under one Act shall be deemed to be communicated in other Act
3	91 Provisional Refund	(1)	Conditions before granting Provisional Refund
		(2)	Seven days period to make an order for Provisional Refund in form GST RFD-04
		(3)	Payment order in Form GST RFD-05
		(4)	Central Govt.shall disburse the refund
4	92 Order Sanction-ing Refund	(1)	Order for sanctioning the amount of Refund in form GST RFD-06
		(2)	Order for withholding the refund in GST RFD-07
		(3)	Issue a notice in form GST RFD-08 in regard of refund is not admissible or not payable. Requiring reply in form GST RFD-09 within 15 days of the receipt of such notice
		(4)	Payment Order in form GST RFD-05
		(4A)	Central Govt.shall disburse the refund
		(5)	Amount Refundable not payable to the Applicant, credited to the Consumer Welfare Fund
5	93 Credit of the amount of rejected Refund claim	(1)	Re-credited in case of deficiency communicated under rule 90 (3) or amount debited under rule 89 (3)
		(2)	Re-credited refund is rejected under rule 92
		Explanation	About Refund deemed to be rejected

6	94 Order sanctioning interest		Order for sanctioning the interest
7	95 Refund of tax to certain persons	(1)	Refund Application in Form GST RFD-10 and detail of inward supplies in Form GST RFD-11 by the person (UNO etc.) notified under section 55
		(2)	Acknowledgement towards refund application in GST RFD-02
		(3)	Restrictions and conditions to be fulfilled before made available of refund
		(4)	Provisions of rule 92 shall, mutatis mutandis, apply for sanctioning the refund
		(5)	About Treaty or International Agreement
8	96 Refund of IGST paid on goods or services exported out of India	(1)	Conditions for Application deemed to be filed
		(2)	Transmission of Export Invoices to the system designated by the custom for confirmation that goods covered by the invoices have been exported out of India.
		(3)	Process the refund application and refund amount credited to the bank account of the Applicant
		(4)	Withholding of the Refund
		(5)	Intimation of withholding of the Refund
		(6)	Order passed by the Proper Officer in form GST RFD-07 in regard of withholding of the refund
		(7)	Proceed to the withholding refund after entitlement
		(8)	Refund of IGST to the Bhutan Government. Such refund shall not be paid to the Exporter
		(9)	Refund Application for IGST paid on services exported out of India be filed in form GST RFD-01
		(10)	Restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios

9	96A Export of Goods or services under Bond or Letter of Undertaking	(1)	Export of Goods or Services without payment of IGST subject to furnish of Bond or LUT in form GST RFD-11 with condition to pay the tax with interest if goods or services are not exported out of India within stipulated time.
		(2)	Details of Export Invoices contained in GSTR-1 electronically transmitted to the system designated by the custom to verify goods covered under invoices have been exported out of India.
		(3)	Withdrawn of Bond or LUT in case of non- payment of tax with interest if export had not been done within stipulated time.
		(4)	Restoration of Bond or LUT immediate after payment of tax with interest
		(5)	Conditions and safeguards may be notified for furnish of Bond or LUT
		(6)	Provisions of Bond or LUT shall be mutatis mutandis apply in respect of supply to SEZ or SEZU.

L. List of Circulars issued till date in regard of Refund Issues

S. No.	Date of Circular	Circular No.	Subject	Particulars
1	15/03/2018	37/2018	Rescinded by circular 125/2019	Export related refund issues
2	03/05/2018	45/2018	Rescinded by circular 125/2019	Refund related issues
3	04/09/2018	59/2018	Rescinded by circular 125/2019	Refund related issues
4	14/09/2018	63/2018	Refund	Processing of refund claims filed by UIN entities
5	05/10/2018	68/2018	Refund	Refund of compensation cess to UN
6	26/10/2018	70/2018	Rescinded by circular 125/2019	Refund related issues
7	27/12/2018	75/2018	Refund	Financial assistance by Refund of GST to Gurdwara, Temples etc. providing free food to devotees

8	31/12/2018	79/2018	Rescinded by circular 125/2019	Refund related issues
9	28/03/2019	94/2019	Rescinded by circular 125/2019	Refund related issues
10	03/10/2019	110/2019	Refund	Eligibility to file a refund application in FORM GST RFD-01 for a period and category under which a NIL refund application has already been filed
11	16/11/2017	18/2017	Refund	Exporters of Fabrics
12	14/06/2018	48/2018	Refund	Independent fabric processors (job workers) in the textile sector supplying job work services
13	24/08/2018	56/2018	Refund	Clarification on removal of restriction on refund of accumulated Input Tax Credit on fabrics
14	29/06/2019	106/2019	Refund	Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.
15	03/10/2019	111/2019	Refund	Procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in appeal or any other forum
16	15/11/2017	17/2017	Rescinded by circular 125/2019	Manual Filing and processing in respect of Zero Rated Supplies
17	21/12/2017	24/2017	Rescinded by circular 125/2019	Manual filing and processing on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger
18	13/03/2018	36/2018	Refund Application	UIN entities
19	13/04/2018	43/2018	Refund Application	UIN entities
20	04/09/2018	60/2018	Refund Application	Canteen Stores Department (CSD)
21	28/06/2019	104/2019	Refund Application	Processing of refund applications in FORM GST RFD-01A submitted by taxpayers wrongly mapped on the common portal

22	18-11-2019	125/2019	Refund Application Electronic	Clarify the fully electronic refund process through FORM GST RFD-01 and single disbursement.
23	04/10/2017	8/2017	LUT Bond	Detailed clarifications on LUT Bond. Amended by circular 88/2019.
24	06/04/2018	40/2018	LUT Bond	Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports
25	01/08/2019	88/2019	LUT Bond	Amending Circular 8/2017

Section 140 of the CGST Act – A Legal Analysis Retrospective Amendment vide Finance Act 2020 – And its legal Ramifications on Tax Payers and the Revenue?

Sushil Verma, Advocate

Executive Summary:

1. The curative amendment made to Section 140 and all its sub-sections based on Section 128 of Finance Act 2020 and notified by Notification No. 43 on 18th May 2020 remains a retrospective amendment. This is notwithstanding the fact that in the Notification No. 43 the delegate has notified the date of its implementation as 18th May 2020. Many feel that this amendment has, for this reason now become prospective; but unequivocally when in the Finance Act 2020 it is stated to be retrospective in effect, it is the will of the Parliament that shall always prevail. The Finance Act, 2020 in no uncertain terms states that the amendment to Section 140 and all its sub-sections mentioned therein shall be retrospective w.e.f. 1st July 2017. Therefore, I have no hesitation to say that the amendment remains "retrospective" and a procedural error in the Notification No. 43 is at best a curable defect and the Courts may not bother much about this.

2. Whether the Parliament could have made this retrospective amendment that could affect the liabilities of lakhs of tax payers all across India is a question which is no more res-integra (it has been debated, argued and decided by the apex court in many Judgments). I have gone through numerous judgments of the Hon'ble Supreme Court and can safely say that the Parliament was well within its Constitutional rights to make this curative retrospective amendment to Section 140. More so, based on various High Courts judgments which declared the limitation mentioned in Rule 117 as ultra vires to the provisions of Section 140 of the CGST Act, 2017 (in short 'the Act') as the limitation period was not flowing from the Act and only for this deficient legislative drafting in the Act the Rules were held directory by the Courts. A need was thus felt to plug this loophole in the Section which invoked the anvil of this amendment. The Hon'ble Delhi High Court in its recent Judgment tof Brand Equity & Ors. went on to even invoke the Limitation Act, 1963 and fixed the last date as 30th June 2020 to offer relief under Section 140 for all similarly placed tax payers

to those who approached the Hon'ble Delhi High Court in the Judgments delivered by the High Court. But as I point out in the main Article, Many High Courts across the country have taken a different/and totally contrary view of Rule 117 and its interplay with Section 140 to that of Delhi High Court; perhaps rightly so. There being conflicting views of various High Courts in as much as few High Courts including Hon'ble Delhi High Court have extended the benefit of transitional input credit, the High Courts of that of Bombay, Rajasthan and Gujarat have taken the view that provisions of Rule 117 of the CGST Rules, 2017 (in short 'the Rules') are intra-vires and if conditions with respect to time and manner are not fulfilled, then the assessee would not be entitled to the benefit of transitional input tax credit. All these judgments have been passed either prior to the amendment caused u/s 140 of the Act or when pronounced thereafter (including Delhi High Court's judgment in Brand Equity (supra). It is surprising that the Revenue either was not aware of these Judgments delivered in March 2020, prior to passing of Delhi High Court Judgments, and hence attention of the Delhi High Court was not drawn to the Judgments of other High Courts nor, surprisngly the Revenue has drawn the attention of the Delhi High Court to the legislative amendment brought through the Finance Act, 2020. In view of the conflicting judgments followed by the amendment brought to Section 140 of the Act that too with retrospective effect which has not been noticed till date by any High Court in the country so far, it is quite likely that matters may further land up and finally get decided by the Hon'ble Supreme Court. Sooner the better, of course.

3. The Parliament by bringing an amendment u/s 140, in my view, has done a" small repair" to the said provision by adding the words "within such time" which have given a mandatory character to the time period specified u/r 117 of the Rules which was hither to understood and decided by Delhi High Court to be directory in nature. The manner of claiming transitional input tax credit stands already prescribed u/r 117 of the Rules. Since then, series of Writ Petitions were filed for seeking relief to file TRAN-1 to claim benefit/concession given in Section 140. High Courts across India gave relief to various assesses and more recently the Hon'ble Punjab and Haryana High Court gave relief to many Petitioners, and even SLP filed by the Government against the judgment was dismissed by the Hon'ble Supreme Court, then the Parliament made a small repair to Section 140. There is no doubt that the Parliament was well within its constitutional mandate and rights to add the words "within such time" to not only get over the rulings of the High Courts but also to provide legal validity and mandate to the time period specified u/r 117 of the Rules. Not that anything new was done by the Parliament; the limitation was already there in the Rule but it was not mentioned in Section 140 that as per these High Courts was

required to be mentioned. But as per other High Courts who held this Rule 117 to be intra vires such an amendment was not even necessary as these High Courts traced the enabling power in Section 164(2) of the CGST Act- for example Bombay High Court in Nelco Limited v Union of India.

4. By bringing this retrospective amendment, it seems that the Government endeavours to recover back more than Rs. 80000 crores (as alleged) transitional input tax credit. If the tax payers have not followed the limitation and conditions of Section 140 read with rule 117 and rule (117(1A) then it is quite likely that they may suffer and even transitional input tax credit may be denied/recovered to/from them. The tax payers will have to bring on record the evidence in support of the positive actions they took to claim the transition input tad credit. Rule 117(1A) still stands.

5. I think that the Judgments based on unamended Section 140 may not be relevant even though few observations of the High Court may still be subjected to debate; like Delhi High Court's observation that (a) the period of limitation u/s 117 of the Rules is directory, (b) claim of transitional input tax credit is a vested right which cannot be taken away etc. All this may be put to test when it has been settled by the Hon'ble Supreme Court in a number of judgments dealing with claims of input tax credit that this claim is not a vested right; and in some other judgments, the Apex Court has held that subjecting a vested right to a time limitation is not taking away the vested right. These Judgments are discussed in the Article.

6. In the article, I have endeavoured to study the legality as well as the validity of the retrospective amendment which subjects the tax payers to undue financial hardships (here transitional input tax credit is threatened to be denied/recovered). Such an amendment now when enforced by the Government to recover or deny the transitional input tax credit will amount to earning premium for their own follies or negligence; that it may be virtually creating indirectly a new tax liability that the tax payers will have to pay perforce – hence, I feel that this amendment is amenable to challenge before the High Court as "palpably arbitrary" because for no fault, whatsoever of the tax payers who bona fide believed in the Circulars issued by the Government; believed the High Court Judgments and now suddenly this retrospective amendment threatens to take away their right to claim the benefits given in Section 140 to get "transitional input tax credit."

However, on the other side, there are Hon'ble Supreme Court's Judgments clearly spelling out that there is nothing wrong with such amendments if it is not against the Constitution and the legislature can come with such retrospective laws, either for the first time or through

amending the provisions that exist, and even any hardship if caused to the subjects i.e. tax payers, that could not be a ground to hold the retrospective amendment to the arbitrary or unreasonable. So the tax payers face a "paradox" of a kind that may hurt them much.

7. I definitely feel all those tax payers who attempted on the system to claim transitional input tax credit within first 90 days or in the extended period of further 90 days (as provided in Rule 117 read with rule 117(1A)) perhaps may be saved; but all those who cannot bring on record any evidence in support of this positive act, perhaps may suffer and transitional input tax credit may be denied to them notwithstanding the judgment of Delhi High Court in Brand Equity which is in any case binding on Delhi authorities only as long as it is not stayed by the Supreme Court or not reversed by the Supreme Court. Other High Courts have taken a totally contrary view and hence the apex court will have to take up this case to deliver the final verdict – and I hope tax payers rights are saved to claim the concessions given in Section 140. Let us keep our fingers crossed!

A brief Back Ground

The Central Goods and Services Tax Act, 2017 (in short 'the Act') was brought into force from 1 July 2017. This tax replaced and subsumed various indirect taxes in India. For the transition between the old and new regimes, provisions have been made under the Act. The Act through Section 140, provides for availing of Transitional the Input Tax Credit accumulated under the existing laws upon certain conditions. The Central Goods and Services Tax Rules, 2017 (in short 'the Rules') framed under the Act provides for filing of a form known as GST TRAN-1 for availing of such input tax credit. Rule 117(1) & (1A) of the Rules provide a time limit for different set of circumstances within which the TRAN-1 Form has to be filed.

The timeline of the statutory enactment is as follows:-

On 19th June 2017, the Rules were notified. Rule 117 was introduced on 28 June 2017 which came into effect from 1st July 2017 providing that every registered person may file TRAN-1 Form within 90 days of 1 July 2017. The first Proviso of Rule 117(1) stipulated that the Commissioner may on the recommendations of the GST Council extend this period by a further 90 days. GST regime was implemented in the country from 1 July 2017 with the enactment of the Act along with the IGST Act and the State GST Act. Rule 120A was introduced on 15 September 2017 in the Rules with effect from 15 September 2017 providing for a one-time revision of TRAN-1 Form within the same time prescribed in Rule 117. Time was extended for revising and filing TRAN-1 Form to 31 October 2017. On 28

October 2017, this was further extended to 30 November 2017. On 10 November 2017, a press release was issued stating that the time of filing/ revising Form TRAN-1 had been extended till 31 December 2017, however on 15 November 2017, the time limit was extended only to 27 December 2017. On 3 April 2018, by a circular issued by the CBEC on the directions of the GST Council, an IT Grievance Redressal Mechanism was enacted. On 10 September 2018, Rule 117(1A) was introduced providing for extension of time for filing TRAN-1 Form for persons who faced technical difficulties in filing the TRAN-1 Form and in respect of whom the Council has made a recommendation for such extension. Further, under Rule 117(1A) time for filing TRAN-1 Form was extended from time to time which lastly stood extended till 31.3.2020 This extension was only for that category of persons who strictly fall within the ambit of Rule 117(1A) of the Rules.

It is imperative to know that Rule 117 of the Rules was framed for allowing carry forward of the eligible transitional input tax credit accumulated by the tax payers in the repealed enactments mentioned in Section 140 and this was available with the registered tax payers on the day immediately preceding 01.07.2017, which inter alia, imposed time limit of 90 days (further extended by 90 days) for taking credit of eligible duties in electronic credit ledger.

2. The Controversy addressed in this Article

The controversy I have attempted to analyse is limited to the scope and effect of retrospective amendment in Section 140 of the Act wherein the Government vide Finance Act 2020, Section 128, amended Section 140 of the Act by adding the words "within such time". This was to provide mandatory effect to the time lines prescribed for claiming transitional input tax credit under Rule 117(1) & (1A) of the Rules. By adding these words to Section 140 and all its sub-sections, the Parliament had perhaps done away with a legislative drafting error as pointed by various High Courts and experts that the limitation period must be mentioned in the Act and if the Act has not mandated the timeline, then the limitation cannot be operated through Rules. Hence, a small repair has been done to the Section 140 that too with retrospective effect to provide legality and validity to the Rules specifically in relation to the limitation period. And this was done notwithstanding the fact that the limitation as mentioned in Rules was not changed at all- it remains as mentioned in Rule 117 before this amendment.

Hon'ble Delhi High Court in its recent judgment of Brand Equity has ruled that time limit for availing transitional input tax credit was only 'directory' in nature and not 'mandatory'. It even allowed a three year time limit from

July 1, 2017 to claim the credits by invoking Limitation Act, 1963. To say that this retrospective amendment was made to negate this effect of the judgment of Hon'ble Delhi High Court will be an over simplification of the view – the legislature cured the defect that was pointed by the Courts or experts and hence the benefits given by Hon'ble Delhi High Court and other High Courts to various tax payers will now have to be re-tested on the touchstone of the new Section 140 carrying the words 'within such time' which have the effect of reading down the timeline u/r 117(1)&(1A) to be mandatory in nature. The judgments passed so far taking the stand the time period u/r 117 is directory, after the Parliament has amended this Section w.e.f. 1st July 2017 will be thrown open for reconsideration either by the High Court themselves or through SLP before the Hon'ble Supreme Court.

Undoubtedly, all the tax payers who are aggrieved with this amendment and whose benefits already granted may be show caused for withdrawal with collateral and consequential liability of interest etc. If this happens, then they may have to approach the Courts again and their claims will now be tested on the touchstone of amended Section 140 of the Act. We cannot ignore the legally settled principle that the legislature always has the inherent power to cure inadvertent defects in statutes or their administration by making what has aptly been called "small repairs." By adding the words "within such time" to Section 140 and all its sub-sections through the Finance Act 2020 in my view the Parliament has not altered the original law but only a defect pointed by the High Court s and experts has been repaired. Nothing wrong so far.

Hon'ble Delhi High Court in the case of Brand Equity considered various judgments and raised and decided several issues like (a) Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application, (b) Rule 117, whereby the mechanism for availing the credits has been prescribed, is procedural and directory, and cannot affect the substantive right of the registered taxpayer to avail of the existing / accrued and vested CENVAT credit, (c) CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of the Constitution, (d) Mechanism for Transitional Credit is Procedural and Directory and cannot affect the substantive right of the registered taxpayer to avail of the existing / accrued and vested CENVAT credit, (e) This credit, under the Section 140(1), has to be carried forward and in that sense, the vested right of the property of the petitioner stood accrued and the same cannot be taken away by the respondents by way of Rules and (f) Right to avail Transitional Credit cannot be in Perpetuity and The Limitation Act,1963 would apply.

Hon'ble Delhi High Court has further held that time limit of 90 days is only directory and not mandatory in nature because there was no such suggestion u/s 140 of the Act. Unamended Section 140 only allowed an assessee to take credit in such manner as may be prescribed without making any reference of the time within which such claim is to be availed. It was in this context, when the legislature fixed the limitation in the Rules, the Hon'ble Delhi High Court observed a tax payer cannot claim transitional input tax credit perpetually and in the absence of enabling power in the Act, the Court took a view that the time limit of three years under the Limitation Act, 1963 will apply which when reckoned from 1st July 2017 will go up to 30th June 2020. Hence, huge benefits were given to the petitioners and to all other registered tax payers who were similarly placed and even the Revenue was directed to publicise this judgment on their website so that all the remaining registered tax payers can also claim their vested rights.

Hon'ble Delhi High Court has held that period of 90 days for claiming input tax credit in TRAN-1 is directory and therefore, period of limitation of 3 years under the Limitation Act would apply. The Court has directed the Department to allow all assessees who are similarly placed to the assesses who approached the High Court to claim transitional input tax credit in TRAN-1 by 30.6.2020. The direction would apply to all those who could not file TRAN-1 and claim input tax credit. The court has further directed that it should be advertised that all taxpayers who have not filed TRAN 1 can do so by 30.6.2020. The judgment has been made applicable to all irrespective of whether the taxpayer has approached the court or not. Rule 117 was held to be directory. But I am definitely of the view that had the amendment under the Finance Act, 2020 (though proposed in the Finance Bill, 2020 when the hearing took place), been brought to the notice of the High Court, a ruling would have definitely been delivered on this issue which could have avoided the controversies that are now being raised in the entire country. And an endless litigation will ensure causing irreparable injury to the tax payers who all along were under the impression that the concessions given to them under Section 140 are unalterable!

Delhi High Court referred and analysed its own various rulings in Brand Equity case, namely, in the case of AB Pal Electricals Pvt. Ltd, M/s Blue Bird Pure Pvt. Ltd, and Sare Realty Projects Private Limited wherein the assessees' couldn't file the form within prescribed time due to reasons other than technical glitches and the court held that although the failure was on the part of the taxpayers, the GST system is still in its nascent stage and benefit of revision or filing should not be limited to those who faced technical snags alone. This is not withstanding the preconditions mentioned in Rle 117(1A) of CGST Rules and the schemes designed therein.

While closing the above matter in the favour of the petitioners, the High Court based its findings on its previous rulings wherein the benefit was extended to even those taxpayers who couldn't file the form on account of non-technical reasons. The Court travelled down to a very fundamental question as to whether the Government could curtail the accrued and vested right, and further restrict it to 90 days.

Notwithstanding the correctness or otherwise of this Judgment, the Judgment, so long as it is not reviewed/ stayed/ overruled, is binding on the CGST/DELHI GST Department especially when this is from the Hon'ble Delhi High Court which is the jurisdictional High Court. The Central and the State Tax Officers should unreservedly follow this judgment and give effect to it. And if any lapse is found that may amount to virtually contempt and actions may follow. Therefore, it is advisable that all the directions given by Delhi High Court must be followed in letter and spirit.

The Legal Effect of the retrospective amendment u/s 140 vis-à-vis the important observations of Delhi HC Judgment.

I for one do not think this curative amendment in Section 140 can be challenged as ultra-vires or unreasonable per se. This also cannot be termed as colourable piece of legislation or unconstitutional. This also cannot be called harassing the tax payers or trying to go beyond the legislative intent as evidenced in the original provision. The only deficiency removed is, as pointed by Delhi High Court, that the time of 90 days to claim transition credit by way of TRAN-1 form that was only mentioned in Rules and not in Section 140 has now been given effect to by incorporating in Section 140 the words "within such time". I am not burdening this already a lengthy piece of article with all the amended sub-sections of Section 140 and I take them as being read by the readers of this Article.

The following key four issues are raised and addressed for the benefit of all the professionals:-

1. Conceding to the fact that the Parliament has the power to legislate or cause minor repairs to the provisions of the statutes including the taxing statutes either prospectively or retrospectively, the question would arise as to whether the retrospective amendment caused u/s 140 of the Act can withstand the judicial scrutiny for being not unreasonable or palpable arbitrary in nature?

2. Whether the right to claim transitional input tax credit in Section 140 can be legally termed a vested right and can we say the

benefits given to the registered tax payers are a concession/relief circumscribed by certain conditions?

3. Whether by using the expression 'within such time' as introduced through the Finance Act, 2020, the time period provided u/r 117(1)& (1A) of the Rules would not be now be read as mandatory with effect from 1st July 2017 and if the answer is in the affirmative then can/has the right to transitional input tax credit under Section 140 which even if assumed to be a "vested right" be taken away if the registered tax payer failed to comply with the conditions with respect to manner and the timeline as prescribed and as made mandatory by this retrospective amendment to Section 140?

4. Whether in the face of the amendment, the period of three years according to the law of Limitation Act, 1963 as propounded by the Hon'ble Delhi High Court would still subsist- once the very basis on which the High Court invoked Limitation Act 1963 stands removed and the provision in the Act itself contains the limitation prescription?

My Take

On the issue of validity of the retrospective amendment, the Hon'ble Supreme Court in the most versatile case of R.C. Tobacco Private Limited V. Union of India reported as (2005) 7 SCC 725 laid down the principles to test the retrospective amendments and gave the following tests:-

"(i) A law cannot be held to be unreasonable merely because it operates retrospectively;

(ii) The un-reasonability must lie in some other additional factors;

(iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be unreasonable as to violate constitutional norms;

(iv) Where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, Courts will be justified in striking down the impugned statute as unconstitutional;

(v) The other factors being period of retrospectivity and degree of unforseen or un-forseeble financial burden imposed for the past period;

(vi) Length of time is not by itself decisive to affect retrospectively."

A five-judge Bench of the Hon'ble Supreme Court in the matter of Memon Abdul Karim Haji Tayab Vs. Dy. Custodian-General held that:-

> "It is well settled that procedural amendments to a law apply in absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the action may have begun earlier or the claim on which the action may be based may be of an anterior date."

It is also a settled law that Parliament / State legislature can make a retrospective amendment of the law in cases where such legislation does not contravene other provisions of the Indian Constitution. A defect noticed by judicial decision can be cured by legislature retrospectively, thereby rendering that judgment ineffective.

It is a trite law that Article 14 of the Constitution of India guarantees equal protection of law to all persons, but at the same time this does not prevent the State from applying different laws to people situated differently. It is, however, well established that such a classification must be founded on an intelligible differentia and this differentia must have a rational relation to the object sought to be achieved by the statute. The corollary to the rule that the same law should apply to persons similarly situated is that un-equals should not be treated equally. Therefore not giving credit of transitional input tax credit to those who did not fulfil the preconditions of Section 140 and Rule 117, in my view, cannot invoke Article 14 of the Constitution and even Article 19(1)(g) of the Constitution of India under these circumstances.

Many will argue that such a retrospective amendment may be unconstitutional. But, I do not think so. While examining the constitutionality of a statute, the first and most basic obstacle encountered is the strong presumption in favour of the constitutionality of a statute a presumption which the Supreme Court itself has stated, 'only the clearest and weightiest evidence can displace". This presumption is taken even further in matters involving economic policy and exercise of discretion in fiscal matters. The interference of the Court in such matters must not happen unless 'the exercise of legislative judgment appears to be palpably' arbitrary 'or 'the view reflected in the legislation is not possible to be taken at all.

At the same time it is just as well settled that such a presumption is a rebuttable one and if it is in fact shown that a certain legislation is unfair

to the point of palpable arbitrariness, the Courts may strike down such legislation as unconstitutional.

It is, however, just as true that the Parliament has the power to legislate retrospectively and a law can never be invalidated simply on the ground that it is retrospective in operation. A statute that is retrospective is generally presumed to be unjust and oppressive unless such retrospective effect is provided in the statute expressly or impliedly. Tax statutes may be retrospective if the legislature clearly so intends but the reasonableness of each retroactive tax statute will depend on the circumstances of each case and if the retrospective feature of a law is arbitrary and burdensome, the statute will not be sustained.

Well here we have a point; when the systems of the GSTN were unworkable and in fact these were not in place; the competent authority kept extending the dates for filing TRAN-1; the High Courts kept extending the benefits by even allowing manual filing of TRAN-1 (of course without any response from most of the Departments) and the tax payers and the professional kept believing in good faith in all the circulars and judgments of the Courts? Now to say that all this should have been done in 90 days well, in my view it will be palpably arbitrary and this amendment, though curative in nature; can be attacked as unconstitutional?

Any retrospective amendment to be valid must, however, be reasonable and not arbitrary and must not be violative of any of the fundamental right guaranteed under the Constitution. The mere fact that any statutory provision has been amended with retrospective effect does not by itself make the amendment unreasonable. Unreasonableness or arbitrariness of any such amendment with retrospective effect has necessarily to be judged on the merits of the amendment in the light of the facts and circumstances under which such amendment is made. In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercise or not, it becomes relevant to enquire as to how the retrospective effect of the amendment operates [Lohia Machines Ltd. V. Union of India(1985)152 ITR 308 (SC) 328].

Based on the Circulars of the Department and based on Judgments of various High Courts against which the Department never filed an appeal before the Apex Court, can we argue that now such a retrospective amendment, though curative in nature, is arbitrary and affected the vested rights as declared by Delhi High Court?

But we should also remember the following:

In Godrej Soaps Ltd. & Anr. v. State of Maharashtra & Ors. (2006 145 STC 137 Bom.) it was observed by the Hon'ble Bombay High Court as follows:

> "41. Having taken survey of the law laid down by the Apex Court from time to time; some of which are referred to hereinabove, we may venture to add that clarificatory amendment to the fiscal legislation with retrospective effect is usually held not to be unreasonable or arbitrary. In the case of any validating Act, the intention of the legislature is generally made sufficiently clear in the Section or in the Act which is declared invalid on account of some flaw or defect which is within the competence of the legislature. The clarificatory amendment, it may be observed, do not in fact have the effect of imposing a fresh tax with retrospective effect. They only clarify the levy which was already imposed. There is in effect and substance no imposition of any new tax for the earlier years by virtue of the retrospective operation and the retrospective operation merely validates the levy already imposed and possibly collected."

If, by a curative exercise made by the legislature, the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. The Supreme Court considered a similar question in National Agricultural v. Union of India. Here, by amendment, Parliament had substituted the word "of" in Sec 80P(2)(a)(iii) of the Act, which had previously been construed by Supreme Court as "belonging to", with the phrase "grown by". The Supreme Court held that the clear effect of the amendment would be that the section would be read with the substituted phrase and that the provision and its retrospective effect from April 1, 1968 were valid. The Court, however, went on to state that if it had been found to be an imposition of an altogether new tax liability, the court would have considered the amendment to be excessively and unreasonably retrospective violating the assessee's fundamental rights under Arts. 19(1)(g) and 14 of the Constitution.

The object of such an enactment is to remove and rectify the defect in phraseology or lacuna of other nature and also to validate the proceedings including realisation of tax, which have taken place in pursuance of the earlier enactment which has been found by the court to be vitiated by an infirmity. Such an amending and validating Act in the very nature of things has a retrospective operation. Its aim is to effectuate and carry out the object for which the earlier principle Act had been enacted. Such an

amending and validating Act to make "small repairs" is a permissible mode of legislation and is frequently resorted to the fiscal enactments.

In so far as the constitutionality of the curative legislative retrospective amendment to section 140 is concerned, in our view this will be upheld per se. However, when tested on the touchstone of reasonableness or arbitrariness we think Revenue will have to put in a very strong defence as whatever they have done or dictated in the pre-amended legal provisions, the tax payers have followed including the Courts.

But, the larger question is what is the purpose of this amendment; the purpose is to not only cure the defective piece of law but also to make the time limit provided u/r 117 to be mandatory. The expression 'within such time' has been used along with manner which was already prescribed in the pre-amended Section 140. Therefore the time period of ninety plus ninety days as provided under sub-rule (1) and the time period u/s sub-rule (1A) of Rule 117 which lastly stood extended till 31.3.2020 has now become mandatory and can not be taken as directory in nature because the very genesis of this being taken as directory has been removed by the Parliament – the appropriate legislature in this case. So the interplay of these two factors now in Section 140 is that the manner to claim transitional input tax credit as per Section 140 is already there and that manner has to be fulfilled within the time prescribed therein.

Coming to the issue as to whether the transitional input tax credit is a vested right as suggested by the High Court, it would be profitable to the refer to the judgment of Ald Automotive Pvt Ltd vs The Commercial Tax Officer reported as 2018 (364) ELT 3 (SC). Supreme Court, in the said judgment held that claim of input tax credit is not a right, much less a vested right. It is a benefit/ concession for dealer under statutory scheme and subject to strict compliance of the conditions mentioned in the special statutes. This was the finding of the Supreme Court to a specific question of law framed. Transitional Input Tax Credit cannot stand on a different footing – as this is noting but accumulated input tax credit in the repeated enactments for which concession was given to the registered tax payers through Section 140.

In State of Karnataka versus M.K. Agro Tech.(P) Ltd., (2017) 16 SCC 210, Supreme Court held that it is a settled proposition of law that taxing statute are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances.

The same principle was laid down by the Supreme Court in the case of Jayam and Co. Vs. Asstt. Commn. & Anr. reported as (2016) 15 SCC 125

where it said it is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19 Tamil Nadu Value Added Tax Act, 2016.

For a moment even if it is assumed that the transitional input tax credit is a vested right then can that right be not subjected to limitation? The theory of vested rights and the implication of limitation on the said aspect of vested right has been considered by Hon'ble Supreme Court in the case of Osram Surya (P) Ltd. Vs. Commr Central Excise, Indore reported as 2002 (9) SCC 20. While considering the second proviso to Rule 57G of the Central Excise Rules, 1944, it was laid down that by providing limitation the statute has not taken away any of the vested rights, which accrue to the manufacturers and what is restricted is the time, within which, the manufacturer has to enforce that right.

Rowlatt J. in Cape Brandy Syndicate v. IRC, (1921) 1 KB 64 and approved in CIT v. Ajax Products Ltd., (1965) 55 ITR 741 wrote:-

> "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing to be implied. One can only look at the language used."

If the provisions of Rule 117 of the Rules, which prescribe limitation are upheld, the plea raised pertaining to the denial of vested right on account of petitioners failing to submit/file Form GST TRAN-1 in time cannot be countenanced. Rule 117 has been held to be intra-vires by various High Courts, Gujarat, Bombay and Rajasthan wherein they have cleared stated that by operation of Section 164(2), the rule making power is already available with the legislature and therefore Rule 117 is intra-vis the powers of the Government and cannot be declared ultra vires. Now when the words 'within such time' have been introduced in Section 140 through a retrospective amendment through Notification No. 43/2020 dated 18.5.2020, there is no room of doubt that the time period prescribed u/r 117 has got the mandatory shield. Once it is so, then to claim the vested right of transitional input tax credit, assessee would have to fulfil all the conditions including that of time period prescribed under the said Rule.

After the judgment of Osram Surya (supra) much water has further flown and Supreme Court while dealing with a case of Input Tax Credit in ALD Automotive (supra) has clearly held that input tax credit is a

concession and not a vested right at all. With the conditions imposed, the concession could have been availed of. In the absence of a substantive provision granting such concession, there would have been no concession at all. With the advent of an entirely new tax regime, like GST the earlier credit could have lapsed, but as and by way of concession it is permitted to be carried forward for a limited time. Thus, going by the Scheme of the Act, under Section 140(1), the reference to transitional input tax credit is not by way of a right, but as a concession.

The legal position that can be taken to be settled in my view is that the right/concession to availment of transitional input tax credit accumulated under the repealed enactments is not absolute and is to be exercised with a time limit. Section 140 gives only the right to carry forward the credit and ignoring the time limit would make the transitional provision unworkable. The credit under the transitional provision is not a right to be exercised in perpetuity. By the very nature of the transitional provision, it has to be for a limited period. Delhi High Court while observing this right to be a vested right or even a fundamental right also clearly held that this is not available indefinitely and for the reasons they subjected this right to Limitation Act, 1963 albeit its attention was not invited to the retrospective amendment brought in Section 140 of the Act through Finance Act, 2020. The judgment of Delhi High Court holding such view runs in conflict with the Judgments of other Hon'ble High Courts like Gujarat, Bombay, Rajasthan and therefore has to be sceptically read and understood. The Judgment of Bombay High Court in Nelco Limited v Union of India is a fine read to appreciate the scope of controversies we all face in the pre-amended Section 140 and now in the amended Section 140- because there is no amendment in the Rule 117 as such.

Therefore, while applying the Supreme Court judgments that have clearly laid down the principles and tests to claim input tax credit, I can have no other view except that the transitional input tax credit claimable u/s 140 would have to comply with the conditions including that of time period prescribed under Rule 117 as the said claim is only a concession given by the statute and can be subjected to limitations. By subjecting this concession to a time line the right as such has not been taken away but it has been time bound? Absolutely nothing wrong, Even Delhi High Court fixed a time limitation of three years by invoking Limitation Act 1963!

5. Hon'ble Delhi High Court has said the mechanism provided by Section 140 to claim transitional input tax credit is a procedural or directory and not mandatory? Well in all on line systems such procedures are provided alongwith consequences thereto. I am of the view those documentation say returns are mandatory provisions and not directory. I cannot file a return

otherwise then as provided. Because of legal deficiency in the substantive law as enacted in Section 140 the High Court quoted Article 300A to say the vested right cannot be taken away unless substantive provisions exist. Article 300A is quoted below:

> "Article 300A states that - No person shall be deprived of his property save by the authority of law. Therefore, the article protects an individual from interference by the State and dispossess a person of the property unless it is in accordance with the procedure established by law."

Delhi High Court in the case of M/s Aadinath Industries vs. Union of India observed that the credit standing in favour of an assessee is property and the assessee could not be deprived of the said property save by authority of law in terms of Article 300A of the Constitution of India.

Well now the amended Section 140 provides that you have to claim input tax credit under Section 140 arising under the existing laws within a certain period, the observation of Delhi High Court that there is no default consequence if the TRAN-I is not filed is an issue which will be debated before the Supreme Court if and when the Revenue approaches the apex court; but the language of Section 140 and all its sub-sections make it clear that on satisfying all the preconditions mentioned in Section 140 that a tax payer who has transitioned into GST Regime will carry forward the transitional input tax credit mentioned in Section 140 of the Act.

We will have to keep in mind that Section 140 provides the complete machinery to claim transitional credit and this section is not subject to any other section. Hence, if any legislative defect was to be cured this could only be done in this Section. It is more than clear if transitional input tax credit is not claimed within the limitation period and fulfilling other conditions, the default consequence can be deemed that this is not available to the tax payer and we do not think it is required to be specified as the law is clear.

I have extensively quoted the judgments simply to appreciate and understand the facets and nuances of the retrospective amendment. Should the Revenue reopen all the cases of TRAN-1 filed beyond 90 days effective 1st July 2017 or within further extended periods as suggested u/r 117(1A), it would have to carry the matters further where relief has been extended by the High Courts. None of the Judgments given so far by the High Courts including Delhi High Court on this issue have considered the amendment caused u/s 140 of the Act. All the judgments are on pre-amended provision of Section 140. These may require reconsideration as

those Judgments were delivered based on an understanding that the time period provided u/r 117 is directory in nature, a situation which has now changed with the introduction of retrospective amendment in Section 140 of the Act. Now this amended provision needs fresh interpretation.

In my view not only does the principle of strict interpretation apply in all taxing statutes, but also in the present context, the principle that amended Section 140 attempts to deny transitional input tax credit to all those tax payers who transitioned into GST Regime if they filed TRAN-1 etc. before the period of 90 days as mentioned in the new Section 140. I think this is the only purpose of the amendment and this intent is writ large. Unamended Section 140 did not provide the mandatory shield to the time period specified u/r 117(1) & (1A) of the Rules which has now been provided through the retrospective amendment made u/s 140. Except Delhi and Punjab and Haryana High Court; Gujarat and Bombay High Court have categorically stated that the limitation prescribed in Rule 117 can be traced to powers of the appropriate legislature in Section 164(2) and hence they held Rule 117 intra -vires and not ultra-vires. There are sufficient reasoning given by these High Courts and the readers are advised to read those judgments especially Nelco Limited v Union of India Bombay High Court and Shree Motors v Union of India – Rajasthan High Court.

Amendments when given retrospective effect can either be beneficial or detrimental to the taxpayer. The ones which impose an unreasonable implication on the assessee or take away some benefit already given to the assessee, are not welcome by the taxpayers and usually become a subject matter of litigation.

No doubt Taxpayer would have planned his finance and tax based on the law as it existed at that time and disturbing the same by way of unjust and unwarranted retrospective amendments is unreasonable. However, retrospective amendment / retrospective tax by itself does not become unreasonable or invalid. Validity/reasonableness of retrospective amendment/tax depends on facts and circumstance of each case and need to be analysed on the merits of amendment in light of facts and circumstances under which such amendment is made. And here in this case the curative legislative amendment is well within the rights of the Parliament and nothing new has been done.

These number of Judgments of the Supreme Court appear to indicate that even with judicial constraints, the power to legislate retrospectively on tax matters is very vast indeed, almost to the extent of being draconian in nature. But merely because a power exists should it always mean that it has to be exercised. Restraint, more than legislative action, is a much better

strategy for building up faith in the tax system and encouraging voluntary compliance with the law. The government must realise that taxpayers have to often spend large sums of money on tax litigation. For the most part, the issues involved in such litigation seldom require a court judgment, and should ordinarily be settled at a lower level. A taxpayer understandably feels doubly frustrated when, after having spent large sums of money to vindicate his stand, he finds the government stepping in to amend the law from a back date. This is nothing short of a player changing the rules of the game, just because he is losing!

Various circulars initially issued by the competent authority under Section 168 of the Act and this Section clearly mandate that all such circulars are binding upon the officers. Then on 18th September 2018, Rule 117(1A) was incorporated wherein on the recommendations of the GST Council the Commissioner was empowered to extend the period for filing TRAN-1 up to a certain period provided there were technical difficulties faced with the system. This period stood extended till 31.3.2020. This would mean that unless the tax payer applied in the first available time of 90 days or in further extended time of 90 days, without any condition, he could have never entered Rule 117(1A) which was meant for extension of time only if there were technical difficulties and in respect of whom the Council has made a recommendation for such extension. It is only in respect of such cases where the twin conditions laid down u/r 117(1A) stand satisfied, the period stood extended till 31.3.2020.

Hon'ble Delhi High Court has now extended this period up to 30th June 2020 based on their finding that the entire TRAN-1 mechanism is directory in nature, there is no limitation prescribed in the Act and hence by invoking Limitation Act, 1963 they said 30th June 2020 is the date when all and sundry can invoke Section 140 read with Rule 117 and file their claims for transitional input tax credit. A series of Circulars have been issued extending the dates for filing the TRAN-1 claims – but the High Court of Delhi has fixed this timeline upto 30th June 2020 for all the tax payers for any issue whatsoever. Notwithstanding the fact that attention of the High Court was not invited to the retrospective amendment made u/s 140, yet it cannot be denied that the timeline upto 30.6.2020 is in variance to the judgments of the other High Courts who have upheld the limitation period prescribed u/r 117(1) & (1A) of the Rules.

A conjoint reading of the above two sub-rules is essential to the interpretation of Section 140 including the new amendment made. Rule 117(1) mandates 90 days period and gives powers to the Commissioner to extend the period of 90 days by a further period not exceeding ninety days. Sub-rule (1A) starts with a non obstante clause and is not subject

to sub-rule (1). It deals with extension of time period upto 31st March 2020 provided the registered person could not submit the TRAN-1 form on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation of such extension.

Therefore, as per Rule 117 of the Rules the taxpayers should have filed the application in TRAN-1/TRAN-2 within 90 days from 1st July 2017 [which was again extended from time to time up to 31st March 2020 for the persons who could not file the form due to technical glitches on the GST Portal]. However, a number of taxpayers could not file the same not only due to technical glitch on the portal but also owing to other technical difficulties at the end of the dealers. Consequently, a large number of taxpayers who could not furnish FORM TRAN -1 within the stipulated time either due to technical glitches on the GST portal or due to technical difficulties experienced by them. In many cases, the taxpayers could not even access the system to upload the said application. However, the time limit for filing TRAN-1 was extended only for the persons who could prove technically that they have attempted to upload TRAN-1 within the prescribed time limit but failed to do so. Practically, this extension is not available to those dealers who did not even attempt to upload the TRAN-1 form on the portal.

This Judgment of Brand Equity (supra) was based on pre-amended Section 140 and cannot be made universally applicable across India because there are other High Courts who have taken a view which is completely different from Delhi High Court. For example, Bombay High Court in its judgment dated 20.3.2020 in the case of Nelco v UOI has held that Rule 117 is not ultra vires as the power is drawn from Section 164(2) and similar is the view of Rajasthan High Court in Shree Motors v UOI which was decided on 18.3.2020. On the question of input tax credit being vested right as observed by Delhi High Court, it would be relevant to refer to the judgments of Hon'ble Supreme Court which clearly state that input tax credit is only a concession and not a right much less the vested right. More so, Supreme Court in Osram case (supra) has held that even vested rights can be subject to conditions of time.

The observation of Delhi High Court that mechanism of Section 140 or time lines in Rule 117 were directory now will have to be re-tested on the basis of amended version of Section 140 of the Act.

To conclude

I am of the view that curative legislative amendment to Section 140 which has been brought with retrospective effect from 1st July 2017, would

impart a mandatory character to the time period prescribed u/r 117(1) & (1A) of the Rules. All those tax payers who had not filed their TRAN-1 within the ninety days or extended period of 90 days, are in for litigation as their transitional input tax credit is under cloud now; for all those who claim that there were technical difficulties or glitches will have to bring on record that they took all steps as mandated in the provisions and bring on record the log screen shot of them having tried and failed and in respect of whom the Council has made for such extension; otherwise they are also in for litigation.

My sincerest gratitude to Rajesh Jain, Advocate, Supreme Court of India and to Rakesh Garg, CA and LL.B and the best Author on GST and other indirect tax laws. Thank you buddies for tolerating me for many days for pro bono discussions and your legal inputs. The final product has many shades of your contribution.

"Let us learn Together"

The Commissioner, Delhi GST and VAT,
New Delhi.

Sub: Filing of Trans-1 under Section 140 of the CGST Act/DGST Act read with Rule 117 and Rule 117(1A0

Sir,

I am a registered tax payer registered with Delhi GST Department and my GSTN No is..

That I have been registered as a dealer under Delhi VAT/central Excise/ Service Tax also.

That as on 30.6.2017 my eligible transitional input tax credit is Rs…….. as per Act wise chart enclosed with this petition that I propose to upload to claim my vested right to transitional input tax credit under Section 140. I certify that I satisfy all the preconditions mentioned in Section 140 read with relevant Rules and I have all documentary evidence in support of the claims that I am making in trans-1

I have come to Department through my counsel many a times in the past four months but I was advised that no transitional input tax credit can be given as this is outside the legal provisions.

However, my counsel has now brought to my notice the Judgment of the Delhi High Court in the case of Brand Equity Treaties Limited Vs Union Of India (Delhi High Court) (Copy attached) . I have been made to understand that as per this Judgment the trans=1 credit is available to me till 30th June 2020. As per my counsel the Judgment carries the following law laid down by the High Court of Delhi which is binding upon all the authorities.

- Delhi High Court Judgment in Brand Equity rendered on 05-05-2020 while directing the Union of India to accept the TRAN-1 till 30-06-2020 and publicize the contents of Judgments on its website, so, that others who may not have been able to file TRAN-1 till date are permitted to do so on or before 30.06.2020

- Technical Difficulty is not the same as a technical glitch. The government is giving "Technical Difficulty" a restrictive meaning by extending dates only for technical glitches under Rule 117(1A). Technical Difficulty is a broader term and can not be restricted to system logs.

- The access to the GST portal could be hindered for myriad reasons, sometimes not resulting in the creation of a GST log-in record. Further, the difficulties may also be offline, as a result of several other restrictive factors. It would be an erroneous approach to attach undue importance to the concept of "technical glitch" only to that which occurs on the GST Common portal, as a pre-condition, for an assessee/taxpayer to be granted the benefit of Sub-Rule (1A) of Rule 117. Difficulties may also offline.

- The technical difficulty may be due to low bandwidth, given the fact that before the deadline, a large number of taxpayers all over the country, were trying to submit the declaration in form TRAN-1

- It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it – such as, by taking a screenshot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Respondents (Union of India) were not efficient.

- Timeline of 90 days under Rule 117 and further extendable by 90 days is discriminatory and unreasonable and violative of Article 14 of the Constitution.

- In terms of the residuary provisions of the Limitation Act, the period of three years should be the guiding principle, and thus a period of three years from the appointed date i.e. 30-06-2020 would be the maximum period for availing of such credit. [Residual Entry at S.No. 113 of Part X of Division I of Schedule to Limitation Act.

- Other taxpayers who are similarly situated should also be entitled to avail of the benefit of this judgment. Therefore, Respondents are directed to publicize this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 to date are permitted to do so on or before 30.06.2020.

Hon'ble Delhi High Court has held that period of 90 days for claiming input tax credit in TRAN-1 is directory and therefore, period of limitation of 3 years under the Limitation Act would apply. The Court has directed the Department to allow all assessees to claim input tax credit in TRAN-1 by 30.6.2020. The direction would apply to all those who could not file TRAN-1 and claim input tax credit. The court has further directed that it should be advertised that all taxpayers who have not filed TRAN 1 can do so by 30.6.2020. The judgment has been made applicable to all irrespective of whether the taxpayer has approached the court or not.

In view of the above Judgment that is binding upon you pleae immediately order upload of my trans 1 on the computer so that I can exercise my vested right to claim transitional input tax credit as on 30.6.2017. PLEASE ACKNOWLEDGE THE RECEIPT OF THIS PETITION ALONG WITH CLAIM.

Thanking you,

Yours…..

Section 73 and Section 74 of the CGST Act-2017: Levy of Interest and the Relevance of Union of India Vs. M/s Ind-Swift Laboratories Ltd (Supreme Court of India) Judgment for CGST Act 2017?

Sushil Verma, Advocate

Today I pen down an article which is going to create controversy and debatable issues – but that is the beauty of writing legal articles and I shall accept that with all the humbleness at my disposal.

1. **Friends the above Judgment in 2009 created quite an uproar and experts in service tax field perhaps were not happy with the Judgment – not that it mattered much.**

2. In fiscal Statutes, the import of the words -- "tax", "interest", "penalty", etc. are well known They are different concepts. tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty-- which is penal in character. Pratibha Processors v UOI AIR 1997 SC 138). This was quoted by Punjab and Haryana High in their Judgment of Ind-swift.

3. **Some background to erstwhile CENVAT Credit Rules is perhaps necessary for the purpose of this Article otherwise this Judgment cannot be discussed.**

In terms of the erstwhile CENVAT credit rules that were in force prior to the enactment of the CENVAT Credit Rules, 2004 (CENVAT Rules), the Punjab and Haryana High Court, in CCE vs. Maruti Udyog Ltd. [2007 (214) ELT 173 (P&H)], had held that an assessee was not liable to pay

interest where credits had only been availed erroneously but were not subsequently utilised. The Special Leave Petition filed by the Department against this order of the High Court with the Supreme Court was thereafter dismissed. All this was under the old Rules as indicated earlier.

This decision by the hon'ble High Court of Haryana and Punjab takes cue from its earlierdecision in the case of CCE, Delhi-III v. Maruti Udyog Ltd. reported in [2007 (214) ELT173 (P&H)] wherein the erstwhile Rule 57I of the Central Excise Rules, 1944 was underconsideration. The Hon'ble High Court had in this case held - the assessee is not liable to payinterest in the case where credit was only taken and not utilized. Both of the above-saidjudgments are very significant in nature as this mark an important departure and takes intoaccount the nature and object of the cenvat scheme first rather than resorting to a plainreading of the relevant provision. Such an interpretation assumes high significance in thecontext of availment and utilization of cenvat credit because in the usual course of business anassessee may avail cenvat credit immediately by making a cenvat credit entry in his books butkeeps the same hanging for its ultimate utilization towards payment of duty / service tax (ormay be to just keep his claim of Cenvat credit alive). This Cenvat credit may also be reversedby the assessee on learning about its non-admissible nature before its utilization.

4. Rule 14 of the CENVAT Rules was worded differently from the erstwhile rules.

This Rule stated that where the **CENVAT credit had been taken or utilised wrongly or had been erroneously refunded,** the credit along with the interest shall be recovered from the manufacturer or the service provider under the relevant provisions of Section 11AB of the Central Excise Act, relating to payment of interest.

In the light of this new Rule 14, the matter was again examined by the Punjab & Haryana High Court in the Ind-Swift Laboratories case where it again held that the i**nterest was payable from the date of utilisation of the wrongly availed credits and not from the date of availment of such credit**.

While deciding the matter, the High Court referred to the decision of the Supreme Court in Pratibha Processors vs. UOI [2002-TIOL-273SC-CUS], in which it was held that interest was compensatory in character and was imposed on assessees who had withheld the payment of any tax that was due or payable. That is how the High Court continued to hold that the interest was not chargeable unless the credit that was erroneously availed, had been utilized, despite the changed wordings of Rule 14.

5. Notwithstanding the above decision of the High Court, the CBEC issued Circular No. 897/17/2009-CX dated September 3, 2009 to clarify that interest would be recoverable from the date of availment of credit even if the credit has not been utilised.

The matter was taken to Supreme Court by the Union Government in the case of Union of India Vs M/s Ind-Swift Laboratories Ltd.

The Apex Court examined in detail new Rule 14.

The issue the Supreme Court considered was whether the word **'OR**' appearing in Rule 14 of the CENVAT Rules could be harmoniously read as '**AND'**, **as was interpreted by the Punjab & Haryana High Court in its decision.**

The Apex Court held that if the aforesaid provision was read as a whole there was no reason to replace the word "OR" occurring in between the expressions taken or utilized wrongly or `has been erroneously refunded with the word "AND".

In other words, the Court clearly held that the credit became recoverable along with interest upon the happening of any of the three aforesaid circumstances.

The Supreme Court emphasized that it was not required to obtain a harmonious construction of a provision which was clear and unambiguous as it stood all by itself.

The Supreme Court also held that a taxing statute must be interpreted in the light of what was clearly expressed therein. Accordingly, the Supreme Court held that the High Court was erroneous in construing the word 'OR' as 'AND', so as to give relief to the assessee.

Not surprisingly, subsequent to the Supreme Court's decision, the CBEC has issued a Circular No. 942/03/2011-CX dated March 14, 2011 to clarify that interest was payable from the date of erroneous availment of credit even if the credit had not been utilized at all to discharge any tax liability on any account.

This is what Supreme Court in Ind-Swiftt held based on facts and based on the law as it stood then. We might be tempted to say SC itself held that interest is compensatory in nature and should be imposed only from the date when the assesee utilised the funds and not simply availed in

his returns; or we might also add that the Supreme Court did not consider Pratibha Processors case in its right spirit that was considered by Punjab and Haryana High Court while giving relief to the assesee; but does that matter? The answer is NO. Ifs and Buts have no role to play when we interpret SC Judgments.

The complexities of not harmoniously interpreting the word "OR" can be understood by further examining a situation wherein an assessee takes CENVAT credit in month 1 and reverses such wrongly availed credit in say month 10, without utilising it.

In my view, based on the above decision, the assessee will be liable to pay interest from the time of wrong availment i.e. from Month 1. However, if in the same situation, the assesseeutilises the credit in month 8, the question arises as to whether the assessee will be liable to pay interest only from month 8 i.e. from the time of utilisation of the credit, based on the wordings of Rule 14.? Your interpretation can be yours under such circumstances – a person who utilised in month 8 will gain over the person who did not use at all if we were to give language of Rule 14 a meaningful interpretation?

Thus, the Apex Court interpreted the provision of Rule 14 and held that Interest liability under Rule 14 of CCR, 2004 will arise from the date of taking credit and not from the date of utilization of credit.

Thereafter, the judgment of the Karnataka High Court in the case of *Commissioner of Central Excise and Service Tax, LTU, Bangalore v/s M/s Bill Forge Pvt Ltd, Bangalore [*2011 (4) TMI 969 - KARNATAKA HIGH COURT*]* was delivered wherein the interpretation of the word 'taken' in Rule 14 was done in a different way. It was held that the actual taking of credit happens at the time of removal of excisable product. It is in the nature of a set off or an adjustment. Before that timeit will amount to making a book entry in accounts. **Thus, merely by making book entry which can be reversed before the removal of goods, the interest liability will not arise. Accordingly, the Karnataka High Court departed from the view taken by the Apex Court in the case of Ind-Swift Laboratories Ltd.**

Amendment in Rule 14 vide Budget, 2012: -

Apex Court vide ***Union of India v. Ind-Swift Laboratories Ltd., (2011) 4 SCC 635*** wherein it was made crystal clear that the word "or" between taken and utilized is disjunctive and suggests the intention to tap cases even where credit has been wrongly availed (and may not have been utilized).

Post this, the provisions under Rule 14 were rejigged and the word "and" was substituted for the word "or" between taken and utilized under Credit Rules. Accordingly, it was provided that interest will be applicable when the CENVAT is wrongly availed and utilised.

After the series of contrary verdicts, the government bought in a change in Rule 14 of the Cenvat Credit Rules, 2004 vide Notification No. 18/2012-CE(NT) dated 17.03.2012 to clarify the haziness contained in drafting of rule.

The words "taken or utilized wrongly" were substituted by the words "taken and utilized wrongly".

The recent decision of Patna High Court in ***M/s Commercial Steel Engineering v. State of Bihar [TS-553-HC-2019(PAT)-NT]*** has yet again erupted the debate of availment-utilisation of CENVAT Credit for triggering the interest liability under GST laws. At the outset, the decision holds that interest cannot be recovered on wrongly reflected transitional credit in an electronic ledger unless such credit is put to use so as to become recoverable. This decision assumes significance under GST particularly in view of the manner the recovery provision is worded under Section 73 of the Central Goods and Service Tax Act, 2017 ("CGST Act") and the interpretation placed upon similar provisions under previous tax laws. This case related to transition credit.

The issue of applicability of interest in a situation of wrongful availment of credit was discussed in ***CCE v. Veetech Valves Pvt. Ltd. 2010 (261) E.L.T. 204 (T)*** wherein provisions of Rule 14 were interpreted and it was held that no interest is payable when credit is taken as an entry in record but has not been utilised. Following the same pursuit, various courts held no interest will be payable in case of mere wrongful availment of credit. Reference may be made to the judgment of the Allahabad High Court in ***CCE., Ghaziabad v. Ashoka Metal Decor (P) Ltd. 2010 (256) ELT 524 (All.)***. Similarly, the Gujarat High Court in ***CCE v. DynaflexPvt. Ltd. 2011 (266) ELT 41 (Guj.)*** held that no interest is payable when credit is not utilised.

The ratio of this decision was subsequently followed in ***CCE v. GL & V India Pvt. Ltd. 2015 (321) ELT 611 (Bom.) CCE v. Vandana Vidyut Ltd. 2016 (331) E.L.T. 231 (Chhattisgarh)*** etc.

However, even after the aforesaid position was laid down by Apex Court, divergent view was expressed by the Hon'ble Karnataka High Court

in ***CCE & ST, Bangalore v. Bill Forge Pvt Ltd., (2012) 26 S.T.R. 204 (Kar.).*** In this case, the Court distinguished the judgment of the Supreme Court by holding that reversal of credit wrongly taken is equivalent to credit not availed and thus there was no liability to pay interest. Similar position was taken by the Hon'ble Madras High Court in ***CCE, Madurai v. Strategic Engineering (P) Ltd. 2014 (310) ELT 509 (Mad.)***. **It is noteworthy that while the Supreme Court had held that interest would be payable on availment itself, various High Courts took a position that mere availment of credit would not attract interest liability unless the same is utilized.**

In my view in all the judgments post Ind-Swift the courts were interpreting the meaning of the words Credit – does it happen when entry in electronic credit register is posted or when it is utilised. Perhaps bona fide the Courts interpreted and perhaps read down the ratio of Supreme Court Judgment in Ind-Swift which is not permissible under Article 141 of the Constitution of India?

2. Under the CGST Act, the provision for recovery of wrong input tax credit is dealt under Section 73. The said Section reads as under:

> *"1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or **where input tax credit has been wrongly availed or utilized for any reason**, …, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the **notice along with interest payable thereon under section 50** and a penalty leviable under the provisions of this Act or the rules made thereunder."*

Furthermore, with respect to recovery of transitional credits, Rule 121 of the CGST provides for recovery under Section 73 as follows:

> *"RULE 121.Recovery of credit wrongly availed. — The amount credited under sub-rule (3) of rule 117 may be verified and proceedings **under section 73** or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly."*

Now Section 73 provides that where input tax credit has been **wrongly availed or utilised**, notice will be served for its recovery along with interest and penalty. Further, if such input tax credit has been wrongly availed or utilised by reason of fraud or willful misstatement or suppression of fact, provisions of Section 74 of the CGST Act are attracted.

We should clearly note the difference between the language of Rule 14 before its amendment and this was "**taken or utilised wrongly**" but now the Legislature has used the words "**wrongly availed or utilised**".

Well in my view the language used in Section 73 is materially different and more imperative than unamended Rule 14 and by prefixing the word WRONGLY before availed or utilised the legislature has materially altered the provision itself. Hence, now if there is any registered tax payer wrongly avails or utilises any input tax credit etc he has invited the provisions of Section 73 or as the case may be of Section 74.

Wrongly **in English is an adverb and so is Wrong. Wrongly means "in a way that is incorrect or mistaken". Or it could be in the sense "erroneous" or "in error" or a "mistake".** Whether Intention to defraud could be imported to define this word Wrongly, I have my own reservations. And if this be the interpretation than that means it is much more than Ind-Swift ruling – a simple mistake can invite the levy of interest at the rate of 18 per cent for the entire amount of credit etc wrongly availed or utilised.

Many experts keep quoting the judgment of Pratibha Processors v UOI and opine that Ind-Swift did not take into account the ratio of this judgment. Let's examine this judgment also and see if it made any material difference. The Supreme Court deliberated the Judgment of Punjab and Haryana High Court where this judgment had been quoted and accepted. Can we say that the Supreme Court did not consider that Judgment? The answer has to be in the negative.

The Supreme Court in Pratibha Processors case was seized with the following issue under Customs Act – a provision that is not identical or materially same as considered in Ind-Swift:

> "……It is implicit from the language of Section 61(2) of the Act that the interest shall be payable on the amount of duty "payable or due on the warehoused goods for the period from the expiry of period specified or granted till the date of clearance of the goods from the warehouse. In this case, on the date of clearance of the goods, no duty is payable. The goods are not exigible to duty at that time. Calculation of interest is always on the principal amount. The interest payable under Section 61(1) (2) of the Act is a mere "accessory of the principal and if the principal is not recoverable, payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(1) (2) of the Act. …'

I am of the view the judgment of Pratibha Processors should have no bearing on Ind-Swift case at all and that is why the counsels did not even quote that judgment before the Supreme Court otherwise Supreme Court must have dealt with this judgment. In any way, Punjab and Haryana High Court had considered that judgment and their judgments was reversed by the Supreme Court.

Both the Judgments are a bench of Two Honble Judges and hence subsequent judgment should prevail anyways.

In Ind-Swift the Apex Court considered the following

15. In order to appreciate the findings recorded by the High Court by way of reading down the provision of Rule 14, we deem it appropriate to extract the said Rule at this stage which is as follows:

"Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded: - Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of Sections 11A and 11AB of the Excise Act or Sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries."

16. A bare reading of the said Rule would indicate that the manufacturer or the provider of the output service becomes liable to pay interest along with the duty where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded and that in the case of the aforesaid nature the provision of Section 11ABwould apply for effecting such recovery. "

Xxxx

17…"A statutory provision is generally read down in order to save the said provision from being declared unconstitutional or illegal. Rule 14 specifically provides that where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest would be recovered from the manufacturer or the provider of the output service. The issue is as to whether the aforesaid word "OR" appearing in Rule 14, twice, could be read as "AND" by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to read the word "OR" in between the expressions

`taken' or `utilized wrongly' or `has been erroneously refunded' as beenthe word "AND". On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.

xxxx

18. We do not feel that any other harmonious construction is required to be given to the aforesaid expression/provision which is clear and unambiguous as it exists all by itself. So far as Section 11ABis concerned, the same becomes relevant and applicable for the purpose of making recovery of the amount due and payable. "

So the Apex Court reversed the Judgment of Punjab and Haryana High Court holding the charged provision has to be read as written by the Legislature and if one interpretation leads to unworkable interpretation and one upholding the charged provision the later has to be adolpted.

3. Now relying upon any High Court judgment or their interpretation after this Judgment, in my view, will be disregarding the mandate in Article 141 of the Constitution of India. If the issue is identical and phraseology used in the legislation is identical, then there is no question of disregarding Ind-Swift at all.

The language used in Section 73 "wrongly taken or utilised" though looks same as in unamended Rule 14; but the word "wrongly" has been prefixed to both "taken or utilised". My view is that the language is more imperative now.

The plausible interpretation of the word "wrongly" have been prefixed to the words "taken or utilised" is that Section 73 imposes levy of interest for reasons mentioned in Section 73 or Section 74 on wrongful availment with or without utilization. In my view there can be no other possible interpretation and if this be so the language used in Section 73 is much more imperative than the one used in unamended Rule 14.

Concluding therefore I am of the firm view that any wrong claim made with or without utilisation shall attract interest from the date when it is availed and there does not seem to be any escape at all. An analysis of the provisions of Section 73 of the CGST reveals that levy of interest would ensue once the wrong input tax credit is taken and the fact of utilization may not be material on application of the rule of strict interpretation. The

word “or” used between the expression availed – utilized manifests the legislative intent to cover either of the cases

Levy of interest is a part of collection of tax and, therefore, it is covered by the second limb of Article 265. If it forms part of collection of tax under Article 265, it should be by an authority of law. And Section 50 deals with levy of interest. In my view the provisions of Section 73 or Section 74 must confine to levy of interest on grounds mentioned in Section 50 and nothing beyond that and for which a show cause notice has to be necessarily issued as per various Judgments that have come now on this issue and I am not repeating these here simply I am not dealing with those issues in this Article.

Do write to me at vsushil56@gmail.com if you have a contrary view based on a Supreme Court judgment only; High Courts have taken for and against view. But tread with caution friends – provisions of Section 73 or Section 74 can be fatal to the very existence of our clients. Please do not make a wrong claim at all in the returns because we so called experts say so; follow the law in its letter and spirit. Opinions are opinions. And if in spite of the Rule 14 having been amended by the appropriate Legislature in service tax regime and if again the original language with OR has been brought in by rephrasing the legal phraseology; the intention is clear Central Government will stick to the provision as in Section 73 or Section 74. Even on the levy of interest I think the scope of Section 50(2) is very wide and the words used are sweeping in nature and in meaning.

Merchant Exports- Ramifications

Sushil Verma, Advocate

Merchant exporters pay nominal GST of 0.1% for procuring goods from domestic suppliers for export.

Supplier selling goods to Merchant Exporter will charge tax @ 0.05% as CGST and 0.05% as SGST/UTGST or 0.1% as IGST of the taxable value, as the case may be instead of charging tax at normal rates of tax. This relief has been provided w.e.f. 23/10/2017.

The levy of 0.1 per cent for such supply is a well-considered decision which strikes a balance between exporters' liquidity problem and monitoring of such consignment by the Government. Even 0.1 per cent paid as GST is available as refund. On a consignment of Rs 10,00,000, its impact is Rs 1,000. Assuming this is refunded after 3 months and cost of the fund to pay is at 12 per cent, the net burden comes to Rs 30. If the supply is to make free against bond or LUT, compliance burden will be much more.

Intrastate supply from a registered supplier to a registered recipient (Merchant exporter) for exports has been allowed at 0.05 per cent through Notification no. 40/2017-CGST (Rate) for CGST. CGST and SGST put together come to 0.1 per cent. **If it is interstate supply, the IGST rate is 0.1 per cent as per Notification no. 41/2017 –Integrated Tax (Rate).**

The Notification no. 41/2017 Integrated Tax (Rate) relating to Merchant Exporter only applies to taxable goods under GST.

The facility of procuring goods at 0.1 per cent is an optional facility which is available subject to adhering to the conditions mentioned in Notification no. 41/2017 dated 23rd October, 2017. In case, an exporter wants to procure the goods for exports on payment of applicable GST and subsequent exports either on LUT or on payment of IGST, the exporter can do it and claim back ITC or IGST, as the case may be.

The Notification relating to merchant exporter only referred to a registered supplier and registered recipient. Therefore, a registered recipient, who may be a manufacturer, can procure goods from a registered supplier at 0.1 per cent to be supplied along with goods manufactured by you.

Who Is A Merchant Exporter?

As per Foreign Trade Policy, "Merchant Exporter" means a person engaged in trading activity and exporting or intending to export goods.

"**Merchant Exporter**" means a person engaged in trading activity and **exporting** or intending to **export** goods. **Merchant exporter** procures the material from a manufacturer and **exports** in his firm's name. ... "Manufacturer **Exporter**" means a person who manufactures goods and **exports** or intends to **export** such goods. Merchant exporter does not have own manufacturing unit or processing factory. Merchant Exporter can export the excisable goods either directly from the premises of the manufacturer, with or without sealing of the export consignments, or through his premises under claim for rebate or under bond.

"Manufacturer Exporter" means a person who manufactures goods and exports or intends to export such goods. The manufacturer exporter procures and process raw materials at his factory and exports finished products. Here, the manufacturer exporter procures the export order and exports in their own name.

Export of **goods** or services is treated as a zero-rated supply. An **exporter** dealing in zero-rated supplies **can** make **exports** with or **without** payment of tax. The **exporter** may supply **goods** or services or both after **paying** the amount of IGST and **can** claim a refund of the amount of tax paid on such **goods** or services or both.

Thus **merchant exporters** who purchase goods from the local market for **export** shall be entitled to full rate of duty **drawback** (including the excise portion). However, such **merchant exporters** shall have to declare at the time of **export**, the name and address of the trader from whom they have purchased the good

However, such relief has been provided subject to following terms and conditions:-

1. Supplier to supply goods to registered recipient against a Tax Invoice only; recipient to export goods within a period of 90 days from the date of tax invoice issued by the registered supplier, in the Shipping Bill or bill of export the registered recipient shall mention GSTN no of the supplier and tax invoice details; registered recipient should be registered with the Export Promotion Council or a Commodity Board recognized by the Department of Commerce; registered recipient should also file copy of the

order placed on registered supplier with the jurisdictional tax officer of the registered supplier; recipient to move goods from the place of registered supplier directly to Port etc. from where the said goods shall be exported or alternatively move the said goods directly to a registered warehouse from where the goods shall move to the Port etc. for exports; for multiple suppliers the recipient shall store the goods in a registered warehouse; (in this case recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgment of receipt of goods in registered warehouse etc., **when the recipient exports the goods he shall provide copy of the shipping bill or bill of export containing details of GST No. and Tax Invoice of the registered supplier along with proof of export general manifest that the recipient and a copy of the same shall also be filed with the jurisdictional officer of the registered supplier.**

You have to export under letter of undertaking without payment of IGST. Of course, you can take credit of the 0.1 per cent and claim refund of the same, as well as the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods. Please see notification 75/2017-Central Tax dated December 29, 2017 that amends the relevant CGST Rules

Few Questions raised:

We are supplying to merchant exporter and charging 0.1 per cent IGST. Our ITC is accumulated. Can we file refund application on the grounds of inverted tax structure?

Yes. You can do so under Section (3) (ii) of CGST Act, 2017 read with rule 89 of the CGST Rules, 2017 and in accordance with CBEC Circular no. 24/24/2017-GST dated December 21, 2017.

The registered supplier shall not be eligible for the above mentioned relief if the registered recipient fails to export the said goods within a period of ninety days from the date of issue of tax invoice. And, then, such supplier is liable to pay tax at normal rate of tax under GST Rate Schedule.

"Force Majeure"- Implications for Infra Sector

Sushil Verma, Advocate

Meaning of Force Majeure:

The term has its origin from French, meaning "*greater force*". Collins Dictionary defines "*force majeure*" as "*irresistible force or compulsion such as will excuse a party from performing his or her part of a contract*"

The term has been defined in Cambridge Dictionary s follows:

> "an unexpected event such as a war, crime, or an earthquake which prevents someone from doing something that is written in a legal agreement".

In Merriam Webster Dictionary the term has been defined as "*superior or irresistible force*" and "*an event or effect that cannot be reasonably anticipated or controlled*".

***Force Majeure and the doctrine of frustration*:**

Frustration is an English contract law doctrine that acts as a device to set aside contracts where an unforeseen event either renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract.

The parties shall be excused if substantially the whole contract becomes impossible of performance or, in other words, impracticable by some cause for which neither was responsible. The spirit of force majeure and the doctrine of frustration have been embodied in sections 32 and 56 of the Indian Contract Act.

With the present pandemic subsisting and may subsist a bit longer in my view, the parties to an executed contract can resort to fresh negotiations or may even avoid the performance of the contractual obligations if they are able to invoke material adverse clauses in their executed contracts. Of course the party taking recourse to this will have to bring on record the evidence and prove that pandemic has materially and adversely affected the performance of the contract on his part.

Extreme and unreasonable obstacles, unreasonable expenses, grave injury or heavy losses may be a few factors that the parties normally quote

to avoid a promise made in the executed contracts. A severe shortage of raw materials or of supplies due to war, embargo, local crop failure, unforeseen shutdown of major sources of supply, or the like, which either causes a marked increase in cost or prevents performance altogether may bring the case within the ambit of this doctrine.

But in most cases defaulting parties take a plea that due to the above factors the performance of the contract has become difficult or impracticable . But the Courts have consistently held that to invoke force majeure the non performing party will have to bring on record circumstances that are much more than the issue of impracticability. ***Mere change in the degree of difficulty or expense due to such causes as increased wages, prices of raw materials, or costs of construction, unless well beyond the normal range, does not amount to impracticability since it is this sort of risk that a fixed-price contract is intended to cover****.*

The defaulting party has to prove and demonstrate not only that the force majeure event was unforeseeable but also that the availability and delivery of its promises made to the other party were affected by the occurrence of a force majeure event

Indian Contract Act recognises the Force Majeure doctrine.

Section 32 of the Indian Contract Act stipulates that contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened; If the event becomes impossible, such contracts become void. Even if the agreement does not contain a specific provision to this effect then in such a case doctrine of frustration under Section 56 of the Indian Contract Act shall apply. The section provides that a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.Hon'ble Supreme Court of India in*Energy watchdog Vs. Central Electricity Regulatory Commission* reported at *2017 (4) SCALE 580 followed the above law.*

Impossibility under S.56 doesn't mean literal impossibility to perform (owing to strikes, commercial hardships, etc.) but refers to those cases where a supervening event beyond the contemplation and control of the parties (like the change of circumstances) destroys the very foundation upon which the contract rests, thereby rendering the contract 'impracticable' to perform, and substantially 'useless' in view of the object and purpose which the parties intended to achieve through the contract.

The initiatives taken by the Government of India deserve a special mention. Government of India is taking necessary measures in order to prevent further disruption in international trade and commerce by declaring outbreak of COVID-19 as a force majeure event. For instance, Ministry of Finance issued an office memorandum dated February 19, 2020 ("**Memorandum**") which states that Force Majeure clause can be invoked in Government contracts if there is a "disruption in supply chain due to spread of corona virus in China or any other country". The Memorandum further states that COVID-19 should be considered as a case of "natural calamity". Further gaining strength from the Memorandum, the Ministry of New & Renewable Energy has issued an Office Memorandum dated March 20, 2020 which directs all Renewable Energy implementing agencies of the Ministry of New & Renewable Energy (MNRE) to treat delay on account of disruption of the supply chains due to spread of COVID-19 in China or any other country, as Force Majeure event.

To invoke an event as a force majeure event on fulfilment of the following conditions: Defauliting party trying to avoid contractual obligations must bring

1. **That an unexpected and intervening event occurred which is forcing us to avoid the contract- it could be an Act of God beyond the control of both the parties especially the defaulting party.**

2. **That such an event could not be foreseen at the time of execution of the Contract.** A party's non-performance will not be excused where the event preventing performance was expected or was a foreseeable risk at the time of the execution of the agreement; **and**

3. **That the unforeseen event like Covid 19 or an Act of God like Tsunami made the performance of contractual obligations impossible or impracticable**

4. **The parties have taken all such measures to perform the obligations under the agreement or atleast to mitigate the damage:** It is required that a party seeking to invoke force majeure clause should follow the requirements set forth the agreement, i.e. to provide notice to the other party as soon as it became aware of the force majeure event, and should concretely demonstrate how the said situation has directly impacted the performance of obligations under the agreement. This is very critical indeed

and the Courts do ask whether all precautions were taken by the defaulting party to satisfy this clause. Hence, keep all evidence ready.

Covid 19 - Whether a Force Majeure event? No ready made answer really.

In the light of COVID- 19, a pertinent question that may arise here is whether COVID- 19 shut down will be regarded as a force majeure event for all the agreements, providing a leeway to the parties claiming impossibility of performance? Further, whether such non-compliance of the terms of the agreement will neither be regarded as a "default committed by any party" nor a "breach of contract"?

In **Satyabrata Ghose v. Mugneeram Bangur& Co., 1954 SCR 310[12]**, the Hon'ble Apex Court had adverted to Section 56 of the Indian Contract Act. The Supreme Court held that the word "impossible" has not been used in the Section in the sense of physical or literal impossibility. To determine whether a force majeure event has occurred, it is not necessary that the performance of an act should literally become impossible, a mere impracticality of performance, from the point of view of the parties, and considering the object of the agreement, will also be covered. Where an untoward event or unanticipated change of circumstance upsets the very foundation upon which the parties entered their agreement, the same may be considered as "impossibility" to do as agreed.

Subsequently, in **Naihati Jute Mills Ltd. v. Hyaliram Jagannath, 1968 (1) SCR 821[13]**, the Supreme Court also referred to the English law on frustration, and concluded that a contract is not frustrated merely because the circumstances in which it was made are altered. In general, the courts have no power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events.

Action Points required immediately:

- Quickly notify the contracted parties regarding the occurrence of a force majeure event, in the manner provided under the contract.

- Keep ready, collect and analyseall documents related to the force majeure event, as the same would serve as a vital evidence at the time of dispute resolution.

- **Ensure a detailed evaluation of the contract and other related aspects by a legal expert.**

The most generic clause under most force majeure clauses is the 'Act of God', and the Covid- 19 can be brought under the ambit of the same.

In the absence of a force majeure clause, any party could also invoke the doctrine of frustration under Section 56 of the Indian Contract Act, 1872. In order to invoke the same, parties must show that the performance of a contract has become impossible, and the arrangements and conditions have become fundamentally different from those envisaged in the contract. The parties also have the option to invoke several clauses such as price adjustment clauses, limitation or exclusion clauses, material adverse change clauses, and many others such clauses in order to limit the liabilities arising from non-performance or the partial performance of the contractual obligations. The ability to invoke such grounds would depend on the wording of the Contracts, the application of case-laws on these clauses, and how these clauses would be interpreted by the tribunals, courts, and other adjudicatory bodies.

In the case of ***Energy Watchdog Vs. Central Electricity Regulatory Commission &Ors***(2017) 14 SCC 80 the Supreme Court of India, restated the law of force majeure and laid down the following guidelines to be mindful of while invoking a force majeure clause:

1. The very basis of such clauses is that the events are beyond the reasonable control of the parties and in such conditions parties cannot be held liable for non-performance of obligations under the contract.

2. While analysing the force majeure clause, it is also necessary to analyse if best endeavours have been taken to mitigate force majeure event.

3. For an event to qualify as a force majeure, it is necessary that the same is unforeseeable by the parties.

4. The event has actually rendered the performance impossible or illegal.

Thus, any impact of COVID-19 may be covered as a force majeure event provided that the parties invoking the same shows that reasonable steps towards mitigating the same have been taken and as a result no alternate means for performing the obligation is left.

However, it does not give a blanket protection against any non-fulfillment of contractual terms. It depends on the mutually agreed upon events and obligations to be covered by this clause.

Invocation of Force Majeure clause in itself won't guarantee an escape from the obligation. The onus actually lies with the party, which wants to invoke the force majeure clause to establish an existence of such events, circumstances or conditions which result in force majeure. A very difficult legal exercise that requires a lot of data, clarity on the contractual clauses and collation of evidence in support of the claims made by the defaulting party.

Bombay High Court Latest Judgment – denies relief to steel importers based on Covid 19

The Bombay High Court has ruled that since the lockdown would be for a limited period, it could not come to the rescue of a steel importer so as to enable it to resile from its contractual obligations to make payment. *(Standard Retail Pvt. Ltd vs M/s G. S. Global Corp &Ors)*

Relying on Section 56 of the Indian Contract Act, 1972, it was the Petitioners' case that in view of the COVID-19 pandemic and the lockdown declared by the Central/State Government, its contracts with the sellers were terminated as unenforceable on account of frustration, impossibility and impracticability.

Several steel importers contended before the court that their contracts with South Korea-based Hyundai Corp and GS Global stood terminated as unenforceable on account of frustration, impossibility and impracticability. Due to the virus-related lockdown declared by the central government they could not receive the steel product shipments, the importers argued. Hence, they moved the Bombay High Court

The court however declined this plea for urgent relief. In his order, Justice AA Sayeed, noted that letters of credit are an independent transaction with the bank; and the underlying dispute between the importers and South Korean sellers doesn't concern the bank. The force majeure clause in the contracts is applicable only to the South Korean exporters, and cannot support the case of the importers.

The Latest Judgment of Supreme Court (May 2020)

In South East Asia Marine Engineering And Constructions Ltd (Seamec Ltd) vs. Oil India Ltd the Supreme Court has held that Doctrine

of "Force Majeure" & "Frustration of Contract": Under Indian contract law, the consequences of a force majeure event are provided for u/s 56 of the Contract Act, which states that on the occurrence of an event which renders the performance impossible, the contract becomes void thereafter. When the parties have not provided for what would take place when an event which renders the performance of the contract impossible, then S. 56 of the Contract Act applies. The effect of the doctrine of frustration is that it discharges all the parties from future obligations.

> "56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.
>
> Contract to do act afterwards becoming impossible or unlawful—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

The Supreme Court observed:

> "When the parties have not provided for what would take place when an event which renders the performance of the contract impossible, then Section 56 of the Contract Act applies. When the act contracted for becomes impossible, then under Section 56, the parties are exempted from further performance and the contract becomes void.

As held by this Court in Satyabrata Ghose v. Mugneeram Bangur & Co., AIR 1954 SC 44:

> "15. These differences in the way of formulating legal theories really do not concern us so long as we have a statutory provision in the Indian Contract Act. In deciding cases in India the only doctrine that we have to go by is that of supervening impossibility or illegality as laid down in Section 56 of the Contract Act, taking the word "impossible" in its practical and not literal sense. It must be borne in mind, however, that Section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties." (emphasis supplied) However, there is no doubt that the parties may instead choose the consequences that would flow on the happening of an uncertain future event, under Section 32 of the Contract Act."

COVID 19 and GST

In a few recent Advance Rulings, in the specific facts and circumstances of the said cases, the Tax authorities have been taking a view that payments under an Arbitration Award would be liable to GST as it amounts to *"agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"* as per Clause (e) of Entry No. 5 of Schedule II of the CGST Act. In such a situation, it may be possible to contend that the amount under arbitration, being awarded with no obligation of a *quid pro quo* ought not be seen as a 'supply' under Section 7 of the CGST Act including Entry 5(e) of Schedule II thereof.

So friends, advise your clients with a caution and after analysing their contractual clauses and to see whether on such clauses force majeure can be invoked.

Let us learn together.

Refund in case of Inverted Duty Structure under GST

Sushil Verma, Advocate

1. As per Section 54(3) of CGST Act, 2017, refund of accumulated ITC will be granted where the credit accumulation has taken place on account of inverted duty structure. It may be noted that this would include even those cases where supply has been made to merchant exporters under Notification no. 40/2017- Central Tax (Rate) dated 23.10.2017 or notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017 or both.

2. The refund of accumulated credit will be granted once it is established that the goods or services are covered under inverted duty structure. The intention of the legislation is to grant the refund of accumulated credit resulting on account of procurement of inputs and input services only. However, in April 2018, the relevant provision for granting the inverted duty refund were tweaked to restrict the scope of refund to inputs only and not to input services. Further, in June 2018, the said amendment was given retrospective effect i.e. from the date of implementation of GST, July 1, 2017. The rationale given for restricting the scope of refund is the legislative intent to grant the refund for inputs used in outward supplies only. These amendments have resulted in inconsistency between general principles provided in the GST legislations read with the manner of determination of refund as prescribed.

3. **Rate tax on inputs is higher than the rate of tax on output supplies:** accumulation is due to rate of tax on input is higher than rate of tax on output;

1. The Output Supplies shall not be exempted or Nil Rated.
2. The output is not notified as ineligible for getting refund under Section 54(3)(ii)

The term input is defined under Section 2(59), the term “input” means any goods **other than capital goods** used or intended to be used by a supplier in the course or furtherance of business.

4. A registered person may claim a **refund** of unutilized ITC on account of **Inverted Duty Structure** at the end of any **tax** period where the credit has accumulated on account of rate of **tax** on inputs being higher than the rate of **tax** on output supplies.

5. **Inverted duty** structure means the scenario wherein the inward supplies are being taxed at a higher rate than the outward supplies. Such unbalancing **tax** structure results into accumulation of **tax** credits in the hands of the **tax** payers with no clear foreseen usage.

6. A situation can arise where while, in certain cases, the final supply attracted a lower rate of say 5% or 12%, procurements (inputs, input services or capital goods) were / are subject to a higher rate of say 18% or 28%, resulting in credit accumulation. While the legislation was drafted to accommodate for refund of such accumulated credit, **it is the interpretation of the provision and subsequent amendments in CGST Rules which created a bit of confusion in the minds of the members of industry.**

7. Under GST, all GST refund claims must be filed within 2 years from the relevant date. If the claim is in order, the refund has to be sanctioned within a period of 60 days from the date of receipt of the claim. Interest on the withheld refund is paid at the rate of 6%.

8. Accumulation of Input **Tax** Credit happens when the **tax** paid on inputs is more than the output **tax** liability. A **tax** period is the period for which return is required to be furnished. Thus, a taxpayer can claim **refund** of unutilised **ITC** on monthly basis.

9. A **registered person** may claim a refund of unutilized ITC on account of Inverted Duty Structure at the end of **any tax period** where the credit has accumulated on account of rate of tax on **inputs** being higher than the rate of tax on output supplies.

10. Exceptions where refund of unutilized input tax credit shall not be allowed in these cases :

1. Output supplies are nil rated or fully exempt supplies except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

2. If the goods exported out of India are subject to export duty.

3. If supplier claims refund of output tax paid under IGST Act.

4. If the supplier avails duty drawback or refund of IGST on such supplies.

11. **Tax period:** A tax period is a period for which return is required to be furnished.

First proviso to Section 54(3) of the CGST Act, 2017, states that,

"no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated ***on account of rate of tax on inputs being higher than the rate of tax on output supplies*** *(other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council."*

12. According to Instruction No. 8 to Form GST RFD-01 (form for claiming refund), such net ITC was to include inputs only for the purposes of refund under inverted duty structure creating a confusion as to whether the expression "inputs" used in Section 54(3) should be interpreted in terms of the definition of inputs under Section 2(59) and if so, refund for capital goods and input services cannot be availed or, should the provision be interpreted as if refund of all of the unutilized ITC is permitted once credit has been accumulated on account of rate of tax on inputs being higher than that of output?

13. Thereafter, Rule 89(5) was amended by way of Notification No. 21/2018-Central Tax dated 18th April, 2018 wherein, the formula for maximum refund amount was amended to specifically include the turnover of inverted rated supply of services as well in a welcome move for service providers. However, the Notification also amended the scope of expression "Net ITC" to specifically remove Input services therefrom (earlier cross reference to Rule 89(4) was removed). This was a strong signal to restrict the refund in respect of input services under inverted duty structure. Thereafter, a retrospective amendment was carried out to the CGST Rules (by Notification No. 26/2018-Central Tax dated 13th June 2018) to substitute the formula for "Maximum refund amount" and the scope of "Net ITC" under Rule 89(5) with effect from July 1, 2017.

14. The interpretation so far of the amended Rules and the definition of net ITC can be that inverted duty refunds will not include GST paid for input services as the law restricts the refund only on "Inputs" even though Section 2 defines only "input".

15. However, it is legally debatable to argue that refund under inverted duty structure requires interpretation of the expression "inputs" as all

procurements including input services used in making outward supplies. Accordingly, even input services should be eligible for refund therein. Considering that goods and services are taxed equally, the refund provision should also equally apply for input services as well and restricting refund on input services merely because they are not covered by the expression “inputs” may be unreasonable and absurd.

16. However, the Government also has the power to notify supplies where refund of ITC will not be admissible even if such credit accumulation Refund of Unutilized ITC GST(Goods and Services Tax)is on account of an inverted duty structure. In exercise of the powers conferred by this section, the government has issued Notification no. 15/2017-Central Tax (Rate) dated 28.06.2017 wherein it has been notified that refund of unutilised input tax credit shall not be allowed under subsection (3) of section 54 of the said CGST Act, 2017, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the CGST Act, 2017. The supplies specified under item 5(b) of Schedule II are **construction services**. In respect of goods, the central government has issued Notification no. 5/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification no. 44/2017-Central Tax (Rate) dated 14.11.2017. The government has notified the following goods in respect of which unutilized ITC will not be admissible as refund: - It has been clarified by the Government vide Circular no. 18/18/2017- GST dated 16.11.2017, that the aforesaid notification having been issued under clause (ii) of the proviso to sub-section (3) of Section 54 of the CGST Act, 2017, restriction on refund of unutilised input tax credit of GST paid on inputs will not be applicable to zero rated supplies, that is (a) export of goods or services or both; or (b) supply of goods or services or both to a Special Economic Zone Developer of special Economic Zone Unit. Accordingly, as regards export of fabrics, it has been clarified that subject to provisions of Section 54(10) of the CGST Act, 2017, a manufacturer of such fabrics will be eligible for refund of unutilised input tax credit of GST paid on inputs (other than input tax credit of GST paid on capital goods) in respect of fabrics manufactured and exported by him.

17. Further, Rule 89(2) (h) of CGST Rules, 2017 stipulate that refund claim on account of accumulated ITC (where such accumulation is on account of inverted duty structure) has to be accompanied by a statement containing the number and date of invoices received and issued during a tax period. Rule 89(3) of CGST Rules, 2017 also provide that where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.

18. Formula for calculation of Maximum Refund Amount = (Turnover of inverted rated supply of goods and services X Net input tax credit / Adjusted total turnover) – Tax payable on such inverted rated supply of goods and services

19. **Rule 89(5) of CGST Rules reads as follows:**

"(5) In case of refund on account of inverted duty structure, refund of ITC shall be granted as per following formula

Maximum refund amount= {(Turnover of inverted rated supply of goods and services) Net ITC/Adjusted Total Turnover}- tax payable on such inverted rated supply of goods and services*

Explanation:- For the purposes of this sub-rule, the expressions –

(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under subrules (4A) or (4B) or both; and ….."

20. In case there is a mix of inputs – some of which are higher than the final rate and some are lower, the entire gamut of inputs will be considered for calculation of refund, not just those that are chargeable to a higher duty.

Form RFD 01A has to be filed with relevant supporting documentation and can be tracked using the Track Applications Status on the GST Portal

In the following circumstances, despite higher tax on inputs, no claim can be entertained –

In case of input services, as services being amenable to varied pricing are not covered under the inverted tax refund restructure.

Capital goods are outside the purview of "inputs", as the tax department considers only consumables going into the final product as inputs for determining the refund.

Nil rated or fully exempt supplies of goods or services are also outside the realm of an inverted tax refund of input tax credit.

Despite meeting the above three conditions, a claim may be denied if it pertains to items specifically mentioned in notification no. 05/2017-Central tax (rate) dated 28.06.2017 that includes items such as woven cotton, corduroy, railway equipment etc.

Let's learn together.

Time Limits under Section 16(4) of the CGST Act 2017- To Claim Input Tax Credit? Are these Sacrosanct? Or is there an Escape Available?

Sushil Verma, Advocate

1. Today I am writing a little piece of article after a while. And I am quite engrossed with this issue of interpretation of Section 16 as a whole with specific reference to the limitation set out in Section 16(4) of the CGTST Act? I am aware most of us are seized with this issue which is yet to go into litigation and it will go sooner than later; I am sure.

2. I am aware limitation is generally a procedural law that supplements the substantive provision and ensures that an accrued right or a concession created by the statute must remain preserved notwithstanding the fact that limitation to reap that right or concession may have expired – whether it is given in the Act or in the Rules. I am also aware of the rulings where the Supreme Court interpreting the special statutes read with Sections 29(2) and Section 5 of the Limitation Act under contextual circumstances extended the limitation period and allowed the right to fructify. The question is whether the limitation periods prescribed in Section 16(4) are actually procedural in nature or a part of the substantive law?

3. But does Section 16 – the main provision through which right to input tax credit (defined in Section 2) actually created an accrued right in favor of the tax payer? Is right to claim input tax right is actually a statutory right? Or the right to claim input tax right is a concession given by the Legislature under the CGST and under the IGST Act which is conditional in nature? I am aware of the judgments of the Tribunals and of High Courts where the right to claim input tax credit was held sacrosanct notwithstanding the limitations to claim the same attached in the statute and notwithstanding these judgments I write this piece of law the way I understand today and in the overall scheme of the GST Input Tax Credit mechanism.

4. Section 16(4) of the CGST Act as applicable to IGST Act as well through the operation of Section 20 of the IGST Act puts an embargo or a legal hurdle to avail or claim the input tax credit as per law if the registered tax payer has filed the return in the form GSTR B for the tax periods July 2017 to March 18, for example after 30.4.2019 and or for that matter for the tax periods April 2018 to March 2019 after 20.20.2019.

5. Section 16 of the CGST Act, 2017 deals with the eligibility and conditions for taking input tax credit.

Sub-section (1) of section 16 of the Act provides that 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.

Sub-section (2) of section 16 of the Act provides the conditions to be fulfilled before a registered dealer is entitled to credit of any input tax in respect of any supply of goods or services or both.

Sub-section (3) of section 16 also provides for a situation where input tax credit shall not be allowed where a registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961.

Sub-section (4) of section 16 provides that 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**

6. Sub Section (4) of the Section 16 is couched in a very imperative language and perhaps make the limitations with the suffixing words “which ever is earlier” as a legislature mandate.

7. Sub-section (1) of Section 16 of the CGST Act entitles a registered tax payer to avail credit of input tax (defined in Section 2 of the CGST Act) subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of the CGST Act.

The plain interpretation of such a “subject to” provision is that a registered tax payer can avail input tax credit only when he fulfils the conditions laid down in Section 16(1) of the CGST Act. And hence the input tax credit will not be available if the conditions set out in Section 16 are not met with strictly.

Section 16(2) is a non-obstante clause and is a statutory provision creating strict compliance by a registered tax payer to avail input tax credit as per eligibility under Section 16(1).

Section 16(4) sets out clearly the time lines within which a registered tax payer has to avail input tax credit as set out in Section 16(1) of the CGST Act and mandates in no uncertain terms that 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.

8. The central issue is whether Section 16(4) is not in sync with Section 16(1). Can we say that provisions of Section 16(4) cut short my availing of ITC under Section 16(1) or whether the provisions of Section 16(4) can be deemed to be arbitrary and illegal?

9. The legal question is whether section 16(1) creates a Right in Rem in the registered dealer to avail ITC and whether this right can be deemed to be an accrued right or a right subject to conditions mentioned in Sections 16(2)(3) and (4)?

A principle of statutory interpretation which needs to be noticed is that a provision in the statute is not be read in isolation rather it has to be read along with other related provisions itself, more particularly when the subject matter dealt with in different sectors or parts of the same statute is the same.

10. In ALD Automotive Pvt. Ltd. vs. The Commercial Tax Officer and others) ***(2019) 13 SCC 255***, the dealers filed many SLPs and Civil Appeals, more than 45, wherein input tax credit was disallowed under Section 19(11) of the Tamil Nadu VAT Act which is similar to Section 16(4) – dealing with limitations placed on availment of the input tax credit by the registered dealers.

SC noted as follows in their order:

> 11. "It is submitted that Section 19(11) makes the enforcement of the substantive right unreasonable as well as arbitrary and violative of Article 14 and 19(1)(g) of the Constitution. Such right under Section 3(3) of the Act cannot be taken away by Section 19(11) which is only a procedural provision. Section 19(11) is inconsistent with the charging Section 3(3) of the Act. In any view of the matter, Section 19(11) is only a directory provision and cannot be held to be mandatory. Sections 3(3) and 19(11) being part of the same scheme that is to allow Input Tax Credit, Section 19(11)

has to be construed harmoniously so as not to take away the right which has been given under Section 3(3). Statutory benefit under Section 3(3) is mandatory being part of charging Section. Section 3 which entitles claim of Input Tax Credit does not contain any limitation hence such right could not be hedged by any limitation, as contained in Section 19(11)..

Zzz

22. Can it be said that above provisions are inconsistent to Section 3(3) which permits reduction of tax of registered dealer, answer, obviously is No. When the input tax credit is to be allowed and when it is to be disallowed is elaborated in Section 19 which is self-contained scheme and benefit under Section 3 sub-Section (3) can be claimed only when conditions as enumerated in Section 19 are fulfilled.

Zzz

33. A Three-Judge Bench in (2005) 2 SCC 129, India Agencies (Regd.), Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore had occasion to consider Rule 6(b)(ii) of Central Sales Tax (Karnataka) Rules, 1957, which requires furnishing original Form-C to claim concessional rate of tax under Section 8(1). This Court held that the requirement under the Rule is mandatory and without producing the specified documents, dealers cannot claim the benefits. Following was laid down in paragraph -

"13.....Under Rule 6(b) (ii) of the Karnataka Rules, the State Government has prescribed the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and Rule 6(b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory....."

The Supreme Court further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession.

In para 43 the Supreme Court observed as under:

….”It is submitted that time period as contained in section 19(11) in not akin to law of limitation. We have already found that expression “shall” occurring in Section 19(11) IS MANDATORY whose compliance is necessary for claiming input tax credit…..”

The Supreme Court dismissed all the appeals and disallowed the input tax credit that was claimed in violation of Section 19(11) i.e. limitations prescribed therein.

11. **We cannot read section 16(4) in isolation** and has to be read along with sub-section (1), (2) and (3) of Section 16 of the Act. In ***Kailash Chandra Vs. Mukundi Lal, (2002) 2 SCC 678***, the Apex Court held as under: (quoted in the above SC Judgment)

“A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject matter dealt with in different sections or parts of the same statute in the same or similar in nature”

Section 16 makes it clear when the registered tax payer will get ITC and when he will not. Section 16(4) clearly mandates in. no uncertain terms that beyond the limitations prescribed in this sub-section input tax credit cannot be claimed. That is the law and all registered tax payers have to follow. Section 16 and its sub sections make it clear as to when can the registered tax payer avail the input tax credit.

The Apex Court in ***ALD Automotive Pvt. Ltd. vs. Commercial Tax Officer,*** clearly laid down that if the statute provides and stipulates conditions for availment of input tax credit, that credit of input tax is not an absolute but a restricted or conditional right and is subject to the fulfilment of conditions as laid down in the said statute.

In ***State of Karnataka Vs M.K. Agro Tech (P) Ltd, (2017) 16 SCC 210*** the Apex Court held that taxing statutes are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given and under what circumstances.

It is a settled principle of interpretation that whenever concession is given by a statute, the conditions to claim that concession are to be strictly complied with in order to avail such concession. I**t is not the right of the dealers to get the benefit of input tax credit but it is a concession**

granted by virtue of Section 16 of the Act. As a fortiori, conditions specified in Section 16 including sub-section (4) must be fulfilled.

To further reinforce their conclusion the SC further observed in ALD Automotive case:

> *"The conditions under which input tax credit is to be given are all enumerated in Section 19 as noticed above. The condition under which the concession and benefit is given is always to be strictly construed. In event, it is accepted that there is no time period for claiming input tax credit as contained in Section 19(11), the provision becomes too flexible and gives rise to large number of difficulties including difficulty in verification of claim of input credit."*

It is thus crystal clear that the scheme envisaged under Section 16 is a self contained code and stipulates conditions subject to which a registered tax payer can claim input tax credit and if conditions to claim this conditional right subject to conditions are not fulfilled then in my view there is no question of any input tax credit being given to him notwithstanding satisfaction of section 16(1) and 16(2) as non -obstinate clause shall override these two sub sections. Since availing input tax credit has been held to be a conditional right or a conditional concession there is no vested right to claim input tax credit when the conditions precedent to claim that concession is not fulfilled. Some experts say Section 16(4) is arbitrary and is repugnant to Section 16(1) – well in my view NO. Both are mutually exclusive and have to be read together to cull out the intention of the legislature.

Concluding therefore, I feel that "input tax credit" as defined in Section 2 including RCM cannot be claimed beyond the limitation prescribed in Section 16(4) and if we claim or avail the same in our returns it can invoke Section 73 or Section 74 with collateral consequences mentioned therein.

Three Controversies – GST on Commercial Properties Renting; GST on Directors Salaries and Reverse Charge for SEZs.?

Sushil Verma, Advocate

1. Commercial Properties – Renting

A. If the supplier of services is a registered tax payer i.e. his aggregate turnover exceeds Rs. 20 lakhs, say for Delhi, then he will pay tax on forward charge basis on the total consideration by way of rent received. For example if the rent is Rs. 100000/- then he would charge 18 percent i.e. Rs. 18000/-. There is no deduction available under GST.

Place of Supply for such transactions is where the Property is situated. As per the GST Act, Place of Supply for services related to immovable property is the location of the immovable property. Iff the property is situated in UP then place of supply will be in UP and if the landlord is also registered in UP then it is an intra- state transaction and CGST + SGST should be charged on the invoice value. But if the landlord is registered in Delhi then it will be an inter-state transaction and IGST should be charged because place of supply is the location of the property which is in Gujarat.

If the supplier of services and recipient of services are both unregistered,then there is no GST chargeable for renting of commercial property whether forward or reverse charge.

B. Reverse Charge – Confusion.

Section 9(4) of CGST / SGST (UTGST) Act, 2017 / section 5(4) of IGST Act, 2017 provides that the tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Accordingly, wherever a registered person procures supplies from an unregistered supplier, he need to pay GST on reverse charge basis.

Initially by operation of Section 9(4) of the CGST Act, if the recipient of such services received services from unregistered supplier of services, then reverse charge was applicable i.e. the recipient should have paid RCM on the entire consideration he paid for receipt of such services to the unregistered supplier. However, from October 2017 the application of provisions of Section 9(4) were deferred and it is only on 1st February 2019 that Section 9(4) was amended and new scheme of the law was made applicable where the Government was empowered to notify supplies where reverse charge will be applicable.

All the provisions of the Act will apply to such recipient as if he were the person liable for paying the tax in relation to the supply of goods or services.

Reverse Charge Mechanism (in case of supplies made by unregistered persons to registered persons) will apply, starting from 1st Feb 2019, only on specified goods/services and specified persons.

The list of persons or items subject to the provisions is yet to be notified.

Brief History of Notifications is given below:

On **28th of June, 2017** through **Notification no. 8/2017- Central Tax (Rate)** the government exempted the tax payable on RCM under this section. On its 1st proviso the exemption limit was constricted to Rs. 5,000/- of aggregate value of supplies from any or all the suppliers within a day.

On **1st July, 2017 Notification No. 8/2017- Central Tax (Rate)** came into force.

On **13th October, 2017** through **Notification No. 38/2017 Central Tax (Rate)** the 1stproviso of **Notification No. 08/2017 Central Tax (Rate)** was omitted. The exemption was made applicable for all registered person up to 31st March, 2018.

On **23rd March, 2018 Notification No. 38/2017 Central Tax (Rate)** was amended through **notification No. 10/2018 Central Tax (Rate)**. The exemption period was extended upto 30th June, 2018.

On **29th June, 2018 Notification no. 12/2018 Central Tax (Rate)** was passed amending **Notification No. 10/2018 Central Tax (Rate)**. The period of exemption was further extended upto 30th September, 2018.

On **06th August, 2018** the period of exemption as declared through **Notification no. 12/2018 Central Tax (Rate)** was further extended to 30th September, 2019.

On **29th August, 2018** The **Central Goods And Services Tax (Amendment) Act, 2018** (No. 31 Of 2018) was passed where the amendment of the Section was made through substitution of the whole as –

> "The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.".

On **29th January, 2019 Notification No. 08/2017 Central Tax (Rate)** was rescinded, but the things done or omitted to be done before such rescission was kept unaltered.

Again **Notification No. 2/2019 Central Tax** was also issued on that date for bringing amendment as per The Central Goods And Services Tax (Amendment) Act, 2018 (No. 31 Of 2018) in force from 1st February.

On **1st February, 2019** The Central Goods And Services Tax (Amendment) Act, 2018 (No. 31 Of 2018) and **Notification No. 8/2017 Central Tax (Rate)** got rescinded.

On **29th March, 2019** through **Notification No. 07/2019 Central Tax (Rate)** the Government notified that Section 9(4) will be applicable for "Promoters" only for the supplies mentioned therein. The new provision applicable from 1st April 2019 deals with construction activities undertaken by the Promoters and deals with cement, steel etc. and not with renting of commercial properties.

Renting of commercial properties does not find any place there so far and hence if the recipient pays any rent for commercial

property to an unregistered supplier of services, then no RCM is payable.

Many people ask me if the supplier was required to be registerd and he did not get himself registered then what is the ffect on recipient: my answer is the position of recipient remains unaltered i.e. he has no on liability of GST to discharge on the rent consideration he pays to the supplier.

Concluding therefore : RCM U/s 9(4) CGST Act, 2017 is non applicable **until Government Notify *a class of registered persons and specified categories of goods or services. Renting is not yet specified and hence if rent consideration is paid by the registered recipient to the un-registered supplier of such services, the recipient is not to pay GST on reverse charge under Section 9(4) and this position is more or less the same since October 2017 where the provisions of 9(4) were deferred and this deferment continues till new provision was brought in by the appropriate legislature on 1st Feb 2019.***

However is the supplier of services is a registered tax payer or is required to be registered then forward charge shall be applicable and notwithstanding whether he charges or not the recipient has no liability to pay any GST on reverse charge basis.

Directors Salary and GST – A controversy not dyeing yet

Section 7(2) starts with the word "NOTWITHSTANDING" hence, it is an overrides the very section of 7(1) which defines what is supply. Section 7(2) of CGST Act reads as:

7(2)

Notwithstanding anything contained in sub-section (1),–

(a) activities or transactions specified in **Schedule III** ; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, **shall be treated neither as a supply of goods nor a supply of services**.

> Schedule III clearly excludes services by an employee from the purview of the GST. Read the full language employed by the Legislature in Schedule III.

The function of a non -obstinate clause like the one used in Section 7(2) is that it shall have overriding effect e.g. even if such a supply was covered by Section 7(1), it shall not be considered as supply for the purpose of Section 7 and hence not chargeable to GST under Section 9 read with Section of the CGST Act 2017. , Therefore any activity covered under Schedule III is not a supply under GST Act even it qualifies as Supply under section 7(1) of CGST Act.

The problem is neither the terms Director nor the term Employee or Employer have been defined in the CGST Act. Also the phrase used "in the course of " or in relation to" have been defined in the Act.

So if we come to conclusion based on whatever contractual documents with the Directors that they are nothing more than full time employees of the Companies a view is possible that they will fall under Section 7(2), Schedule III and their supply of services as full time directors/employees of the Company will not be considered as a supply under Section 7(1) of the CGST Act and hence out of Section 9 – charging Section of the Act.

This controversy has been created by a leading advance ruling of Rajasthan Bench in the case of Clay Craft. I am sure all of you are aware of this and I am not going to burden this article further with the details of that ruling.

In an application filed before the Rajasthan bench of the AAR, Clay Craft India Pvt Ltd had sought clarification on whether salaries paid to directors would attract Goods and Services Tax.

The company said its directors are working as employees for which they are being compensated by way of a regular salary and other allowances.

"The company is deducting TDS on their salary and PF laws are also applicable to their service. Therefore, in all practical purposes these directors are the employees of the company and are working as such besides being Director of the company," it said.

In its ruling, the AAR said,

> "the consideration paid to the directors by the applicant company will attract GST under reverse charge mechanism..."

The AAR, while analysing the case, said that Director is the supplier of services and the applicant of the company is the recipient of the services.

It said that the Central Tax (Rate) notification clearly states that services supplied by a Director of a company will be considered as supply and hence directors cannot be called an employee.

"So it is very clear that the services rendered by the Director to the company for which consideration is paid to them in any head is liable to pay GST under RCM (Reverse Charge Mechanism)," the AAR order said.

The Rajasthan AAR in the above decision has held as under:

"It is very clear that the services rendered by the Director to the company for which consideration is paid to them under *"any head"* ***is liable to GST under reverse charge mechanism – Applicant company is located in the taxable territory and the Director's consideration is paid for the supply of services by Directors to the applicant company and hence same is liable to GST under RCM as provided under Entry No. 6 of*** *13/2017-CTR* ***issued u/s 9(3) of the Act, 2017."***

Latest Karnataka AAR ruling dated 4th May 2020

Salary paid to **Full-time Directors** Exempted From **GST** Regime.

In a Controversial issue Authority Advanced Rulings (AAR) Karnataka Bench comes up with a ruling on 4th May and it states that The **salary** of a **director** in a company is **not** liable to be taxed under **GST**.

This ruling by AAR Karnataka is opposite to a ruling given by the Authority of Advance Rulings (AAR) Rajasthan which came last month in a similar matter.

AAR, Karnataka in the case of Shri. Anil Kumar Agarwal, a whole time Director of a company (AR No. KAR ADRG 30/2020, daed 04.05.2020

The Applicant is Anil Kumar Agarwal and filed an application as an unregistered person to know whether salary to directors of a company attracts Goods and Service Tax (GST) or not. The applicant received a salary from a private company as a director of the same company, and that's why seek clarification.

The AAR said in this matter that The GST can't be levied when the director is an employee in the company however in the case of a non-executive director who is providing services to the company then the salary

will attract GST. The ruling further added that in these types of cases RCM (Reverse Charge Mechanism) will be utilized and the company will have to pay the GST. AAR Karnataka stated in the ruling that,

> "The incomes received towards salary/remuneration as a non-executive director of a private limited company, renting of commercial property, residential property and the values of amounts extended as deposits/loans/advances out of which interest is being received are due to be included in the aggregate turnover for registration".

The effect of this ruling, thought based on half baked facts and documentation before the AAR, is that the remuneration received by the applicant as Executive Director is not includable in the aggregate turnover, as it is the value of the services supplied by the applicant being an employee and hence covered by Schedule III to Section 7(2) e.g. not treated as supply under Section 7(1) of the CGST Act and hence not chargeable to GST under Section 9 – the charging section.

Further if the applicant receives the remuneration as a Non-Executive Director, uch remuneration is liable to tax under reverse charge mechanism under section 913) of the CGST Act 2017, in the hands of the company, under entry no 6 of **Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017**. Thus the value of the said services of the applicant being a Non-Executive Director are includable in the aggregate turnover, as it is the value of the taxable services supplied by the applicant, though the tax is discharged by the private limited company, under reverse charge mechanism.

My take on these two rulings is that both of them are chaotic and half baked. In the Karnataka ruling the AAR has noted that no documents have been provided. The law does not talk of any documents to be provided. Nor any principles have been set out in the law as to which director shall be treated as an Employee? Further the interplay of Section 9(3) read with 9(1) and Section 7(1) has not been elaborately discussed. It is indeed true that unless a supply is a taxable supply and satisfies the preconditions mentioned in Section 7(1) and not subject to any other sub-sections of Section 7 ; he provisions of Section 9(1) and therefore accordingly on Section 9(3) do not get invoked at all. Simply stated such supply cannot be taxed at all.

Can we say the Notification under Section 9(3) is a **"dead lumber**" taxing services provided by Director to a Company to be taxable on RCM Basis i.e. has the Government not presupposed that services provided by

Directors are covered by Section 7(1) and not by Section 7(2) of the CGST Act? Notification when issued under provisions of law becomes a part of that Statute itself. Notification has to be read and given meaning to and in my it is not going to be an easy one.

The Notification has not distinguished between full time directors and non -executive directors at all? Then can we distinguish notwithstanding the Karnataka Advance Ruling?

Can it not be supposed that the appropriate legislature presumed Directors not employees at all – and there is enough case law to this effect? I do not think a sweeping statement made by many of the experts that Directors are employees of the Company is justified and even Karnataka Ruling does not say so in that tone and tenor?

Notification and the language employed therein is quite imperative and strong? And it being a part of the Statute has to be read as such and given meaning to.?

I am of the view that the Legislature was well aware of the implications of such a Notification based on recommendation of the GST Council and still they issued it? The ramification of this Notification need a much wider deliberation and unless like in Service Tax Regime Ministry of Corporate Affairs and the Government issue clarification, asap, clarifying that a particular supply of of services by a certain set of Directors will be treated as supply of services by an employee in the course and in relation to his employment, and hence treated as No Supply at all under Schedule III to Section 7(2) this controversy will not end?

I am taking a totally different view than most of my friends who blindly agree with Karnataka Advance Ruling ? I for one will wait for further development of law and/or clarifications. After all a Notification has been issued by the Government under Section 9(3) of the CGST Act and it simply cannot be pushed under the carpet on one of the possible views that such supply of service is not a Supply at all?

Karnataka ruling is more chaotic than Rajasthan ruling in my view. It has simply stated certain full time directors services to be not taxable based on assertion of the applicant and without any documents. Are we to conclude that for every show cause we will carry the documents and contracts the Company has with Directors to bring on record the evidence in support of our claims that directors are employees in a particular circumstance and not employee in another? And such an examination of evidence shall be subjective satisfaction of the revenue officers and we

know what will happen? No, I do not such a horrendous law can be a universal law without any Rules or Definitions or Principles set out in the legislation itself?

More so, if the stake holders are so sure about the non-application of the Notification issued under Section 9(3) then such Notification can be challenged by way of Writ Petition before the High Court being beyond the powers of the Legislature? Why has it not been challenged so far even though more than three years have elapsed?

Concluding on this issue : I would strongly recommend provision for liability on this issue on RCM basis subject to time of supply rules and the limitation for claiming ITC under Section 16(4) of the CGST Act?

A law to be binding has to be universal : advance ruling is binding only on the applicant ? Rajasthan say contrary to what Karnataka says now. This confusion can be cleared by the Government only under GST Law and so far they are sitting tight on this even though many representations have been made to them. I think for this matter law will take its own course and I am of the view that Directors cannot always be employees of the Companies even though for certain specific Acts they may been treated as employees?

I know I am writing a very controversial piece of this Article but without dissent there can be no evolution of law; that is it. My take is let us keep our fingers crossed even though I will favour such supply of services by Directors to companies as no Supply at all? But friends this is only a view and not a law. Take your decisions carefully.

III. RCM and SEZ issues

Section 16 of IGST Act stipulates that the supply of goods and Services to SEZ units and Developers as 'Zero-rated supply' and the registered person can supply the goods or services or both either without payment of tax under Bond or LUT, or on payment of IGST. Section 16 read with Section 54 and further read with Section 17(5) of the CGST Act entitles the registered person/supplier to claim the refund of unutilised input tax credit when the supplies are effected without payment of IGST, or the supplier can claim refund of IGST when the supplies are effected on payment of IGST.

If supplies are on forward charge basis (the term not defined or used in the law) there is no issue. However, there is a big issue in claiming

input tax benefits for the supply of service which attract GST liability under Reverse Charge Mechanism (RCM).

The notification No. 10/2017-Integrated tax dated 28.06.2017 specifies certain categories of supply of services which attract GST liability on RCM basis, viz., Goods Transport Agency (GTA), Legal service, etc.

The receipt of such services by any business entity located in taxable territory, would attract IGST liability under RCM basis. Thus, the recipient unit would be liable to pay IGST under RCM basis.

As there is no requirement to pay GST, the supplier would not in my view execute a Bond or LUT, and not pay IGST to the government, on such supplies of services under RCM

Further neither the GST Law nor any provision in SEZ Law prescribe the conditions and procedures to be adopted for receipt of such services with the Zero-rated benefits when such supply attracts GST payment under RCM mechanism.

Section 16 of the IGST Act treats supply of all categories of services as 'Zero-rated' supply irrespective of the fact that such service attracts Forward charge or Reverse charge. And surely Section 16 does not distinguish between supplies made under Section 9(1) (presumably forward charge) and supplies made under Section 9(3) on RCM basis.

However, for availing the GST benefits by the zero rated suppliers, certain conditions and procedures should be followed viz., execution of Bond/LUT, etc.

Similarly, the Department of Commerce (SEZ Section) vide Letter No. F. No. 12/19/2013-SEZ dated 02.01.2018 has prescribed the list of default authorised services which are eligible to be sourced without payment of IGST by SEZ units and Developers. **The said default authorised service list covers inter alia legal services, GTA Service, etc., which attract payment of GST under RCM basis.** That is to say refundll be given under Section 54 read with Section 16/17 of the CGST Act applicable for IGST supply also by operation of Section 20 of the IGST Act.

Similar situation had cropped up under the Service tax regime also. Under the Service Tax Regime, the registered person could provide services without payment of service tax against Form A2. The CBIC vide Circular No. 142/11/2011-ST dated 18.05.2011 had clarified inter alia

that there is no difference in treatment of service tax paid under Forward charge and Reverse charge under the Finance Act, 1994. Therefore, the same document (Form A-2) based on which the supplier of service under Forward charge mechanism would claim service tax benefits, can be used by the recipient of service for claiming the service tax benefits under Reverse charge mechanism.

The question is whether supplies of services covered by Notification 10/2017 can be made through LUT or Bond or the recipient has to pay RCM compulsorily and claim refund. **My best friend and brother Rakesh Garg, the prolific writer on GST's original books**, will argue why not? Section 16 does not prohibit use of Bond or LUT for RCM supplies as notified under Section 5(3) of the IGST Act? He argues that Section 16 is a self -contained code and not subject to any other provision and therefore the provisions of all the three sub-sections are mutually exclusive then why should the recipient pay the RCM and claim refund and subject himself to examination by the proper officers? A fantastic argument to which I have no easy answer but I have a difficulty in subscribing to this view for the reasons given below.

If you recollect Section 68(2) of the Finance Act 1994 empowered the Government to notify the person who will pay service tax other than the service provider in respect of certain taxable services. There the Government did not specify Recipient . However, for the same purpose a similar provision in GST has been materially altered and vide Notification 10/2017- Integrated Tax (Rate) clearly stipulates that GST shall be levied on reverse charge basis on the recipient for all the services notified by the Government through a Notification on the recommendations of the GST Council under Section 5(3) of IGST Act or Section 9(3) of the CGST/State GST Acts.

If I am to legally analyse the two pari -material provisions of Section 68(2) and Section 5(3) read with the above Notification 10/2017 it is clear that both provide levy of tax on persons other than the suppliers/service providers; but under GST Section 5(3) clearly mandates that the Recipient shall pay the GST on reverse charge basis. There is no option left at all. And to reinforce this argument the term Recipient has been defined in Section 2(93) of the CGST Act as any person who is to pay the consideration as defined in Section 2(31) of the CGST Act. Since **the law mandates that only the Recipient shall pay the tax on reverse charge it can only lead to inescapable conclusion, in my view, that only the Recipient has to pay the tax and no other person can discharge the liability for payment of GST under Section 5(3) of the IGST Act for supply of services as notified in the above notification to SEZ.**

I may also quote a Constitution Bench Judgment of the Supreme Court of India in the case of Orient Weaving Mills (P) Limited v Union of India where the apex Court clearly held that Rules and Notifications as framed and issued by the Central Government shall have the effect as being enacted in the Central Excise Act and therefore become an integral part of the taxing statute itself. Relying upon this Notification, in my view, the GST Notification 10/2017 is a part of the IGST Act/State GST Acts itself and since Notification uses the term Recipient which is defined in Section 2(93) of the CGST Act, there is no escape except to read this definition for the purpose of the Notification 10/2017. Friends, in my view this is the only interpretation that is possible – may be it is very uncomfortable for our clients but that is the law in my view.

Clearly a conjoint reading the above Notification 10/2017 read with Section 5(3) of the IGST Act for SEZ etc. the liability of pay for services received as notified n the Notification shall be on the recipient e.g. SEZ etc. will have to pay reverse charge on the consideration they pay for receiving such services including lawyers, GTA etc. and claim refund subject to provisions of Section 54(3) read with Section 17(5) of the CGST Act.

Well friends read and do send critical comments to meat vsushil56@gmail.com

Difference of opinion is a part of evolution of law and that is how we all learn and how the Courts learn through us.

“Works Contracts under CGST – Ramifications under Law”

Sushil Verma, Advocate

The **Goods and Services Tax (GST)** has come into force w.e.f. 1st July, 2017 by subsuming various indirect taxes such as Excise Duty, VAT, CST, Entry Tax, Service Tax etc. Works contract is treated as composite supply of service under GST and are taxable @ 18%, 12% or 5% depending on the nature of works contract. In GST regime, the works contractor is required to raise Tax Invoice clearly showing the taxable work value and GST (CGST + SGST) separately.

A works contract is treated as supply of services under GST. Under the previous indirect taxes dispensation, there were issues in tax treatment of works contract. Both the Central Government (on the services component of a works contract) & the State Governments (on the sale of goods portion involved in the execution of a works contract) used to levy tax. Thus the same contract was subject to taxation by both Central and State Government. GST aims to put at rest the controversy by defining what will constitute a works contract (applicable for immovable property only), by stating that a works contract will constitute a supply of service and specifying a uniform rate of tax applicable on same value across India. Thus, under GST, taxation of works contract will be simpler and easier to administer.

1. A works contract is a mixture/combination of services and transfer of goods. Examples of works contract are the construction of a new building, erection, installation of plant and machinery etc.

   Definition of Works Contract under GST As per section 2(119) of CGST Act “works contract” is defined as a contract for: building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any Immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

   In simple words, any contract in relation to an Immovable property where services are provided along with transfer of goods is known as a “Works Contract”. Example of works contract – Building an

Apartment comes under Works Contract. The process of building comes under works contract.

Works Contract is a Supply of Services. Under Schedule II, entry no. 5(b) of CGST Act, it has been clearly stated that Works Contract amounts to supply of services, hence the confusion whether it will be categorized as supply of service or goods does not sustain anymore. General Rate of Tax @18% has been fixed for supply of services under Works Contract. Some of the activities under Works Contract attract 5% and 12% tax rate also.

Rates of GST for Works Contract Transactions: Refer [As per Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017, Notification no.24/2017-Central Tax (Rate) dated 21.09.2017 & Notification No. 01/2018-Central Tax (Rate)]

Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc. of an immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.

2. Input Tax Credit and Works Contract Transactions:

ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example a building developer may engage services of a sub-contractor for certain portion of the whole work. The sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his subcontractor as his output is works contract service. However if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company. Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor

would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.

Legal position in brief is mentioned below:

The works contractor shall be entitled to take input tax credit under section 16 of the CGST Act 2017 on all input (goods) and input services used in supply of works contract services – construction contract subject to the provisions of section 17(5) of the CGST Act.

The block credits under sections 17(5)(c) and (d) are specific conditions for works contracts which are read as follows:

> "(c) the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. (d)Goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course of furtherance of business."

The explanation under these clauses states that for the purpose of clauses (c) and (d) the expression 'construction' includes reconstruction, renovation, addition or alteration or repairs to the extent of capitalization to the said immovable property. The definition of plant and machinery is already given above.

Therefore, if the owner of the land wishes to construct a factory building on that piece of land, then he has to award works contract services for construction of immovable property i.e. building. In this case he would not be eligible for input tax credit qua the tax charged by the contractor on such supplies. Whether the factory building is plant and machinery or not is another debatable issue? Construction of factory shed from CKD materials; airport hangers; temporary labor camps; temporary toilets at factory site; temporary site office construction etc. are examples that require debate.

Exception for 'Plant & Machinery' - defined to mean – apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such

foundation and structural supports but excludes (*i) land, building or any other civil structures (ii) Telecommunication towers (iii) Pipelines laid outside factory premises.*

Orissa High Court judgment – in Safari Retreats- a brief comment.

The petitioner therein was engaged in the business of constructing shopping malls for the purpose of letting out for commercial purposes. Inputs in the form of cement, sand, steel, aluminum, wires, plywood, paint, escalators, electrical equipment as also and input services such as architect fees etc. were used in construction of the complex that was ultimately leased out for commercial purposes (attracting goods and services tax). Section 17(5)(d) of Central Goods and Services Tax Act, 2017 (CGST Act) restricts ITC on goods and services received by a taxable person for construction of an immovable property on his own account even though such immovable property is used in the course or furtherance of business.

On account of the restriction prescribed in Section 17(5)(d) of the CGST Act, the petitioner was ineligible to avail ITC on aforesaid inputs and input services. The petitioner filed a writ petition challenging the vires of Section 17(5)(d) of the CGST Act and a separate prayer for allowing ITC.

The principal argument taken in the petition was that Section 17(5) (d) of the CGST Act restricts the seamless flow of credit and that denial of ITC in is unjust, arbitrary, oppressive and contradictory to the basic rationale of GST. The Petitioner argued that the restriction under Section 17(5)(d) of the CGST Act should apply only in those cases where there is a break in the tax chain. However, in the present case, there is no breakage in the tax chain as the Petitioner would be liable to pay goods and services tax (GST) on letting out of such properties for commercial purposes.

The counsel for the Government argued that the said provision should be given a literal interpretation and the restriction of Section 17(5)(d) of the CGST Act should apply accordingly to all circumstances

The issue involved in the said case was regarding availability of ITC on construction of a commercial mall in terms of Section 17(5) of the CGST Act r/w OGST Act wherein a writ petition was preferred before the High Court of Orissa, Cuttack.

The said petition challenged actions of the revenue whereby use of credit accumulated by the petitioners through purchase of inputs for construction of the said immovable property intended for letting out on rent was being barred to be used by the petitioner for discharging its tax liability on such letting of the said property.

Findings of the Court:-

- *In the said order, the court accepted the submission of the petitioners that very object of enacting GST law is to obviate the cascading effect of various indirect taxes and reduce multiplicity of indirect taxes. If the benefit of taking input tax credit is denied to the petitioner by invoking Section 17(5)(d) of the CGST Act r/w OGST Act, the said object will be frustrated, especially in view of the fact that the petitioner shall be required to pay GST on its rental services.*
- *The Hon'ble Orissa High Court held that a person engaged in letting out the property cannot be said to be using the property "on his own account".*
- *The Hon'ble High Court has rejected the narrow interpretation of the section 17(5)(d) of the CGST Act done by the department and held that the benefit of credit would be available to assessee on goods or services used in construction of immovable property if the assessee is required to pay GST on the rental income arising out of the investment on which he paid the GST.*
- *The court duly noted the submission of the Petitioner that in case where immovable property is sold before issuance of completion certificate or first occupation (i.e. on payment of GST), the input tax credit is not denied u/s 17(5)(d). Whereas, in the current case when the petitioner has to pay GST on its rental income, the input tax credit is denied by invoking Section 17(5)(d). Thus, it has no reasonable basis underlying such classification when both categories of taxable persons are carrying on a continuous business without any break in the tax chain.*
- *In such case the petitioner's prayer was that on this ground Section 17(5)(d) of the CGST Act and OGST Act has to be struck down as violative of Article 14 of the Constitution and if the said section is not read down by the court.*
- *The Hon'ble Court chose to read down Section 17(5)(d) of the CGST Act and OGST Act.*

The Hon'ble High Court of Orissa, vide its order dated 17 April 2019 (Order), in in Safari Retreats Private Limited v Chief Commissioner of Central Goods & Service Tax [W.P. (C) 20463 of 2018], has allowed availment of input tax credit (ITC) on goods and services used for construction of immovable property and used in the course or furtherance of business.

3. Works Contract – Under the Goods and Services Tax regime

Under CGST Act 2017 the levy of GST is on supply of goods or services or both. The concept of transfer property in goods is given a go by as in pre-GST regime and as envisaged under Art 366 (29) of COI.

The intention of the law is abundantly clear that the works contract under the GST should mean only the contracts in relation to immovable property. The question therefore would be how would the contract involving supply and services both in relation to movable property be taxed under the GST regime. To understand this, we have to refer to the definition of composite supply of section 2(30).

The contracts involving supply of goods and services in relation to movable property would fall in the definition of composite contracts.

4. What is immovable property as mentioned in Section 2(119) of the CGST Act?

Hon'ble Bombay High Court had an occasion to decide the issue in the case of Permasteelisa India Ltd. (91 VST 129) (Bom.), as to whether fixing up a glass curtain walls would constitute a construction contract. Unfortunately, the Hon'ble Bombay High Court ruled against the applicant and held that such contract would not constitute contracts for construction of buildings. On facts, on the basis of the contract the High Court ruled that the transaction of the applicant comprises of design, fabrication, supply and installation of structural glazing works (curtain walls). These are typically designed and assembled aluminium frames filled with glass. The process involves fabrication and assembling of specially designed extruded powder coated aluminium sections into the frames, on which the glazed panels are bounded. These activities are done in the factories of the applicant and after transporting the same to the work site they are erected on the buildings. The High

Court refused to accept the alternative argument that the contract would get covered by the phrase incidental or ancillary activity to the construction of the buildings.

In my view, that may be debatable, this judgment would no more be applicable under the GST regime as any contract for construction, fabrication, installation, fitting out, improvement, modification etc., may cover installation of the glass walls to the immovable property. In other words consequential contracts may also fall and get covered in Sec 2(119) of the CGST Act.

5. The works contracts of immovable property are normally completed over months or may be years. There is a specific provision for continuous supply of goods and continuous supply of services.

Section 2(33) reads as follows :

"Continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

The construction contract would be per se continuous supply because the contract normally continues over a period of time, at least for more than 3 months and there is normally condition to make periodic payment.

The time of supply provision that is section 13(2) refers to the period prescribed under section 31(2) for raising of invoice. Section 31(2) makes it mandatory for the registered person supplying taxable service to issue a tax invoice before or after the service but within a prescribed period. The time prescribed for raising of invoice in terms of Rule 47 is 30 days from the date of supply of service. Therefore, all the contracts of immovable property should ideally fix the time for raising the invoice. For example, in the contract for sale of under-construction flats, one would normally find the stages at which the payment has to be made by the buyer of the flat like completion of first slab, second slab, etc. therefore, no sooner as the work of the first slab is completed and is certified as completed by the architect the developer must send a notice to the persons from whom he has to recover the installments.

Rule 31(5) reads as follows

"Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,— (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment; (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment; (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event".

The above provision makes it clear that it would be wise to define the due date of payment in the contract to avoid any litigation.

In case of the composite supply of goods and services, the time of supply is determined in terms of section 13. Normally, the contracts which are not in relation to immovable property are completed within 3 months and therefore such contract would fit in section 13(2). However, there may be contracts of repair of heavy machinery where the goods are sent for repairs and the repairs takes more than 3 months. In that case, such contract would also be continuous supply of service.

6. Valuation of works contract

The consideration under section 2(31) refers to the monetary value/transaction value. The purpose of valuation of construction contract one must refer to Note 2 given under Notification 11/17 – Central Tax (Rate) dated 28th June, 2017 providing deduction of land cost recovery as follows:

"2. In case of supply of service specified in column (3) of the entry at item (i) against Serial No. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one-third of the total amount charged for such supply. Explanation – For the purposes of paragraph 2, "total amount" means the sum total of, – (a) consideration charged

for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be."

Thus clear 33.33% deduction is allowed towards cost of land. This is deeming price. No scope for proving actual land cost. This probably explains the enhancement of rate from the promised rate of 12% to 18%. This note needs corresponding amendment after amendment to this entry on 22-8-2017.

For the above purpose, "total amount" means the sum total of,- (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be

7. The place of supply for works contract

The place of supply qua the immovable property is very clear. In terms of section 12(3) of IGST Act, 2017 the place of supply of services, directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out co-ordination of construction services and any services ancillary to the services referred to hereinabove shall be the location at which immovable property is located or intended to be located.

The phrase 'intended to be located' NEEDS TO BE UNDERSTOOD for pre-construction services.

As per section 7(3) of IGST Act, 2017, supply of services, where the location of the supplier and the place of supply are in

(a) Two different States;
(b) Two different Union Territories; or
(c) A State and a Union Territory,

shall be treated as supply of services in the course of inter-State trade or commerce.

For example, if a contractor in Maharashtra is given a contract to construct a commercial building in Andhra Pradesh (AP), then all the supplies by the supplier who is in Maharashtra (unless he is registered in AP) would be subject to IGST.

8. Position Maintenance of records: As per Rule 56 (14) of the CGST Rules, 2017, every registered person executing works contract shall keep separate accounts for works contract showing - (a) the names and addresses of the persons on whose behalf the works contract is executed; (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract; (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract; (d) the details of payment received in respect of each works contract; and (e) the names and addresses of suppliers from whom he received goods or services.

9. Liquidated Damages and GST for works contract transactions.

   A liquidated damage is supply of service under GST as per entry no. 5(2) (e) of Schedule II of CGST Act (agreeing to tolerate an act) and is taxable at 18%.

   Various advance ruling authorities have held that the contract price and liquidated damages are two different events and deduction of one from other is merely a convenience for settlement of accounts. Such advance ruling authorities have held that the empowerment of LD is due to a delay which would be tolerated only for a price. Thus it becomes a supply of service under entry no. 5(2) (e) of Schedule II of CGST Act. The applicable rate of GST would be 18% as impugned levy of LD is covered under residual heading [entry 35(Heading 9997)] of the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017. Factual matrix of each case needs to be appreciated before deciding the levy of GST on LD.

   Levy of GST on liquidated damages has been a debatable issue. Section 7(1) (d) of the GST Act, 2017 includes activities referred to in Schedule II in the scope of supply. Entry 5(e) thereof declares that “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”shall be treated as supply of service. The view supporting levy of tax on liquidated damages and forfeiture of earnest money is based on premise that the party has ‘tolerated’ the non-performance.

   The view supporting levy of tax on liquidated damages is based on premise that the party has ‘tolerated’ the non-performance. ‘Tolerate’ is ‘verb’ for ‘noun’ ‘toleration’. ‘Toleration’ is defined in Black’s Law Dictionary (Tenth Edition) on page 1716 as “1. The

act or practice of permitting or enduring something not wholly approved of; the act or practice of allowing something in a way that does not hinder. 2. The allowance of opinions and beliefs, esp. religious ones, that differs from prevailing norms….."

Black's Law Dictionary (Tenth Edition) on page 473 defines Liquidated damages thus: "An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches. If the parties to a contract have properly agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages." The distinction between a penalty and genuine liquidated damages, as they are called, is not always easy to apply. In the first place, if the sum payable is so large as to be far in excess of the probable damage on breach, it is almost certainly a penalty. Secondly, if the same sum is expressed to be payable on any one of a number of different breaches of varying importance, it is again probably a penalty, because it is extremely unlikely that the same damage would be caused by these varying breaches.

In a matter before the Maharashtra Authority for Advance Ruling in the case of Maharashtra State Power Generation Company Limited

The Authority however held that tax was payable on Liquidated damages observing that 1. The value of work done and which is to be paid is not effected by the amount deducted therefrom towards liquidated damages. Thus the consideration for work done remains unaltered. 2. The act of delayed supply has happened. The same is being tolerated by an additional levy in the nature of liquidated damages. 3. The impugned income though presented in the form of a deduction from payments to be made to the contractor is the income of the applicant and would be a supply of 'service' in terms of clause (e) of para 5 of Schedule II of the GST Act.

10. Transportation Services and Composite Service of Works Contract

The advance ruling authorities have held that the supplies of goods and services of transportation etc. are composite services qua the works contract services, therefore, naturally bundled as supply involves delivery of the goods at the Contractee's site, which includes transportation, in-transit insurance etc. Such a supply will

be a composite supply with supply of goods as the principal supply and services like transportation; in-transit insurance etc. being ancillary or incidental to the principal supply and the consideration receivable on that account will be taxed accordingly

11. Indivisible contract for supply of both, goods and services, constitutes works contract.

The nature of the contract is indivisible and falls under works contract and thus is a supply of service under GST. Divisible contract of supply of goods and services may not be of any use as the end objective may make such divisible contracts as works contract service as defined in section 2(119) of the CGST Act. I know many people are charging concessional tax of 12 per cent for supply of goods to the Government based on a divisible contract. Perhaps their view is in correct and the entire consideration as per law will be subject to an 18 percent GST Rate.

12. Sub-contractors and principal contractors – GST implications.

As per the amendment to notification No. 8/2017 vide notification No.39/2017 dated 13.10.2017, composite supply of works contract as defined in clause (119) of section 2 of the GST Act, supplied to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Governmental Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration is taxable @12% GST;

The work awarded by Government is subsequently given as sub-contract, by the principal contractor. The composite supply of works contract provided by a sub-contractor is also taxable @12% GST.

As per Notification No. 31/2017 – Central Tax (Rate), Dated – October 13, 2017 issued under CGST Act, 2017 and corresponding notification under MPGST Act, 2017. Government Entity is defined as *"Government Entity means an authority or a board or any other body including a society, trust, corporation, i) set up by an Act of Parliament or State Legislature; or ii) established by any Government, with 90 per cent, or more participation by way of eguity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."* MPPGCL has been established by the Government of

Madhya Pradesh and the Government of Madhya Pradesh has a 100% shareholding in the company. The State Government is also exercising full control over the activities of the said company. Therefore, M/s. Madhya Pradesh Power Generation Company Limited is a Government Entity as defined under Notification No.31/2017-Central tax (Rate) for the purpose of GST law.

Lastly theissue related to determination of GST on tenders invited in pre-GST regime continue to be a serious one particularly for the works contractors as non-payment due to lack of clarity and confusion on the side of various Government Departments (PWD etc.) has exposed them to serious criminal consequences under GST Laws apart from pecuniary implications.

In my next updated Article we shall try to key 10 advance rulings issued on this subject in India.

Till then let’s learn together.

Transitional Input Tax Credit – Judicial Encounter

Ravi Chandhok, Advocate

Background

The Goods & Services Tax legislations ("**the GST Laws**") are biggest tax reforms in independent India. With introduction of the GST Laws, Governments, both State and the Centre, intends to achieve various objectives *viz*. 'ease of doing business', 'make in india', etc. It is vision of the present Government at the Centre that the GST Laws would help bring in more investment in the country, which will boost employment and would ultimately lead to strengthening the economy.

During various meetings between the Government and the industry regarding investments, foremost suggestion by the industry was tax reform. The Government was informed that major challenge in doing business in India was separate tax laws in each State and non-adjustment of input tax credit ("**ITC**") among tax laws. Under the erstwhile, Central Excise, Services Tax and Value Added Tax, laws ("**the Earlier Laws**"), ITC of taxes paid under the Central Excise, Service Tax were not allowed to be set-off against the Value Added Tax Laws and *vice-a-versa*. Due to which businesses ended up paying taxes on taxes, which ultimately lead to rise in price of goods/ services.

The GST Laws have been implemented with the view to eradicate cascading effect of indirect taxes and to overcome multiple compliances under different tax laws prevailed during the Earlier Laws. Objective of laying off burden of multiple compliance obligations has been achieved. However, with so much litigation and reluctant attitude of the Government wrt allowing benefit of transitional ITC on naïve issues is a hurdle in race to achieve other objective of overcoming cascading effect of taxes.

As per Section 140 of the GST Laws, for claiming ITC of taxes paid on transitional stock, claimant assessee was required to furnish information of the same in form TRAN – 1. Rule 117 of the Goods and Services Tax Rules ("**the GST Rules**") prescribed time within which TRAN – 1was required to be filed online on portal of Goods and Services Tax Network ("**GSTN**"). However, certain assessees due to varied reasons ranging from technical glitch to lack of knowledge of using online services, could not file TRAN – 1 within prescribed time. Considering technical glitch in GSTN, Rule 117(1A) was inserted in the GST Rules, which empowered

the Commissioner of Goods and Services Tax to extend limitation for filing TRAN – 1 for persons who could not file the same due to technical glitch. However, no relief was given to assessees who did not have proof of having faced technical glitch at the time of filing TRAN – 1 within limitation prescribed under Rule 117 of the GST Rules. The said assessees have been denied benefit of transitional ITC. To seek remedy, the assessees approached different High Courts, which allowed belated filing of TRAN – 1. The petitions were allowed by considering various factors associated with claiming transitional ITC. One of the common flaws in the GST Laws wrt transitional ITC pointed by some of High Courts is that though Rule 117 of the GST Rules prescribe time limit for filing TRAN – 1, Section 140 of the GST Laws does not empower the Government to frame such Rule. Such shortcoming in the GST Laws was already noticed by the Government and modification of Section 140 thereof to empower the Government to frame corresponding Rule was mentioned in the Finance Act, 2020 ("**the Finance Act**") to be applicable retrospectively whenever the same is notified. Considering judgments of High Courts against the Government, provision of the Finance Act relating to Section 140 has been notified on May 18, 2020. As per amended Section 140 of the GST Laws, to claim benefit of transitional ITC, TRAN – 1 form was required to be filed within time prescribed under Rule 117 of the GST Rules.

On the transitional stock, claimant assesses have paid taxes under the Earlier Laws, ITC of which is being claimed now. The said ITC has been duly reflected by the claimants in last return filed under the Earlier Laws. Dis-allowance of ITC on transitional stock on account of procedural lapse of non-filing of form TRAN – 1, would lead to only one thing 'double taxation'.

Issues

Issue 1: Whether assessees who failed to submit form TRAN – 1 within the time prescribed in Rule 117 of the GST Rules are entitle to transitional ITC?

Issue 2: Whether retrospective amendment of Section 140 of the GST Laws would negate judgments of High Courts allowing the assessees to file TRAN – 1?

Legal analysis

Assessees who have been denied benefit of transitional ITC due to non-filing of TRAN – 1, have been knocking doors of different High Courts. While noticing hardships of the claimant assessees and turmoil GSTN has

created wrt filing of TRAN – 1 (since this article relates to transitional ITC) the Government was directed to open the portal to allow assessees to file TRAN – 1.

Some of the judicial pronouncements important for forming an opinion on the issues mentioned above are discussed below:

A. Judgments allowing belated claim of transitional ITC

1. Adfert Technologies Pvt. Ltd. Vs. UOI [CWP No. 30949 of 2018 (P&H)] {"the Adfert Case"} – SLP dismissed

While interpreting entitlement granted under Section 140 of the GST Laws, limitation prescribed in Rule 117 of the GST Rules has also been considered and following principles have been laid down:

- The Petitioners were duly registered under the Earlier Laws and Authorities have complete record of unutilized ITC. Thus, department has no authority to deny credit on technical or procedural grounds.

- Restricting ITC on goods and services purchased in pre-GST regime within time prescribed in Rule 117 of the GST Rules vis-à-vis ITC on the same purchased after July 1, 2017 i.e. upto date on which return for September of following financial year is required to be filed, is discriminatory and violative of Article 14 of the Constitution of India ("**the Constitution**").

- Dis-allowing vested right (ITC) to an assessee registered under the Earlier Laws who complied with all provisions thereof is offensive against Article 14 of the Constitution as it goes against the essence of doctrine of legitimate expectation.

- Dis-allowing transitional ITC may severely dent working capital and diminish ability to continue business. Such action violates mandate of Article 19(1)(g) of the Constitution.

- Liability to pay GST on supply of transitional stock without corresponding ITC would lead to double taxation on the same subject matter and, therefore, is arbitrary and irrational.

- C.B.E. & C. Flyer No.20, dated January 1, 2018 had clarified as under:

"It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid earlier would be admissible as credit."

- ITC earned under the Earlier Laws is property of claimant assessees, which can't be appropriated. If appropriated would be violative of Article 300A of the Constitution.

2. Brand Equity Treaties Limited Vs. UOI [W.P.(C) 11040/2018 (Del.)] {"Brand Equity Case"}

The following principles have been laid down:

- Recognition of technical glitches in GSTN in Rule 117(1A) of the GST Rules and extensions of filing of TRAN – 1 demonstrates that Authorities were aware about non-filing of TRAN – 1 due to technical glitches. The said fact substantiates that period for filing TRAN – 1 is not considered – either by the legislature, or the executive as sacrosanct or mandatory.
- Section 140 permits carry forward of transitional ITC, which presupposes that the same has therefore accrued.
- Transitional ITC in every sense stood accumulated, acquired and vested on the appointed date as the same was reflected in credit register in the previous regime
- There are no provisions under the GST Laws, which completely restricts carry forward of transitional ITC in GST regime by a particular date, and there is no rationale for curtailing the said period, except under the law of limitations.
- Benefit of extended period for filing TRAN – 1 only to taxpayers whose cases are covered by "technical difficulties on common portal", is arbitrary, vague and unreasonable
- Technical difficulties would include the same faced by or on part of Authorities and the taxpayers as well.
- Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice.

Important points:

Hon'ble P&H High Court in the Adfert Case took a broader view while allowing benefit of transitional ITC to assessees. The hon'ble High Court

has travelled beyond nuanced approach whether in absence of specific power under Section 140 of the GST laws wrt framing of corresponding Rule 117 of the GST Rules, limitation prescribed thereof are mandatory or directory. It has been held that when claim of transitional ITC was a vested right granted under the Earlier Laws, the same could not be taken away due to procedural lapse of non-filing of TRAN – 1.

Judgment in the Adfert Case was challenged before the hon'ble Supreme Court vide SLP (C) No. No.4408/2020, which has been dismissed. Accordingly, principle laid down and entitlement granted in the Adfert Case has become law of land.

Further hon'ble Delhi High Court in the Brand Equity Case while acknowledging view in the Adfert Case has held that in the absence of mandatory nature of limitation in the GST Laws for claiming transitional ITC, general law of limitation prescribed under the limitation Act 1963, i.e. three years shall apply.

B. Judgments on ITC under the Earlier Laws

1. Jayam & Co. Vs. Assistant Commissioner [2018 (19) G.S.T.L. 3 (S.C.)] {"the Jayam Case"}

Vires of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006 ("**the Tamil Nadu VAT Act**"), which required reversal of ITC where goods are sold at a price lesser than purchase value was challenged. Further insertion of the said Section with retrospective effect was also challenged. The hon'ble Supreme Court while upholding insertion of Section 19(20) to the Tamil Nadu VAT Act held that ITC granted under a legislation is a concession, which is available when you satisfy conditions attached to the same.

However, the hon'ble Supreme Court struck down retrospective amendment to Section 19(20) of the Tamil Nadu VAT Act for the reason that it takes away vested right of the concerned dealers. It has been held that dealers' eligibility to claim full ITC of taxes paid on purchase price before coming into force of Section 19(20) of the Tamil Nadu VAT Act is a vested right, which cannot be taken away by retrospective amendment. Relevant extracts are reproduced below:

"The manner of calculation of the ITC was entirely different before this amendment in the example, which has been given by us in the earlier part of the judgment, 'dealer' was entitled to

ITC of Rs. 10/- on re-sale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs. 9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when ***vested right*** *had accrued in favour of these dealers in respect of purchases and sales made between January 1, 2007 to August 19, 2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 1, 2007."*

2. ALD Automotive Pvt. Ltd. Vs. CTO 2018 (364) E.L.T. 3 (S.C.) {"the ALD Case"}

Section 19(11) of the Tamil Nadu VAT Act provided that ITC of tax paid on purchases could be claimed within ninety days of purchase or by end of financial year, whichever is later. The petitioners challenged validity of the same on the ground that vested right of claiming ITC cannot be curtailed and fettered by an unreasonable restriction imposed under Section 19(11) of the Tamil Nadu VAT Act. The hon'ble Court while upholding validity of Section 19(11) of the Tamil Nadu VAT Act held that *'input credit is in nature of benefit/concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute.'*.

3. EICHER MOTORS LTD. Vs. UOI 1999 (106) E.L.T. 3 (S.C.)

Rule 57F(4A) was inserted in the Central Excise Rules, 1944 ("**the Excise Rules**"), vide which ITC lying unutilised as on March 16, 1995 with the manufacturers, stood lapsed. The said Rule was challenged. Hon'ble Supreme Court held that Rule 57F(4A) of the Excise Rules could not be made applicable to goods manufactured prior to March 16, 1995 for the following reasons:

"We may look at the matter from another angle. If on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs

and that right would continue until the facility available thereto gets worked out or until those goods existed."

Important points:

The pertinent point to notice in above cases, is that hon'ble Supreme Court termed ITC as concession when the same could be claimed after satisfying conditions laid down in respective legislation. However, it has been held that when ITC has been claimed by fulfilling conditions prescribed under law, the same becomes a vested right. It has been very categorically held by hon'ble Supreme Court in the Jayam Case that vested right of ITC cannot be taken away by bringing retrospective amendment to provision which entitled a dealer to claim ITC.

Conclusion

It is true that controversy wrt belated claim of transitional ITC would be put to rest by hon'ble Supreme Court. However, judicial pronouncements discussed above definitely help us to form an opinion on the issues, which are responded below:

Issue 1: Whether assessees who failed to submit form TRAN – 1 within the time prescribed in Rule 117 of the GST Rules are entitle to transitional ITC?

Response 1: Hon'ble High Courts in the Adfert Case, the Brand Equity Case and other similar judgments have held that transitional ITC is vested right of the assessees claiming the same. The said vested right accrued after satisfying conditions laid down in the Earlier Laws. Further revenue already had information about said ITC brought forward from the Earlier Laws since the same was duly reflected in last returns filed thereunder. The Revenue had and still has the opportunity to verify claims of transitional ITC. Further controversy wrt denial of substantive rights due to procedural lapses has also been put to rest by hon'ble Supreme Court in many judicial pronouncements, which have been discussed and followed by High Courts in judgments mentioned above.

The above aspects have been elaborately discussed and decided by hon'ble Punjab & Haryana High Court in the Adfert Case. Special Leave Petition filed against the Adfert Case has also been dismissed. Accordingly, entitlement of transitional ITC, though belated, should not be denied.

Further transitional ITC is the amount of tax paid on purchases made by claimant assessees. The said amount was paid on the assurance given under the Earlier Laws that ITC of the same would be allowed. Due to the said nature, amount of transitional ITC becomes property of the claimant assessees lying unutilised with the Revenue Authorities. As per Article 300A of the Constitution, the claimant assessees cannot be deprived of their property i.e. the unutilised transitional ITC. Similar proposition has been laid down in the Adfert Case and the Brand Equity Case.

It would also not be out of place to mention that denial of transitional ITC would defeat the very purpose of implementation of GST i.e. eradicating cascading effect of taxes. In addition, the industry would also lose faith in the Government, which would hit other pillar of GST i.e. investment.

Issue 2: Whether retrospective amendment of Section 140 of the GST Laws would negate judgments of High Courts allowing the assessees to file TRAN – 1?

Response 2: Amendment to Section 140 of the GST Laws has been brought in to overcome alleged flaw in language of the same. For instance, in the Brand Equity Case, one of the reasons for allowing belated claim of transitional ITC is that Section 140 of the GST Laws does not empower Rule 117 of the GST Rules to prescribe time for the same.

However, it is important to notice that Hon'ble Punjab & Haryana High Court in the Adfert Case has, irrespective of language of Section 140 of the GST Laws, considered limitation prescribed under Rule 117 of the GST Rules as time for submitting form TRAN – 1. The petitioners therein have been allowed to file belated TRAN – 1 primarily for the reason that it was a vested right information for which was available with the Revenue Authorities. SLP filed against the Adfert Case has been dismissed by the hon'ble Supreme Court. Consequently, it may be concluded that effect, which amendment to Section 140 of the GST Laws has brought, has already been considered by the hon'ble Supreme Court while dismissing SLP filed against the Adfert Case.

Further, going with principle laid down by hon'ble Supreme Court in the Jayam Case and the Eicher Case, a vested right cannot be taken away by retrospective amendment of a provision, which entitled an assessee for claiming ITC.

Delay in Adjudication of SCN

By Pradeep K. Mittal, Advocate, LLB. FCS.

Under many corporate laws and also erstwhile Central Excise Act, Service Tax law, Customs Act, Foreign Trade (Development & Regulation) Act, there is no time limit prescribed under the law by which the Adjudication Order shall have to be passed. On many occasions, the OIO is passed after 6 to 10 years and even more. I have compiled various land-mark judgments. However, under GST law, Section 75(1 0) CGST talks of conclusion of proceedings if the order-in-original is not within the time specified under Section 73 and 74 ofCGST Act.

2. The DB of Gujarat High Court in the case of Parimal Textiles vs. Union of India: MANU/GJ/2202/2017 has observed as under:-

> In all cases, the department had issued show cause notices sometime in the year 2000. These proceedings were kept in call book without intimating the noticees. Without service of any further notices on the petitioners, the orderin- original came to be passed by the adjudicating authority. In the result, in all cases, the show cause notices followed by the order-in-original are set aside.

3. The DB Bombay High Court in the case of Hindustan Lever Limited vs. UOI MANU/MH/1218/2010 has noted the following citation of the Hon'ble Supreme Court and that of High Courts.

4. In absence of any period of limitation, it is required that every Authority is to exercise the power within a reasonable period, as has been held in the case of Govt.of India v. The Citedal Fine Pharmaceuticals, MANU/SC/0198/1989: AIR 1989 SC 1771 and Bombay High Court in two cases Bhagwandas S. Tolani v. B.C. Aggarwal and Ors. reported in 1983 E.L.T. 44 (Born) and Universal Generics Pvt. Ltd. Vs. UOI MANU/MH/0433/1993.

5. The Hon'ble Supreme Court in the case of Bhatinda District Coop. Milk MANU/SC/8017 /2007 while deciding question of reasonable period of limitation for invoking revisional jurisdiction under PGST Act, 1948 applied limitation period prescribed under Section 11(6) of the PGST Act, 1948 and concluded that reasonable period cannot be more than 5 years.

6. The Punjab & Haryana High Court in the case of Gupta Smelter Pvt. Ltd. vs. UOI MANU/PH/2111/2018: 2019 (365) ELT 77 has set aside show

cause notice which was issued for framing final assessment under Section 18 of Customs Act, 1962 on the sole ground that it was issued after 5 years from the date of bill of entry.

7. Furthermore, once again, the Punjab & Haryana High Court in the case of GPI Textiles Ltd. vs. UOI, CWP No. 10530 of 2017 has set aside show cause notice issued under Section llA of the Central Excise Act, 1944 raising demand of duty on the ground of its non-adjudication within reasonable period. The court relied its own previous judgment in the case of CCE vs. Hari Concast (P) Ltd. MANU/PH/1205/2009:2009 (242) ELT 12 wherein it has been held that notice of penalty issued under Central Excise Act, 1944 beyond 5 years is bad in the eye of law even though no limitation period is prescribed for penalty.

8. Board had issued a Circular No. 732/48/2003-CX. MANU/EXCR/0009/2003, dated 05th August, 2003 directing that after the conclusion of personal hearing, it is necessary to communicate the decision immediately or at least one month from the date of the personal hearing. He also points out that the Board had issued instructions F. No. 280/45/2015-CX. 8A, dated 17th September, 2015 emphasising that all the adjudicating authorities are directed to pass adjudicating order within the time limit prescribed.

9. The DB of Delhi High Court in Sunder System Pvt. Ltd. vs. Union of India and Ors. (17.12.2019- DELHC) : MANU/DE/4374/2019, has observed as under:-

> This Court is also of the view that, even if no time period for limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period and if it is not so done, it will vitiate the proceedings.

9.1: The writ petition is allowed and show-cause notice dated 25th November, 2011 is quashed.

10. The DB of Bombay High Court in the case of Raymond Ltd. vs. UOI (06.08.2019- BOMHC) : MANU/MH/3290/2019

> Petitioners to proceed on the basis that the department was not interested in prosecuting SCN and had abandoned it. Even if, notices can be kept in the call book to avoid multiplicity of the proceedings, yet the principle of natural justice would require that before the notices are kept in the call book, or soon after the

petitioners are informed the status of the show cause notices so as to put the parties to notice that the show cause notices are still pending. Giving notices for hearing after gap of 17 years, as in this case, is to catch the parties by surprise and prejudice a fair trial, as the documents relevant to the show cause notices are not available with the petitioners.

11. The DB of Bombay High Court in Sanghvi Reconditioners Pvt. Ltd. vs. Union of India and Ors. : MANU/MH/3805/2017 has held as under:-

Revenue has not been able to justify its lapse in not adjudicating the show cause notice issued on 28th March, 2002 for more than 15 years. There may be reasons enough for the Revenue to retain some matters like this in the call book, but those reasons do not find any support in law insofar as the present petitioner's case is concerned. Merely because there are number of such cases in the call book does not mean that we should not grant any relief to the petitioner before us.

Delay in Refund – Right of Assessee to Claim Interest from Department

By Pradeep K. Mittal, Advocate, LLB. FCS.

In this Article, an attempt has been by me to explain exhaustively various situations in which the assessee would be entitled to claim interest in the event of delay in refund of amount withheld by the Department without any justifiable reasons.

2: On many occasions, Departmental officers visits the units and carry out detailed and exhaustive investigation. During investigation, under the threat of arrest of Director, Senior Officers, Partners and Sole Prop, detention of goods and other coercive measures, the officers of the Department compel the assessee to Deposit the amount.

3: After the completion of investigation, the Department issues Show Cause Notice to the party and in almost all cases, the demand sought to be raised in the SCN, get confirmed under the order of Adjudication passed by the Adjudicating Authority. In the pre-GST regime, in most of the cases, the first appeal was to be filed before Custom Excise and Service Tax Appellate Tribunal, (hereinafter called CESAT) and ultimately proceedings get culminated into an Final Order being passed by CEST AT and in most of the cases, because of faulty investigation, demand of duty/tax, interest and penalty is set aside with consequential relief.

4. Of course, there were cases where the First Appeal was to be filed before the Commissioner (Appeal), who also invariably confirms the demand sought to be raised in the SCN and ultimately, the party gets the real justice in the hand of Hon'ble CESTAT - where one of the relief is that the party shall be entitled to "consequential relief'. In other words, in case any Amount/Deposit/ alleged Tax so paid/deposited previously shall be refunded to the party in case, the Department accept the Final Order of the CESTAT.

5. At the same time, the relevant provisions of CGST Act, 2017 may also kindly be seen.

Section 54 CGST Act, 2017.

Refund of tax.- (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him,

may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

(2) to (7) ..... .

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

(e). the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

Section 56. If any tax ordered to be refunded under subsection (5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection(]) of that section, interest at such rate not exceeding six percent, as may be specified in the notification issued by the Government on the recommendations of the council, shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

6. The Section 54(8)(e) (reproduced above) permit, inter-alia, refund of “any other amount paid by the applicant”. Since both types of (i) amount paid during investigation and (ii) amount paid by way of predeposit at the time of filing an appeal, are neither “duty” nor “tax”, shall, in my view, clearly be called “amounts” so as to fall within the ambit of Section 54(8) (e) of CGST Act, 2017 and the proper officer shall refund the amount to the party. However, there is no specific provision for grant of interest on the amount paid in two situations - since the words used in Section 56 are “tax” and not “any other amount” as have been used in sub-section (1) of Section 54. Hence, there is no specific prohibition in grant of interest by the judicial and quasi-judicial authorities nor there is any enabling provision for grant of interest as a consequence of refund of (i) amount paid during investigation and (ii) amount paid by way of pre-deposit. Hence, there is no

material difference in position of law both in pre-GST regime and post GST regime. Consequently, position of law as enunciated thus far shall equally apply to the post GST regime with equal virulence.

7. There have been cases where it has been held by the Courts/ Tribunal that in case, Tax/Duty has been paid "under protest" then the limitation of one year shall not apply. The combined reading of Section 11 B and 11 BB makes it clear that the party shall be entitled to interest only upon application being submitted within a period of one year from the date of passing of appellate order, when refund has not been granted within a period of three months from the date of application seeking refund pursuant to Appellate Tribunal. The Department has been granting refund of tax/duty within a period of three months.

8. Nonetheless, question arises as to whether the party would be entitled to interest in two situations narrated in para 5 hereinabove. First of all, let us discuss situation No. 1 as below:-

Party had deposited the amount during investigation at the behest of the Department and ultimately refunded after Appellate Order attained finality

9. One has to consider as to whether the above situation is governed by the provisions of Section liB of the Central Excise Act, 1944 - in my humble view, clearly NO in as much as Section liB of Central Excise Act, 1994 govern the refund of duty/taxes. Where an amount remained deposited/ kept with the Department right from the time of investigation to till the time finally appeal is allowed and as a consequence of which, ultimately refund is granted within three months after Appellate Order, whether the party is entitled to interest or not ? Undisputedly neither Section liB nor llBB covers the situations narrated hereinabove. The question then arises as to whether when or how it could be treated that the amount has been deposited "under protest"- when there is no marking "under protest" on the TR-6, GAR-7 Challan or any documents evidencing deposit of money or covering letter with which the above challans have been annexed or separately the party has written a letter with marking "under protest" to the Department. However, in Section 54 of CGST which speak of refund of (i) tax and (ii) any other amount which obviously would include (i) amount paid during investigation and also (ii) amount paid by way of pre-deposit - but, however, limitation has been specifically provided i.e. two years from the relevant date in Section 54 itself - hence these amounts would now be governed by two years from the relevant date unlike in the pre-GST era.

10. On many occasions, moment, the letter is sent “under protest”, the Department pressurize the party to lift mark “under protest”. To the aid and succor of the party, in the following judgments, the Hon’ble High Courts and different benches of Hon’ble CESTAT held that whenever any amount had been deposited during investigation, it shall always be treated as deposited “under protest” irrespective of the fact that whether there is a marking of “under protest” or not.

a) CCE Vs. Pricol Ltd. &Ors. MANU/TN/1261/2015

b) CCE,Lucknow Vs. Eveready Industries Ltd. MANU/UP/4095/2017

c) Gujarat Engineering Works V s. Commissioner of Central Excise. MANU/CS/0121/2013

d) Shree Ram Foods Industries MANU/GJ/0359/2002

AMOUNT PAID DURING INVESTIGATION SHALL ALWAYS BE TREATED AS “DEPOSIT” & NOT “TAX” OR “DUTY”

11. The Hon’ble Allahabad High Court in the case of Ebiz.com (P) Ltd Vs. CCE MANU/UP/3167/2016, while holding that any amount paid by the party during investigation, shall be always be treated “under protest” as “deposit” and shall neither be treated as a “duty” or “tax” and principal of unjust enrichment shall not apply.

12. The above judgment holds two things (i) amount paid during investigation shall only be called “deposit” and not “duty” or “tax” (ii) and principal of unjust enrichment shall not apply and impliedly holds that limitation of one year or two years for seeking refund shall not be apply nor the restriction that interest shall become applicable only after the expiry of three months from the date of application filed by the party. This is position with respect to pre-GST era. However, in post GST era, limitation shall apply in view of language of Section 54(1).

13. The Hon’ble Madras High Court in the case of CCE Vs. Pricol Ltd MANU/TN/1261/2015 has held exactly on the above lines.

PAYMENT OF INTEREST ON THE AMOUNT LYING WITH THE DEPPTT- FROM THE DATE OF DEPOSIT TO TILL DATE OF REFUND:

14. The Gujarat High Court in Hindustan Coca-Cola Beverages (P) Ltd Vs. UOI MANU/GJ/0126/2013, while repelling the arguments that since

there is no provision for payment of interest and, therefore, interest cannot be granted, has held when Department acts illegally and not as per the Scheme of the Act, the interest on such refund can never be provided for under the scheme of the Act. The Hon'ble Supreme Court in Sandvik Asia Ltd Vs. CIT has been considered by a Larger bench in CIT Vs. Gujarat Flouro Chemicals MANU/SC/0689/2012 but has not been overruled except to the extent that Gujarat Fluro simply clarified that interest on interest cannot be granted.

WHETHER PRE-DEPOSIT IS MADE AT THE TIME OF FILING OF APPEAL ALSO ATTRACT INTERESTS FOR THE PERIOD DURING AMOUNTS REMAINED WITH THE DEPARTMENT.

15: The Hon'ble Calcutta High Court in the case of CCE vs. Calcutta Chemical Company Ltd. MANU/WB/0276/1992, held when Govt has enjoyed the money of assessee, department must pay interest at the rate of 12% for that period.

16: The Hon'ble Kerala High Court in the case of Sony Pictures Networks (P) Ltd Vs. 2017(353) ELT 179 (Ker) has held as follows:_ The Apex Court CCE Vs. ITC (supra) confined the interest to 12% and further held that any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also, in Kull Fire works Industries Vs. CCE 1997(95) ELT 3 SC, the pre-deposit made by the assessee was directed to be returned to him with 12% interest.

17: The Hon'ble CESTAT in the case ofGhaziabad Ship Breakers Pvt. Ltd. Vs. Commissioner of Customs MANU/CS/0290/2010 has held that interest @ 12% shall be allowable for the period the amount remained kept/deposited with the Department to till the date of refund. Subsequently, the Tribunal, in a very latest case of Arihant Tiles and Marbles Pvt. Ltd. MANU/CE/0346/2019, has held that interest by way of compensation is allowable relying upon the judgment in the case of Sandvik Asia Ltd. 2006 (196) EL T 257 SC.

18: The Hon'ble CESTAT in the case ofBinjrajka Steel Tubes Ltd. vs. CCE: MANU/CB/8380/2007 has observed as under:-

The Hon 'ble Gujarat High court, in the case of Vijay Textiles, has held that if the Excise authorities have collected any amount as tax without the authority of law, it is just and proper and that they should pay interest at the rate of 12% per annum from the date of

collection of the said amount till the date of actual repayment. The Hon 'ble Calcutta High Court, in the case of Dilichand Shreelal (cited supra), has held that the department is liable to pay interest at the rate of 12% p.a. when the duty collected is unauthorized. The Hon 'ble Rajasthan High Court, in the case of Adarsh Metal Corporation (cited supra), has held that there is no need to file any claim arising out of order passed in appeal and the state is liable to refund the amount with interest at the rate of 12%. The Hon 'ble Calcutta High Court, in the case of Calcutta Chemical Co. Ltd. (cited supra), has held that the department is liable to pay interest for unauthorized collections. The Hon 'ble Calcutta High Court, in the case of East Anglia Plastics Ltd. (cited supra), has awarded interest at the rate of 10% for the use of money collected without authority of Law. The ratio of the above case laws is clearly applicable to the present case.

8. Therefore, we allow the payment of interest from the date of payment of the duty by the appellant to the department till the date of payment of refund at the rate as notified for interest on refund under Section 11BB during the relevant periods.

19: The Division Bench of Hon'ble Tribunal in the case of Kerala Chemicals and Proteins Ltd. vs. CCE: MANU/CB/0426/2006 has granted interest over delayed payment of interest although there is no provision for payment interest over interest - this judgment has not been set aside.

20: The Hon'ble Tribunal in the case of BSL Ltd. vs. CCE (17.05.2019 - CESTAT - Delhi), has observed that though there is no provision for grant of interest over delayed payment of interest, yet it is allowable because there is no prohibition in law.

21: The Hon'ble Tribunal in the case of Maithan Ceramics Ltd. vs. CCE: MANU/CH/0136/2019, has observed as under:-

While introducing the new provisions, Board had issued Circular No. : 9841812014-CX : MANU/EXCR/000812014, dated 16-9-2014 for proper implementation of such provisions. In para 5.1, it is clarified that "Where the Appeal is decided in favour of the party/ assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act; 1962. In Para 5.2, it is also clarified that such Pre-deposit for

> filling Appeal is not a payment of duty. Hence refund of Pre-deposit need not be subjected to the process of refund of duty under either Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962."

22: Further, the Hon'ble CESTAT in the case of Marshall Foundry & Engg. (P) Ltd Vs. CGST Appeal No. E/60916/2019-Ex(SM) (Date of pronouncement 28.11.20 19), while discussing the entire law on the subject, has held that Appellants are entitled to claim interest for the period the amounts (i.e. amount paid during investigation and also amount deposited by way of pre-deposit) remained with the Department i.e. from the date of deposits to till, the amount is actually refunded by the Department to the party after the decision of appeal.

UNJUST ENRICHMENT SHALL NOT APPLY TO PREDEPOSIT

23: The Hon'ble Supreme Court in the case of CCE Vs. Finacord Chemicals (P) Ltd MANU/SC/0626/2015 has held as under:-

> 19. It is stated at the cost of repetition that since the amount in question was deposited in compliance with the interim order passed by the High Court of Bombay, which was not towards duty, the question of unjust enrichment would not arise at all.

24: The Board Circular dated 2.1.2002 clearly clarified that in the matter of refund of pre-deposit, refunds would not be covered by the provisions of Section IiB of the Customs Act or Section 35 F of the Central Excise Act, - meaning thereby the aforesaid provisions which pertain to unjust enrichment shall not apply.

25: In my view, the entire law discussed pertaining to pre-GST era, shall equally apply to post GST era also in view of the fact that there is no material difference in the provision for grant of interest in different situations as provided under Section 54 and 56 of CGST Act, 2017. However, Section 54 of CGST which speak of refund of (i) tax and (ii) any other amount which obviously would include (i) amount paid during investigation and also (ii) amount paid by way of pre-deposit - but, however, limitation has been specifically provided i.e. two years from the relevant date in Section 54 itself - hence these amounts would now be governed by limitation of two years from the relevant date unlike in the pre-GST era.

Quasi-Judicial Authorities Must Record Reasons While Passing Order

By Pradeep K. Mittal, Advocate, LLB. FCS.

1. In Siemens Engineering and Manufacturing Co. of India Ltd. v. The Union of India MANU/SC/0211/1976 :AIR 1976 SC 1785, the SC held that it is far too well settled that an authority who is in making an order in exercise of its quasijudicial function, must record reasons in support of the order it makes. Every quasi- judicial order must be supported by reasons. The rule requiring reasons in support of a quasi- judicial order is as basic as following the principles of natural justice and the rule must be observed in its proper spirit.

2. In Smt. Maneka Gandhi v. Union of India and Anr. MANU/SC/0133/1978: AIR 1978 SC 597, held that an order impounding a passport is a quasi-judicial decision. The Court also held when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well and it consequently, demand disclosure of reasons for the decision.

3. In Rama Varma Bharathan Thampuran v. State of Kerala and Ors. MANU/SC/0514/1979: AIR 1979 SC 1918, SC held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice and it requires reasons to be written for the conclusions made.

4. In Gurdial Singh Fijji v. State of Punjab and Ors. MANU/SC/0455/1979: (1979) 2 SCC 368, the Supreme Court, dealing with a service matter, held that "rubber-stamp reason" is not enough and that reasons "are the links between the materials on which certain conclusions are based and the actual conclusions." . 5: In a Constitution Bench decision of SC in Shri Swamiji of Shri Admar Mutt V s. The Commissioner, MANU/SC/0509/1979: AIR 1980 SC, has observed " Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'.

6. In M/s. Bombay Oil Industries Pvt. Ltd. v. Union of India and Ors. MANU/SC/0270/1983: AIR 1984 SC 160, this Court held that while disposing of applications under Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order and faith of the

people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders.

7. In Ram Chander v. UIO MANU/SC/0484/1986: AIR 1986 SC 1173, the SC was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rule. This Court held that the word "consider" occurring to the Rule 22(2) must mean the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasized that in discharging quasi-judicial functions, the appellate authority must act in accordance with natural justice and give reasons for its decision.

8. In Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi, MANU/SC/0583/1991:(1991) 2 SCC 716, even in domestic enquiry if the facts are not in dispute, non-recording of reason may not be violative of the principles of natural justice but where facts are disputed, necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached.

9. In M.L. Jaggi v. Mahanagar Telephones Nigam Limited and Ors. MANU/SC/0625/1996: (1996) 3 SCC 119, Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award so that such reasons are to be recorded, enables the High Court to exercise its power of judicial review on the validity of the award.

10. In Charan Singh v. Healing Touch Hospital and Ors. MANU/SC/0588/2000MANU/SC/0588/2000 : AIR 2000 SC 3138, a three-Judge Bench of this Court, dealing with a grievance under CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasizing". (See Para 11, page 3141 of the report)

Retrospective Withdrawal of Export Benefits Permissible ??

By Pradeep K. Mittal, Advocate, LLB. FCS.

The Delhi High Court in Indian Aluminium Co. Ltd. v. UOI, 1983 (12) ELT 349, held that it is not open to the Board of Central Excise and Customs in its administrative capacity to issue directives to various subordinate authorities exercising quasijudicial functions to interpret excise notifications in a particular manner and to restrict relief there-under and consequently, quashed the SCN.

2. In the case of Mahabir Vegetables Oils (P) Ltd. & Anr. v. State of Haryana & Ors.: MANU/SC/8022/2006, the Supreme Court had held as under:-

> It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation. The rule-making power is a species of delegated legislation. A delegate therefore can make rules only within the four corners thereof.
>
> 42. It is a fundamental rule of law that no statute shall be construed to have a retrospective ope0ration unless such a construction appears very clearly in the terms of the Act.

3. The DB of Bombay High Court in Noble Resources and Trading India Pvt. Ltd. v. UIO: MANU/MH/1282/2011 examined the challenge to a notification dated 31.03.2011 issued by DGFT whereby schedule of rates under the Duty Entitlement Pass Book (DEPB) Scheme was amended to disentitle export of cotton with respect to shipments made on or after 21.04.2010. The High Court has quashed the circular by holding that by merely issuance of a Circular, rate of export benefits cannot be curtailed.

4. The Hon'ble High Courts have held that Power to legislate retrospectively is not inherent, and has to be specifically conferred by statute no such power seems to emanate, either from Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 or from Para 1.2 of the FTP as have been held in (a) Shri Hari Exports v. DGFT, MANU/DE/0075/1994, (b) Hoewitzer Organic Chemicals Co. v. DGFT, MANU/TN/0692/2013 (c) and Intolcast Pvt. Ltd. and Ors. vs. UIO : MANU/GJ/2292/2016

5. The Supreme Court in DG FT V s. I(anak Exports and Ors. MANU/SC/1258/2015 has observed as under:-

Section 5 of the Act does not empower the Government to make amendments with retrospective effect, thereby taking away the rights which have already accrued in favour of the exporters under the Scheme. No doubt, the Government has, otherwise, power to amend, modify or withdraw a particular Scheme which gives benefits to a particular category of persons under the said Scheme. At the same time, if some vested right has accrued in favour of the beneficiaries who achieved the target stipulated in the Scheme and thereby became eligible for grant of duty credit entitlement, that cannot be snatched from such persons/exporters by making the amendment retrospectively.

6. The DB Delhi High Court in Lennox James Ellis vs. UIO: MANU/DE/0018/2019, has observed as under:- On the other hand, it is well settled that a statute which merely prescribed, inter alia, the procedure is presumed to be retrospective, unless such construction Is textually inadmissible as has been held in Hitendra Vishnu Thakur v. State of Maharashtra, MANU/SC/0526/1994.

7. The SC in CCE V s !(ores (India) Ltd. MANU/SC/1510/1997 has held that a quasi-judicial body exercising quasi-judicial powers was not bound by the directions of the Central Board of Excise and Customs.

8. The Supreme Court in State of MP V s . G.S. Dall and Flour Mills MANU/SC/0191/1991 has held “executive instructions can supplement a statute or cover area as to which the statute does not extend but, however, they cannot run contrary to statutory provisions or whittle down their effect”.

9. The Supreme Court in Bindeshwari Ram v. State of Bihar & others (MANU/SC/0080/1989 holding that the executive instructions cannot prevail over the statutory rules and in absence of statutory rules, executive instructions have no relevance or force.

TCS on Foreign Travel - A Looming Misery

By CA Manish Aggarwal

While speaking at a media event in Feb'20 PM Narender Modi commented that more people spend on overseas travel but less people pay income tax. His precise comments were

> "In the last 5 years, more than 1.5 crore of expensive cars have been sold in India. More than 3 crore Indians have travelled overseas for business or travel. Of the more than 130 crore population, only 1.5 crore people pay income tax. Of this, every year, those declaring an income of more than Rs 50 lakh is only 3 lakh," Modi said at an event organised by news channel Times Now."

The fall out of this statement was seen in Finance Act 2020 wherein a new provision, section 206C(1G) was inserted in Income Tax Act, 1961, which requires the seller of overseas tour program package to collect TCS from the buyer of the package. These provision have wide impact on the businesses and individuals specially airlines, cruse-lines, travel agencies, tour operators, visa facilitators and people engaged in similar activities.

However, when we look at the language used in charging section, it looks that government has made the provisions wide enough to cover even unintended people and transactions. There will be serious impact on finances and processes of the enterprises engaged in the travel and tourism businesses across the board and at all the levels. Professionals will be asked to reply various questions relating to TCS and hereinafter we will discuss the provisions of the law and the questions that need to ascertained for proper implementation of the law.

"Extract from the law

206C (1G) Every person,—

a) .....

b) being a seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package,

shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, collect from the buyer, a sum equal to five percent of such amount as income-tax:

Provided that the provisions of this sub-section shall not apply, if the buyer is,—

(i) liable to deduct tax at source under any other provision of this Act and has deducted such amount;

(ii) the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Explanation.—For the purposes of this sub-section,—

(i) ....

(ii) "overseas tour program package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

(1-H) ...

(1-I) If any difficulty arises in giving effect to the provisions of subsection (1G) or sub-section (1H), the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty."

The law will be applicable with effect from 1 October 2020.

Discussion on above Law

Section 206C (1G) (b) provides for collection of TCS by a seller of an overseas tour program package @ 5% of the amount received from or debited to the account of the buyer of such package.

The term overseas tour program package has been defined to mean ***"any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.".*** As such, the definition is much wider and all types of payments made for overseas tour gets covered by the definition.

Therefore, any amount received by seller for

i) international travel
ii) hotel stay; or
iii) boarding or lodging; or
iv) any other expenditure of similar nature; or
v) in relation to

"visit" to a country or territory outside India, from the buyer, is treated as "overseas tour program package". By this definition, amount received for international travel or hotel stay, overseas land arrangements like bus, rail or air services performed outside india or entry tickets for entertainment hubs or restaurant services or visa / immigration services and all such services, will be treated as overseas tour program package and it will be subject to TCS at applicable rates and comply with other related compliances like payment of TCS to government, filing of return, issuance of TCS certificate etc.

It is pertinent to note that there is no monetary threshold provided for the sale of overseas tour program package, thus, TCS liability will start from zero limit and even if the overseas tour is for a very small amount, the TCS provisions will apply. This zero limit is applicable for both seller and buyers. Means, any small agent selling overseas tour program package will be liable to collect TCS. This has been done by amending the definition of seller in Explanation (c) to Section 206C and limiting it only to sub-section (1) and (1F) of Section 206C. The effect of this amendment is that the individual sellers will not be given the turnover benefit for implementation of section 206C.

As per Section 206CC, in the absence of PAN, TCS is required to be collected at double of the prevalent rate i.e. 10%. Most of the passengers don't carry their PAN at the time of travelling and also none of the foreign travelers or non-resident travelers will be having PAN which will be a great cause of concern for such people,

No TCS is required to be collected, where the buyer is liable to deduct and has deducted TDS on such payments, or in a case where the buyer of the overseas tour program package is Central Government / State Government / Embassy or a High Commission etc, subject to certain conditions which are yet to be notified.

Further, provisions of section 206C(9) allows lower collection of tax, has not been extended to sub-section 206C (1G). So at present there is no law which allows the buyer to get benefit of lower collection certificate and it has to pay the TCS at applicable rates.

Some of the problems that need to be addressed before the implementation of the law are discussed hereinafter.

Meaning of term "visit" and its applicability on long term visit

The definition above uses the word "visit". Meaning of word "visit" as per merriam-webster dictionary is **"to go to see or stay at (a place) for a particular purpose (such as business or sightseeing)" ,** this precisely means that visit means short-term visits where the person does not intend to stay in the host country for a long period of time or for the purpose of studying or employment**.** The question arise, whether short-term visits will only be covered or travel undertaken for long-term purposes or permanent migration also is also covered. For example tickets or other arrangements for persons going outside India for employment or education will also be covered or not. At present there is no distinction between long term and short term visits, so TCS will be applicable for all type of visits and even to permanent migrants also.

It may be noted that migrant workers and students stay outside India for more than 182 days and become non-resident as per Income Tax Act, and not liable to file their ITR in India as they may not have any income in India. By virtue of this amendment they will be required to file their return to get the refund of TCS paid.

Doing away with concept of resident

While framing the law, government has carefully not used the words resident or non-resident but instead used the words buyer and seller. Tax residency is a very important concept / term in the Income Tax Act and whole taxability is based on concept of tax residency. Chapter XVII-B, relating to TDS provisions, has effectively differentiated between residents and non residents and different provisions exist for them. But in case of 206C (1G), the concept of tax residency has not been adopted at all, but an entirely, new concept of buyer and seller has been envisaged. For other sub-sections, wherever, the words buyer and seller exists, the implication is very limited and effected persons are very less. But this sub-section has wide reaching impact on everybody's life and will require extensive deliberations before being implemented.

Identification of "buyer" and "seller"

It needs to be ascertained that who should be treated as "buyer" and "seller" of the overseas tour program package as per section 206C(1G).

No definition of buyer or seller has been given in the law. The terms 'buyer ' and 'seller' have not been defined by the government in the relevant sub-section. These terms are very vague and practically cover everybody who enters into a transaction relating to overseas tour program package.

If we look at the part of the language of sub-section it reads as " ***a seller of an overseas tour program package, who receives any amount from a buyer ".*** It means seller means the person who receives amount from the buyer. This precisely means that receiver and payer will be treated as seller and buyer respectively.

Business of travel agency has gone into everlasting changes in last 15 to 20 years and these words will create lot of unintended hardships. Now a days, lot of business is conducted through online portals, even non-IATA agents also work through online portals. In the eyes of law, all the sub-agents between the online portals or IATA agent of the airline or marketing agents of Hotels will be treated as buyers or sellers, as the case may be. Even the IATA agents or online portals who are dealing directly with the airlines will also be treated as buyer as far as airlines are concerned. Therefore, since each party will act as buyer or seller, as the case may be, the effect of TCS will be multifold and these businesses will become non viable just because the TCS is applicable on these transactions at every stage.

Legal relationship between agents and airlines or agents and hotels or agents inter-se is not of buyer or seller, it is of agent and principal. The booking agent, who facilitates in booking of ticket or hotel or other facilities for travel overseas, in no way, should be called the buyer of the overseas tour program package. But, law has been framed in such a manner that mere receiving or paying the amount relating to overseas tour program package will make them buyer or seller in the eyes of law and the TCS will become applicable.

Treatment of payer as buyer

It is needed to be ascertained, whether the TCS is required to be collected from the agents/ actual payer or person bearing the cost of overseas tour program or from the actual passenger. This question arises because no definition of buyer or seller exists.

Many times the cost of travel is borne by one person and services are enjoyed by another person, specially, when the corporate travel/tour packages are conducted or a family tour is undertaken. At present payer

will be treated as buyer, however, clarity is required as there should not be a confusion later on that the passenger is the buyer and not the person who is making the payment.

Services sold from outside India to Indian passengers

Now a days, online travel portal are taking central stage in tourism business and lot of transactions are done through these portals. It is unclear, whether the overseas tour program package will be subject to TCS if tickets / packages are issued/ charges are collected outside India for a journey / tourism starting from India where no money is received by the seller in India.

Let us take an example of Indian passenger booking ticket or tour program from an agent situated outside India or foreign online portal and money is not received in India. With the technology dictating the terms of business, any passenger is now free to buy tour package from any person anywhere in the world and the vouchers come on email in soft copies which are honored by the service providers. Therefore, for an Indian passenger, it will be much more cost effective to buy tour packages from an agency or foreign online portal or person situated outside India than an agent situated in India, as such there is no bar in law which prohibits any Indian passenger to make payment outside India for purchase of travel services, though certain limits may apply.

Applicability on foreign citizens

Another question that arises, whether the TCS will be collected from foreign citizens or people non-resident of India who happen to buy the ticket / package for outward tour / travel from India. For example, if an Americans citizen visiting India decides to visit Nepal during his visit to India. Whether that American citizen will be liable for TCS because he is visiting outside India from India and the ticket/package has been purchased from India. Whether the Americans citizen will allow such collection and how such collection will be refunded to the American citizen in the absence of ITR. Whether the American citizen will be able to claim benefit of DTAA and how it will be reported. All these questions need to be answered by the government beforehand. At present, that foreign citizen will be subject to TCS.

It may also be noted that this will cause a disparity between overseas tour program packages booked from India and booked from outside India. In the given example, if the American citizen had booked the package for

Nepal from America itself, there would not have been any TCS on him. Therefore, Indian agents selling foreign packages to foreign citizens visiting India will be in disadvantageous position viz-a-viz overseas agents selling the same package to the same customers. Also such passenger can buy package from foreign online portals without attracting TCS.

Collection of tax at airports or sea ports

Many times passenger takes several services from at the airport or sea ports itself for example excess baggage, preferential seat, sale of food and other value-added services and they make the payments at the check-in counter and sometimes during voyage or in flight also. It will be herculean task for airlines / cruse-lines to collect TCS at that point of time and compilation of relevant data for filing of TCS return will pose further challenges. The check-in time available at the airports or seaport is very limited, therefore this will create lot of chaos and disputes at the airports.

In our view, TCS will be applicable on the services taken at the airports or seaports or during voyage or in flights.

TCS on ancillary services

Many a times, amendments are required in overseas tour program package, such amendments are chargeable with a fee. Question arise whether TCS will be applicable on such amendment or ancillary services. In our understanding, if main service is subject to TCS, any service linked to main service will also be subject to TCS.

But, if such charges are collected from a Indian visiting outside India at a location outside India, how the seller will collect TCS and comply with other regulations from outside India. Specially for airlines, where these charges are collected from India passengers outside India, will pose problems.

Treatment of refund or cancellation

Clarification is required for treatment of TCS in case of cancellation of tickets / tour programs. At present there is no provision in law for adjustment of cancelled tour program. Though cancellation can be adjusted before the filing of TCS return but there is no provision for adjustment of TCS after the TCS return is filed. Again this will cause great injustice to the people who just entered into a transaction and then cancelled but unnecessary their 5% /10% amount will held up in TCS and refunded only after filing of ITR.

Applicability on Visa services

Next question that comes to mind is whether TCS will be applicable for Visa service and whether amount collected by embassies will also be included in the value liable for TCS.

Visa agents or service providers collect consular fee along with their own service. At present, for purpose of GST the on counselor fee is not subject to tax, however, for TCS, this may be treated as amount subject to TCS as the purpose and intent of the law is entirely different. Here also even if a person do not visit overseas territory but only applies for Visa, he has spent the money for the purpose of overseas visit and he will be subject to TCS.

There can be many more such instances where industry as well as professionals will face problems in implementing the law. TCS is being implemented first time on outward international tour program package and the airlines, cruse-lines, hotel agents, IATA agents, aggregators are also covered by virtue of the definition given in the law for overseas tour program package. The provisions of law have wide impact and require a lot of clarifications from CBDT before its implementation. Under sub-section 206C (1-I) CBDT has the powers to issue guidelines for removal of difficulty and it is suggested that government should take note of the matters raised hereinabove and issue guidelines at the earliest to avoid last minute chaos.

Principles of Natural Justice

by
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Respected Member's

As we know that the basic motive of principle of natural justice is to ensure fairness in social and economic activities of the people and also shields individual liberty against the arbitrary action. But what exactly are these principles?

In this article we can talk about the principles of natural justice and principle for issuing show cause notice.

1) Introduction

The concept of natural justice though not provided in Indian constitution but it is considered as necessary element for the administration of justice. Natural justice is a concept of common law which has its origin in "**jus natural**" which means law of nature. In its layman language natural justice means natural sense of what is right or wrong. 'Natural' justice is not justice found in nature; it is a compendium of concepts which must be naturally associated with justice, whether these concepts are incorporated in law or not. Justice is a great civilizing force. It ensures that the rule of law rather than the rules of nature prevail in regulating human conduct. Natural justice has a very wide application in administrative discretion. Its aims to prevent arbitrariness and injustice towards the citizens with an act of administrative authorities. The concept of natural justice was confined to the judicial proceedings only but with the advent of welfare state the powers of administrative authorities have considerably increased as a result it becomes impossible for law to determine the fair procedure to be followed by each authority while adjudicating any disputes or any quasi-judicial proceedings.

2) Principles Of Natural Justice

Natural justice is concerned with 2 primary rules.

These are:

- Nemo Judex In Causa Sua (rule against bias)
- Audi Alteram Partem (rule of fair hearing)

Nemo Judex In Causa Sua means rule against bias. It is the first principle of natural justice which says no man shall be judge in his own cause or a deciding authority must be impartial and neutral while deciding any case. Thus the principle signify that in a circumstances where a judge or deciding authority is suspected to be bias an partial then he/she shall be disqualify for determining any case before them. It formulate that justice should not only be done but seen to be done.

Audi Alteram Partem It means hear the other side as well. This is the second most fundamental rule of natural justice that says no one should be condemned unheard. In a circumstances where a person against whom any action is sought to be taken and his right or interest is being affected, shall be given an equal opportunity of being heard.

The **Hon'ble supreme court in CCE & Land Customs v Sanawarmal Purohit 1979 (4) ELT j 613 (SC)** held that it is true that a quasi-judicial authority is not required to hold an enquiry into a dispute before him according to the procedure followed in a court. Where a tribunal which has the power to make any enquiry as it thinks fit, decides a case on a matter of fact discovered by the tribunal itself on inspecting the premises in question, it will be breach of natural justice if it does not inform the parties and give them a chance of dealing with it. If a tribunal receives from a third party a document relevant to the subject matter of the proceedings, it should give both parties an opportunity of commenting on it. It was the duty of the collector of customs to inform the persons charged before him of the charges against them. A quasi-judicial authority would be acting contrary to

the rules of natural justice if it acts on information collected by it which has not been disclosed to the party concerned and with respect to which full opportunity of meeting the inferences which arise out of it has not been given.

With reference to principles of natural justice, the **Supreme court** in **Automotive Tyre Manufactures Asson. V Designated Authority 2011 (263) ELT 481 (SC)** held that it is trite that the rules of **'natural justice'** are not embodied rules. The underlying principle of natural justice, evolved under the common law, is to check the arbitrary exercise of power by the state or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In this case, the materials collected by the previous designated authority for antidumping were used by the successor without hearing the aggrieved parties. Therefore the same was interfered with as being a violation of the principles of natural justice.

3) Principles for issuing show cause notice

The indirect tax legislations in **Section 11A** of the **Central Excise Act, 1944**, **Section 73** of the **Finance Act, 1994** and **Section 28** of the **Customs Act, 1962** make it mandatory to issue show cause notices before adjudicating a matter. Therefore, it would be relevant to notice a few principles in that regard.

- **Whether it is mandatory to issue show cause notice?** In **UOI Vs. Madhumilan Syntex Ltd. 1988 (35) ELT 349**, the supreme court held that any demand raised without issuing show cause notice or granting a hearing would be invalid in terms of **Section 11A** of the **Central Excise Act, 1944.** In **CCE Vs. Kosan Metal Products Ltd. 1988 (38) ELT 573,** the Supreme court held that show cause notice is necessary before adjudication and mere noting in the periodical returns is not a notice.

- **Whether unsigned show cause notice is valid?** In the case of **Harichand K. Khanna Vs. C.C.E. 2002(150) ELT 1323 (Tri-LB)** it was held that a show cause notice would not become invalid if the copy served was not signed by the Commissioner but was attested by the Asst. Commissioner, as long as the office copy was initialled by the Commissioner. It must be said that the law in this regard has to be considered strictly. It is noticed in several matters that notices and orders are drafted by subordinates with the Commissioner merely affixing his signature.

- **When can the notice be issued?**

  As per the legislative provisions, show cause notices can be issued wherever the duties/taxes have not been levied, not been paid or have been short-levied or short-paid or erroneously refunded. Meaning of

  (a) **Short levy**-> where the tax/ duty has been levied.

  (b) Non-levy-> Non-levy of a duty or tax arises when the same has not at all been charged on the product or service.

  (c) Short-paid-> The term short payment means payment of an amount less than what is due.

  (d) Erroneous refund-> an erroneous refund refers to a situation where a refund is granted based on an error.

4) Conclusion

The principles of natural justice have been adopted and followed by the judiciary to protect public rights against the arbitrary decision by the administrative authority. It is supreme to note that any decision or order which violates the natural justice will be declared as null and void in nature, hence one must carry in mind that the principles of natural justice are essential for any administrative settlement to be held valid.

In India the principles of natural justice are provided in **Article 14 & 21** of the **Constitution of India**. With the introduction of concept of substantive and procedural due process in **Article 21**, all that fairness which included in the principles of natural justice can be read into **Article 21**.

The principle of natural justice is not confined to restrict walls the applicability of the principle but depends upon the characteristics of jurisdiction, grant to the administrative authority and upon the nature of rights affected of the individual.

Please give your respective feedback.

Need To Declare Video-Graphed Will As Valid Will

By
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The execution of wills is governed by the Indian Succession Act, 1925. The world has changed a lot since past 95 years, and so has the society. The law has to cope up with the dynamic society otherwise it would become obsolete. Similar is the case with the law governing the validity and execution of wills.

A will is a document whereby a person makes a declaration about the management or disposal of the assets, both movables and immovables, owned by him, pursuant to his demise. Although there is no prescribed format of a will to be valid, the essentials must be fulfilled. Firstly, a legally valid will must contain a declaration about the disposal of the assets. Such declaration must be absolute and unambiguous. As per Section 63 of the Indian Succession Act, 1925 the testator, who must be a major and a person of sound mind, shall sign or shall affix his mark to the will, or it shall be signed by some other person in the presence of and by the direction of the testator. As per Section 63(b) the signature of the testator shall be so placed so that it shall appear that it was intended by the testator to give effect to the writing as a will. Section 63(c) lays down the requirement of attestation of will by two or more witnesses that either the testator himself or any person as per his direction under sub-section (a) has put his signature or mark, as the case may be, upon the will. The said Section further makes it clear that no particular form of attestation is necessary.

Section 65 of the Indian Succession Act, 1925 deals with a different class of wills, i.e., Privileged Wills. It states that *"Any soldier being employed in an expedition of engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in manner provided in Section 66. Such wills are called privileged wills."* Further Section 66 specifically states that wills need not mandatorily in writing but may also be made by word of mouth. The privileged wills are special in the sense that there is no requirement of it being in writing, although it applies to a specific class of persons, i.e., only to soldiers, airmen, mariner and that too in special circumstances.

As stated above, the law governing the wills is almost a century old, and there is a need to revise the law. There is a need to include and

incorporate another type of wills- Nuncupative Wills. Nuncupative wills are those wills which are not in usual form of writing, but are in other forms such as oral. A nuncupative will is a will that has been delivered orally to the witnesses of such wills, as opposed to the written form. The problem with the nuncupative wills is that it is almost impossible to prove the existence of such wills, either by the witnesses or by the beneficiaries, however, with the coming up of technology to record such wills the problem is now gone. Now a testator can record a video of himself in the presence of two or more persons who shall be witnesses to such will, and that nuncupative will can be proved in the courts of law as a valid will. In such nuncupative wills or video-graphed wills, there is no requirement of putting the signature or mark of the testator because it is the testator himself who is speaking about the intention of disposing of his assets pursuant to his demise. Further, since there is no prescribed format of a valid will in India, if the condition of the testator being major and of sound mind is complete, such video-graphed or nuncupative will should be perfectly valid will in the eyes of law.

The idea of nuncupative will is nothing new to our jurisprudence, it has existed since the earliest society. Even in Roman law of wills, there was no requirement of making a written declaration initially. *"At first no writing was used or required. The testator gave oral instructions as to the disposition of his property in the presence of five witnesses. These instructions the grantee (familae emptor) bound himself to carry into effect)*[1] *"They were in fact the conditions of the sale. After a time writing came to be used in connection with this form of will. But a writing tho convenient was never necessary"*[2] Thus it is apparent that there was no requirement of the wills to be in writing initially. In fact, the practice of wills to be in writing gained popularity only in the middle ages.

In the Anglo-Saxon England also there were similar provisions. The practice of disposing property by wills was very common in the Anglo-Saxon society. The disposition by wills was encouraged by the ecclesiastic because most of the wills were in favour of the church itself. Although formal Anglo-Saxons wills were in written form, oral wills were also held valid and were favoured by the clergy. It was only after the Norman conquest and the Statute of Henry 8th that the wills regarding land were required to be in writing, however, the wills regarding personal property continued to be governed by the nuncupative wills. After the Statute of Frauds in England, the nuncupative wills were declared invalid if the estate exceeds thirty pounds, besides some other restrictions. After the enforcement of

1 Nuncupative Wills, Stuart Dixon Jenks, Cornell Law School 1895

2 Hadley Roman Law p.300

Statue of Frauds, the concept of nuncupative wills was virtually done away with.

In ancient India also the position was similar. Under the old customary law, a Hindu could make a will either in writing or orally. Thus nuncupative wills were held valid. With the enactment of Hindu Wills Act, 1870, for the first time Hindus were required to make wills, codicils, etc in writing and also to sign and attestation by the witnesses. The Indian Succession Act, 1925 repealed the Hindu Wills Act, 1870. Thus, now the Hindus, Buddhists, Sikhs, Jains are required to make a will in writing, affix his signature or mark on such will, get it attested by two or more attesting witnesses; and the oral or nuncupative wills are not valid wills. However, historically, the oral or nuncupative wills were held valid. In fact, even today the Mohammedans in India are capable of making an oral wills.

So, the concept of nuncupative wills has been the part and parcel of the jurisprudence of wills since the ancient times of our society, and it was started to be discarded only when it became difficult to prove the existence of such wills and the genuineness of such wills. The law of wills has always been so framed so as to provide convenience to the testators, however, the law has been so modified to prevent frauds. Thus it can be deduced that only to prevent the frauds, the nuncupative wills started declining. However, the causes to refuse the existence of such nuncupative wills are not relevant in today's scenario. As discusses above, a will recorded in a video can qualify as a legally valid will.

Society is dynamic and law has to evolve to match the pace of the society. The Indian Contract Act is a classic example of this. The Indian Contract Act was enacted in 1872, which is more than half a century prior to enactment of the Indian Succession Act, and its provisions regarding offer, acceptance, communication, revocation, consideration would have become out dated and obsolete, however, even today about 150 years after its enactment, most of the provisions are similar to that of its original provisions, nothing much has changed in the Indian Contract Act, 1872. The reason is that the judiciary has been liberal in construing and interpreting the provisions of the said Indian Contract Act, 1872 so as to include the new methods of communication, acceptance also. In 1872 there was no internet, nor even the iota of idea of something like internet, even then provisions of 1872 have been given wider interpretation by the judiciary. Similarly, There is no requirement of bringing an amendment in the Indian Succession Act, 1925 to declare a video-graphed will as a legally valid will, it can be done by judicial interpretation to Section 63 of the Indian

Succession Act, 1925. The essentials of execution of a valid will under Indian Succession Act are as follows:

1. A will should be made by a person of sound mind, not being minor;

2. It should have declaration regarding disposition of his assets pursuant to his demise;

3. It should be in writing and the testator should affix his signature or mark, or authorize someone to put his signature on such will;

4. It should be attested by atleast two witnesses that the testator has affixed his signature or mark on such will.

The requirement of a valid will to be in writing and bearing the signature or mark of the testator creates an impression regarding the existence of the intent of testator regarding disposition of his assets as per the declaration mentioned in the document; and if any person challenges such will the burden to disprove such existence of will shall be upon the person challenging the will. Now if we take the case of video-graphed will, the testator himself is speaking his mind regarding disposition of his assets in presence of two or more witnesses, thus there is no requirement of such will to be in writing. Further, the Supreme Court has declared an electronic record is a document.[3] Thus, the only differentiation now left is that of affixing of signature or mark by the testator and the requirement of attestation by witnesses. The requirement of affixing signature or mark is to ensure that the testator has understood the contents of will and that the same has been made by him only. Now if a person himself is speaking about disposition of his assets pursuant to his demise in a video, the purpose of affixing signature or mark of the testator has already been fulfilled. Similarly, if the testator is speaking in presence of two or more witnesses in the video-graphed will, the purpose of attestation by the witnesses is also complete. Thus there appears to be no hindrance in holding the video-graphed declarations regarding disposition of assets by a person upon his demise as a legally valid will.

The question regarding validity of an oral will came up before a Division Bench of the Hon'ble High Court of Delhi in *"Sunita Shivdasani Vs Geeta Gidwani & Anr."*[4], and the Bench after considering various judgements of other High Courts, Privy Council dismissed the appeal by holding that

3 P. Gopalkrishnan @Dileep Vs State of Kerala (Crl.A. 1794/2019)

4 AIR 2007 Del 242

"It is quite clear that there is no scope for a Hindu to make an oral or a nuncupative will after the said date [01.01.1927]*"*. However, what came up for consideration before the Hon'ble Bench in *Sunita Shivdasani* was a question of validity of an oral will, and not a video-graphed will. The oral will is different from a video-graphed will. The existence of an oral will is extremely difficult to prove and the courts will not go in such depth to consider the existence of an oral will, however, if a will is video-graphed its existence will not much be in doubt. True, the burden of proving the genuineness of such video will shall be upon the person propounding such will, however, that is a matter of trial; and if the video containing such nuncupative will is proved to be a genuine one, there should not be any hindrance upon granting probate upon such nuncupative will, provided other conditions such as of witnesses etc are fulfilled.

The question of validity of video-graphed Will came up for hearing before the Hon'ble High Court of Delhi in *"Shilpa Khullar Sood Vs Vipul Khullar"*[5] . The Single Judge of the Hon'ble High Court was adjudicating upon the application under Order XII Rule 6 moved by the Plaintiff on the ground that the Defendant has raised a plea of existence of video-graphed will in his Written Statement and has admitted that there is no documentary will under the provisions of Indian Succession Act, 1925; and as such the Plaintiff prayed for a decree of partition on the grounds that the video-recorded Will is not a legally valid will under the law of the land. The Hon'ble High Court dismissed the said application vide order dated 13.02.2020 by holding that *"… prima facie this Court cannot hold that a Will which is video-recorded will not be a Will in the eyes of law."* Although the above mentioned view of the Hon'ble Delhi High Court is *prima facie* and is also subject to review by the larger Bench or superior court, the said order dated 13.02.2020 opens a new era in the field of law.

It can be said that the courts have started acknowledging the existence of a video recorded will, as opposed to previous judgements wherein the courts have held that there is no concept of nuncupative wills in India, the day is not far when the concept of video-graphed Wills and codicils shall be legally enforceable in India and the ultimate beneficiary in such situation will be common man only. The time is ripe for the judiciary to widen the interpretation of the provisions of the Indian Succession Act, 1925 thereby acknowledging and accepting the video recorded Wills as legally valid and enforceable Wills.

5 CS (OS) 586/2017

Important Questions and
Detailed Suggested Opinions

by
Sushil Verma, Advocate

Q. Like VAT and Service Tax, GST is also a value addition -based law. It was supposed to provide seamless input tax credit to ensure cascading effect is reduced. But we find that for all activities there are many restrictions and bottlenecks. And on top of it the conditions provided in Section 16 dealing with claim of input tax credit are very onerous? Do you think GST law has achieved it objective; more so, when virtually all controversial provisions are under challenge before various High Courts?

Section 140 – transitional input tax credit – retrospective amendment? Matter pending in SC: What is the view of a practicing lawyer?

We all are of the opinion that the GST law is still in its infancy – three years are not a very long period for an indirect tax reform of this magnitude to settle comfortably. Undoubtedly a flurry of notifications; clarificatory circulars; hundreds of High Court Judgments; seminars, conferences, webinars; advance rulings and their appeals etc. have engulfed our minds and profession. The stake holders – tax payers and the professionals dealing with GST- are still grappling with the nuances of this law. The Government and the Board, in my view, are treading with the development of GST law with a "fear syndrome" and perhaps in the process of appreciating this law are mistrusting the tax payers. Of course in any tax law there shall be black sheep operating to un-justly enrich themselves. That is what is causing havoc with the implementation of this law – for example continual threats of arrests; attachment of properties and coercive measures being used by authorities all over the country are creating fear even amongst the honest tax payers. But the enforcement of this law has been to say the least very poor – for the simple reason that the entire team of GST officers is ill trained to appreciate this law – **Service Tax** people do not know the nuances of taxation on goods and infra projects and **VAT**people do not know to say the least, anything about services. The result is a chaos and let us agree to it. But I am not a pessimistic to write off this reform

as yet; the tax collections are improving though not to the satisfaction of the Centre and States; perhaps there will be finally a silver lining in the dark clouds that GST law faces today. Let this law evolve and it will evolve only when some legal enforcement is done and not arrests, attachments etc.

Section 140 of CGST Act deals with claim of transition input tax credit was subjected to retrospective amendment by Finance Act 2020 and before various High Courts read the Rule 117 attached with this Section as directory. To cure this defect retrospective amendment was brought by the Parliament. Of course, the matter is now before the SC and the latest Judgment in the series of tens of Judgments by Delhi High Court in the case of Brand Equity has been stayed by the SC.

Notwithstanding my views in my long and widely circulated Article on this subject, I only pray the transition input tax credit is saved for all and sundry and a final opportunity be given be by the SC to all those who could not avail due to various reasons including technical glitches. Let the procedural law and procedural requirements not get priority over the law e.g. the tax payers are entitled to transition input tax credit for the taxes they have paid in the repealed Acts. Let us wait for the time being; In my personal view the Judgment of Brand Equity in so far as it interpreted the technical glitches in Rule 117(1A) may perhaps by upheld provided the tax payers applied as per time lines given in rule 117 of CGST Act!

Q2. What is the key requirement of Section 16 to claim ITC that the tax payer must comply – especially with regard to "proof of receipt of goods etc."? Must the tax payer claim ITC ONLY when it has received the goods or service or he can claim based on receipt of tax invoice? The tax periods will vary and it will have implications for refund etc.

It is stated that GST paid on advances is not claimable as ITC unless the advance is applied to a supply? Can we challenge this provision? This blocks money of the tax payers and for infra projects it could be a long period?

The other relevant question is Rule 36(4) Notification- briefly tell us its implications and whether there are any gate ways to come out of it?

The conditions attached to availing the input tax credit as prescribed in Section 16 of the CGST Act read with rules must be adhered to. There is no way out. Yes, till goods are received and the tax payers are in a

position to evidence the receipt of goods or services; in my opinion input tax credit may not be claimed as it would amount to **"wrong"** claim of input tax credit and may attract the provisions of Section 73 and Section 74 of the CGST Act and consequential demands for interest and penalty. Yes, the tax payers will have to shell out the cash out go to pay their output tax liabilities – but that must be done.Ofcourse, for bill to ship transactions there are deeming provisions and perhaps theory of Constructive Delivery may be invoked and this has been so provided in Section 16.

On advances issue also in my view the law is clear. For example; for continuous supply transactions, till the supply of goods or service is complete as per explanation 1 to Section 12 read with Section 16, the ITC cannot be claimed. The invoice shall be issued at the time when the continuous supply ceases and such invoice shall be issued to the extent of the service provided before stopping. For example, a works contract starting on 1st August 2017 was due for completion in March 2018. But it was stopped on 11th Nov 2017. The contractor will issue an invoice on 11th November 2017 to the extent of work performed. Agreed, it is a very harsh provision as in infra projects this could be as long as years; but that is the law and there is nothing we can do.

Notification issued under Rule 36(4) – mandates that the tax payers can claim only 10 percent of the mismatched ITC and this notification is under challenged before various High Courts. **"Let us wait for the verdict.**" Till then we follow this.The Government has the power to issue such notifications. If you ask my opinion, this Notification may be held valid as the input tax credit, being only a concession and not a vested right, can be subjected to conditions as may be prescribed and this Notification may be held to be such a step to regulate the input tax credit. Moreover such notifications have not taken away right to claim ITC – once the. mismatch disappears; you can claim the ITC. It only cautions the tax payers to not to deal with men of straw and have good and professional dealings for receipt of goods and services. The Notification had an objective behind this – to curb tax evasion. As we all know Circular Trading and hawala transactions are even today galore in India and in the whole world; including transactions made for exports in India. Therefore through this Notification the Government clearly meant that should there be a mismatch in inwards and outwards supply as per online Portal this notification attempts to curb such clandestine transactions that has allegedly caused havoc with the Govt revenue.

The other view point is that the USP of the GST was **"seamless input tax credit** "and making India one nation with one tax. Hence, in my view,

notwithstanding the noble objective behind this Notification, this notification defeats the very USP of the GST Law and Courts will look into it. But legalities over equity considerations may prevail and Notification may be upheld as intra-vires.

However, in my view there is a way forward to tackle such tax deficient eventualities - Yes you can avoid the risk of such notifications; hold back the tax amount till the supplier files the prescribed returns and you are satisfied about such filing. Even if you have to perforce agree to pay the bank interest to the supplier on such security equivalent to tax amount held back; you should agree. This will also prove the bona fide of your transactions. Many companies are doing this especially when dealing with large suppliers for the first time and the good suppliers are agreeing as well.

Q.3 What is the 180 days provision in Section 16? Do you think it is constitutional? Can we challenge it? It attempts to overpower commercial arrangements between private parties even though there is a view the ITC is not denied but deferred? If this be so, how do you reconcile this provision with the limitation provided in Section 16(4)?Don't you think this is a contradictory provision?

Does a virtually impossible to satisfy condition that ITC will not be given unless the tax is paid by the supplier is intra vires the legislature or like VAT the SC may quash such a condition like in Arise case to some extent?

Answer: As per the second proviso to section 16(2) read with Rule 37, a registered person who has availed input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon within the period of one hundred and eighty days from the date of the issue of the invoice, shall furnish the details of such supply in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice and such amount of ITC shall be added to the output tax liability of the registered person for the month in which the details are furnished in GSTR-2.

Incase, **payment** against purchase of goods or services or both has not been made by the recipient to the supplier of such goods or services or both within a **period** of **180 days** from the date of issuance of invoice, Input Tax Credit (**ITC**) availed by the recipient on such purchase has to be **reversed** by adding the same to output tax liability and also pay interest on such reversal of input tax credit. This is the provision and this is a part

of substantive law contained in Section 16 – and this too, in my view, is one of the conditions to claim the concession of input tax credit granted by the legislature. Here too the input tax credit is not being denied but its rightful claim is deferred subject to the recipient making full payment as required including that of GST. Arguments could be advanced if a recipient satisfies only one condition i.e. he pays GST only and not the value of the supplies? Can he claim ITC.

MY TAKE is no; these are twin conditions and he must satisfy both.

This move is reminiscent of the Rule 4(7) of the CENVAT Credit Rules, 2004,

There is another question – why the input tax credit is not to be reversed when the tax is payable on reverse charge basis? Some argue why? In my view there is no need to discuss this as the conditions to claim input tax credit are in the domain of appropriate legislature and they have prescribed this condition. Further reverse charge liability is fixed as per Section 12 dealing with time of supply and hence it for the deemed supplier of services to ensure the legal process is followed.

Notification No. 13/2017 – Central Tax dated 28th June, 2017 applicable w.e.f. 1st July 2017 notified rate of interest as Eighteen Per Cent (18%) for Sub-section (1) of section 50. Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there-under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council. This is there the catch is as to why the reversal was to be added to output tax liability as calculation of interest is then feasible.

And in my view the interest may have to be paid in cash following the spirit of Section 49 of the CGST Act ? And it is equally debatable whether interest has to be paid when there is sufficient unutilised input tax credit lying in the electronic credit ledger?

Rule 37 of the CGST Rules deals with reversal of input tax credit. Readers can read and I am note quoting here for the sake of brevity.

Simply, it says that a taxpayer can avail ITC even without making payment for goods / services to the supplier (provided supplier has paid

the GST component to the Government and other criteria to avail ITC are full-filled). However the payment must be made within 180 days from invoice date.

In case the payment is not made within 180 days, the ITC will be reversed and will become payable along with interest. The Rule requires furnishing the details of such supply and the amount of input tax credit availed of in form GSTR-2 and the same shall be added to the output tax liability for the purpose reversal of credit..

The rule also provides such reversed amount is available for re-credit once the payment for the supplies is made.

Further through this Rule the Government has mentioned that limitation prescribed under Section 16(4) dealing with claim of input tax credit, but not for claim of reversed input tax credit, will not apply to a situation where the recipient claims back the input tax credit that he reversed when he did not make payment to the supplier within 180 days.

The legal question is that such reversal is circumscribed by GSTR -2 and that has been deferred. Then can we say that in the absence of machinery provision, the liability to reverse vanishes?

The machinery provision provides procedure for carrying out certain activities. The scope of machinery provision is clearly explained in 'USA Agencies V. Commercial Tax Officer, Attur' – 2013 (8) TMI 532 - MADRAS HIGH COURT.

It was held in the case of COMMISSIONER OF INCOME-TAX, BANGALORE VERSUS BC SRINIVASA SETTY (AND OTHER APPEALS) [1981 (2) TMI 1 - SUPREME COURT]

…that if the machinery or mechanism is not provided to comply with the provisions of statute, the charging section shall fail. The charging provisions and the corresponding mechanism together constitute an integrated code. When there is a case that the corresponding mechanism cannot apply it all, it is evident that such a case was not intended to fall within the charging section. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions.

In my view the scheme of Section 16 read with Rule 37 is not in the nature of a machinery provision, rather itis a substantive provision stipulating the contingencies and the types of transaction done by a registered dealer which would qualify for availing input tax credit. Hence my view is that notwithstanding GSTR-2 being not in position the tax payer shall have to

reverse the ITC if he fails to pay to the supplier within 180 days. Further I understand in 9-B the information can easily be culled out on this issue. It will therefore be advisable that recipient must reverse input tax credit and pay interest at the rate of eighteen percent as per the above notification. Of course there may be contrary view as well; but my take is that the input tax credit and the conditions to claim are given in Section 16 and must be adhered to.

I know many transactions arecorded in the books of accounts and issue of invoices are delayed especially in infra sector. This is unhealthy business practice as till tax invoice is received along with goods or services input tax credit cannot be claimed. Many also argue that it is the contract price and not the invoice price that must determine 180 days issue.

My take :

The proviso under discussion mentions that the recipient of supply is required to make the payment of ***"the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice*** *by the supplier…"* There are no exceptions to this provision other than reverse charge transactions. This would imply that the recipient of supply is required to make the payment of goods or services received within 180 days, even in cases where such purchases or expenses are not recorded in the books of accounts, if they wish to claim the input tax credit.

Re-claim of Input TaxCredit on payment – The third proviso, in continuation of the second proviso to Section 16(2), states as below –

> "Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon"

Of course Rule 37 clearly mandates that limitation under Section 16(4) of the Act will not be applicable i.e. the reclaim enjoys infinite time periods!

Suppose a tax payer does not discharge this liability in time and the liability spills over to next financial year and on detection a show cause notice is received from the authorities. There the tax payer will have a serious problem; he will have to reverse the input tax credit with interest but will he be able to reclaim the input tax credit; my view is NO. Let us read Section 17(5):

"(5) 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, namely: —

……

- any tax paid in accordance with the provisions of sections 74, 129 and 130."

Since the tax has been paid or reversed by the assessee in pursuance of a SCN issued under Section 74, the department may take a stand that he is not be eligible to reclaim the credit even when the payment is made to the vendor and the conditions of third proviso to Section 16(2) are satisfied. This means huge litigation will follow: the legal question whether the provisions of Section 16(1) will overpower Section 17(5) or whether the input tax credit blocked in Section 17(5) will prevail? My take is input tax credit will be denied as the provision of Section 17(5) start with non-obstinate clause and this will overpower Section 16 provisions.

Importers are liable to pay Customs Duty and IGST to the Government on imports of goods made into the territory of India. The IGST paid is available as input tax credit to the importer. This transaction, however, is not covered under the reverse charge mechanism of GST. In fact, the Customs Duty and IGST payable on imports of goods are actually a forward charge, i.e. they are a taxable supply under GST. This implies that the second proviso to Section 16(2) should apply squarely to goods import transactions as well, since the input tax credit provisions of the CGST Act apply equally to IGST Act. **The Government has carved out the reverse charge transactions from the liability of payment within 180 days, possibly owing to the fact that tax is payable by the recipient**. It is pertinent to note that the second proviso mentions that the amount payable to the vendor shall be **"the amount towards the value of supply along with tax payable thereon"**. There is no tax payable by the vendor in cases of imports of goods. Would this then imply that such transactions are outside the purview of the second proviso to Section 16(2)? Or could the assessing officers suggest that the proviso would apply equally to import transactions and the tax element should be considered as zero? T**hese questions become especially relevant considering that the payments for imports or exports usually do take more than 180 days**

Whether this provision can be challenged as ultra vires the powers of the Government? What this Section does is it attempts to regular the commercial contractual conditions of the supplier and the recipient.

Section 16(2)(c) of CGST Act, 2017 provides for a condition wherein the recipient would only be entitled to Input Tax Credit if the tax charged in respect of such supply has been actually paid by the Supplier. The second proviso to Section 16(2)(d) provides that the recipient shall add an amount of **Input Tax Credit** availed, along with interest to the output tax liability if the recipient fails to pay the invoice amount to the supplier within 180 days.

Proviso to Section 16(4) extends the benefit of availment of ITC till the due date of furnishing of return under Section 39 for the month of March, 2019 in respect of certain invoices, only if the supplier for such supplies has uploaded the details of such invoices in its return under Section 37(1) for the month of March, 2019.

A case can be made out that Section 16(2)(c), proviso to Section 16(4) is violative to Article 14 of the Constitution of India? Of course once we challenge the vires of the provision revenue shall be put to notice? But as a lawyer I am of the view, though many of you would hate to read, that such a provision may be held intra vires the powers of the Government; the Government is not trying to control the commercial contracting at all; it only is restricting that if the recipient want to claim input tax credit as per Section 16(1) and 16(2) he must show that full payment has been made to the supplier? I see nothing wrong in this at all as it will prompt fair business practices and may even reduce the bad debt issues. Well many High Courts are seized with the matter from this perspective; let us wait for their verdict and the verdict of the Supreme Court? But till then please follow the law in its letter and spirit as advised by the professionals.

Q 4. What is the concept of Input Service Distributor? When can we apply this provision to take advantage of distribution of credit amongst branches etc. of the input tax paid for common services?

An **Input service distributor** (ISD) is a business which receives invoices **for services** used **by** its branches. It distributes the **tax** paid, to such branches on a proportional basis **by** issuing an ISD invoice (Rule 54(1) of CGST Rules) for the purposes of distributing the credit of central tax (CGST), State tax (SGST)/ Union territory tax (UTGST) or integrated tax (IGST) paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD. Since the service, say, software is used **by** all its branches, the **input tax credit** of entire **services** cannot be claimed at one place say Head Office.The Invoice will clearly indicate in such invoice that it is issued only for distribution of input tax credit

It is important to note that the ISD mechanism is meant only for distributing the credit on invoices pertaining to input services only and not goods (inputs or capital goods). Companies may have their head office at one place and units at other places which may be registered separately. The Head Office would be procuring certain services which would be for common utilization of all units across the country. The bills for such expenses would be raised on the Head Office. But the Head Office itself would not be providing any output supply so as to utilize the credit which gets accumulated on account of such input services.

Since the common expenditure is meant for the business of all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between all the consuming units. ISD mechanism enables such proportionate distribution of credit of input services amongst all the consuming units.

An ISD will have to compulsorily take a separate registration as such ISD and apply for the same in form GST REG-1. There is no threshold limit for registration for an ISD. The other locations may be registered separately. Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as the output services are being provided there.

An ISD shall separately distribute both the amount of ineligible and eligible input tax credit. The input tax credit on account of central tax and State tax or UT tax in respect of recipient located in the same state shall be distributed as central tax and State tax or UT tax respectively. The input tax credit on account of central tax and State tax or UT tax shall, in respect of a recipient located in a State or Union territory other than that of the ISD, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient. The input tax credit on account of integrated tax shall be distributed as integrated tax.

Q 5. In this new GST regime, hundreds of tax payers and their allies have been arrested, denied bail, on the basis of interpretation of provisions of Section 132(1) (a to d).The key ground taken against such tax payers that input tax credit was availed without proof of receipt of goods or services or both as required by Section 16 – What proof we should have to evidence the receipt of goods or services?

The question arises as to what will be construed as '*received*' as per Section 16? Whether only physical delivery of such goods is required or even symbolic or constructive delivery shall suffice.

First Proviso to Section 16(2) reads as follows:

(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)……

(b) he has received the goods or services or both

Explanation—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person"

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:"

Explanation to section 16(2)(b) states that goods shall be deemed to be received even if they are delivered by the supplier of goods to *any other person* on the direction of the registered person whether acting as an agent or *otherwise*. Further, it neither require physical movement of goods nor does it require transfer of documents of title to goods or otherwise. Thus, from the plain reading of these provisions I do not infer anything that the legislative intent behind drafting the section was physical delivery: but the question is not that simple of course.

Rule 4(1) of the CENVAT Credit Rules, 2002 allowed availment of input "*immediately on receipt of the inputs in the factory of the manufacturer"*. Thus, in case of the Central Excise Act, 1944, receipt of goods in the factory premises was necessary. However, the Excise Law and the GST Law are entirely different in its nature. Under the Excise Laws, the point of levy of excise duty was manufacture of goods and ITC can be availed only on inputs. Thus, goods have to physically reach the factory to enable

manufacture of goods and subsequent levy of duty. However, no such similar condition was there under the State VAT Laws.

Under the GST Law, tax is levied on supply of goods and that can occur even if the goods are not available physically with the supplier. Levy in case of GST is not on manufacture, but on supply.

In GST there are various provisions dealing with supply of goods or services but none of these provisions talk of physical receipt of goods or services. But when we are dealing with a specific interpretation for input tax credit; my view is that physical receipt of goods or services is a precondition to avail input tax credit; how does a tax payer prove is for him to prove. After all the receipt of goods or services have to be proved in conjunction with "in the course or furtherance of business". My view is totally contrary to the often held view that the word" received" used in Section 16 may also be symbolic or constructive delivery" the very English interpretation of the word "received" is that goods or services were not only supplied but received – in the past tense.

Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

Personally speaking I hold the view that for any supply to be complete in terms of law recipient must physically receive the goods and prove it to claim input tax credit. Symbolic delivery or constructive delivery perhaps is perhaps not visualised in GST regime except in case of Bill to Ship To transactions as is provided in **Section 10(1)(b)** of the IGST Act read with Section 16 of CGST Act. Of course there are many issues that may crop up and litigation may ensue in large number of cases. For example supply on the directions of third person, sale through agents etc. where in the absence of proof of receipt of goods not by the person who may been billed but by the third person who is supposed to have received the goods on the directions of the third person may create problems. Hence, I am of the view the Government must create machinery for such tricky situations and tell the tax payers as to what substantive evidence is required to bring on record the proof of having RECEIVED the goods to be away from litigation for the purpose of claiming input tax credit.

For services the situation is more serious for the simple reason there is no physical thing as received like goods. For example an often quoted example is whether the lawyers service is completed when he agrees to

draft and file the appeal; the litigant pays him the cheque and he files the appeal; then can the litigant claim ITC based on invoice issued by a lawyer or for that matter CA assuming forward charge billing? Or the service will be deemed to have been received when the appeal is decided. Similar is the case of insurance policies? Both the views are possible views and hence to avoid litigation the Board must come out clearly with the documents that are required to prove the receipt of services?

Through these notes I will urge the Government to constitute a panel to sort out this tricky situations otherwise arrests, criminal cases, denial of ITC or refunds and harassment to the tax payers shall continue and perhaps without fault on their part. This rocks the boat of the GST to a great extent.

Let us wait and see as to how this provision is interplayed with Section 132(1)(a to d) by the Supreme Court? Telangana High Court Judgment and Madras High Court and Bombay High Court judgments holding different view about the pre-arrest investigations to be done or not are now before the larger Bench of the Supreme Court of India The scheme of the GST law permits arrest without FIR or without any charge sheet or without even determination of any culpable action and this is the fall out of Section 69 read with Section 132 and this is really huge.

We must be careful to appreciate the amendment made in Section 132 vide Finance Act 2020 wherein the scope of the provision has been expanded to not only include the person directly involved in committing any of the offences mentioned therein – both cognizable and non-cognizable – but all those who help him commit these offences and also retain the benefits. This amendment now makes Section 132 to be read for the purpose of Section 69 (dealing with power to arrest) may prove a panacea in the hands of the tax administrators all over the country to curb GST evasion. As professionals we should be alive to this law and perhaps debate and appreciate this law. This law is there to remain and the Courts will be slow to interpret such a law liberally.

The definition of works contact in Section 2(119) is an exhaustive definition when it uses the word “means” to define works contract. It includes only 14 type of contracts or transactions and all such contracts or transactions must be done in relation to immoveable property. And of course none of such contract or transaction is defined in the Act.

Section 69 is the most regressive provision; but it is required for effective implementation of an all India tax reform like GST: that is the paradox.

Q 6.A lot of people argue that ITC is our money that we pay to the Government through the Supplier and to claim back as Input Tax Credit as defined in Section 2, is our vested right and this cannot be subjected or circumscribed by time? Do you agree with this view?

And this is very critical for both input tax credit of GST regime and for Transitional Input Tax Credit under Section 140? We are aware of various High Court Judgments that are divergent in their views? What is your take on this? We will favor that money paid by the dealer must be returned and why put this to such limitations?

Ans: A right accrues to the tax payer when he pays the GST or any other tax qualifying for input tax credit or transition input tax credit.

The key issue is whether claim of input tax credit or for that matter transition input tax credit creates a vested right. Delhi High Court in M/s Brand Equity Treaties Limited,emphatically says such a right is a vested right. But Supreme Court and other High Courts say this is not a vested right but only a concession. Agreed Section 140 in a way allows the tax payer a carry forward of transition input tax credit that he earned in the repealed enactments; but suppose Section 140 did not allow the carry forward; then GST regime would have given them nothing; and if there were any rights to claim refund in cash in the repealed enactments, those rights could have carried forward – may be infinitely if the law provided.

The view of the Supreme Court is that the vested rightcontinues to be in existence and what is restricted is the time within which the tax payer has to enforce that right. Most of us feel that by imposing a limitation on claim of transition input tax credit under Rule 117 or Rule 117A, this alleged vested right is being taken away..

The theory of vested right and the implication of limitation on the said aspect of the vested right has been considered by Hon'ble Supreme Court in the case of Osram Surya (P) Ltd., wherein, while considering the proviso II to Rule 57G of the Act of 1944 it was laid down that by providing limitation the statute has not taken away any of the vested rights, which accrue to the manufacturers and what is restricted is the time, within which, the manufacturer has to enforce that right and, therefore, once the provisions of Rule 117 of the CGST Rules, which prescribe limitation has been upheld, the plea raised pertaining to the denial of vested right on account of petitioners failing to submit/file **Form GST Tran-1** in time cannot be countenanced.

The Supreme Court, in fact, makes this position clear in the case of Eicher Motors and another V. Union of India and others (106 ELT 3)while considering the applicability of Rule 57F. The aforesaid Rule provided for the lapse of credit lying unutilised as on 16.03.1995 stating clearly that such credit would not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or export. The proviso to the Rule clarified that such lapsing would not affect credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock on 16.03.1995. The Bench opined that Modvat Credit lying to the balance of an assessee represented a vested right accrued or acquired by the assessee. The right in respect of the credit had become absolute at that point when the input was used in the manufacturing of the final product.

A lot of my friends also quote another Supreme Court judgment in support of the claim of vested right theory.

In case of Jayam & Company v. Assistant Commissioner & Anr., reported in [2016] 15 SCC 125 in which subsection (20) of Section 19 of the Tamil Nadu Value Added Tax Act, 2006 was challenged. This provision provided that notwithstanding anything contained in the said section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed. In this context, while rejecting challenge, the Court observed as under:

> "11. From the aforesaid scheme of section 19 following significant aspects emerge :
>
> (a) ITC is a form of concession provided by the Legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.
>
> (b) Concession of ITC is available on certain conditions mentioned in this section.
>
> (c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax

A lot of my friends also often quote the case of the Supreme Court Eicher Motors Ltd. V. Union of India (1999 [106] ELT 3 SC) to buttress their point that a vested right cannot be taken away at all and it is available to infinity.

However, Supreme Court in Osram Surya case distinguished this case in the following words:

> "Therefore, that was a case wherein by introduction of the Rule a credit which was in the account of the manufacturer was held not to be available on the coming into force of that Rule, by that the right to credit itself was taken away, whereas in the instant case by the introduction of the second proviso to Rule 57G, the credit in the account of a manufacturer was not taken away but only the manner and the time within which the said credit was to be taken or utilized alone was stipulated. It is to be noted at this juncture that the substantive right has not been taken away by the introduction of the proviso to the Rule in question but a procedural restriction was introduced which, in our opinion, is permissible in law. Therefore, in our opinion, the law laid down by this Court in Eicher's case (supra) does not apply to the facts of these cases. This is also the position with regard to the judgment of this Court in Collector of Central Excise, Pune & Ors. V. Dai Ichi Karkaria Ltd. & Ors. [1997 (7) SCC 448].

In the case of State of Gujarat v. Reliance Industries Limited, reported in [2017] 16 SCC 28, in which, in the context of provisions contained in the Gujarat Value Added Tax Act reducing the tax credit that has to be availed by the dealer, it was observed that how much tax credit has to be given and under what circumstances is the domain of the legislature and the courts are not to linker with the same. The Court noted with approval, the observations in the case of Godrej & Boyce Mfg. Company Pvt. Limited vs. Commissioner of Sales Tax & Ors., reported in [1992] 3 SCC 624to the effect that it is only by virtue of the rules that the assessee was entitled to a set off. It is really a concession and an indulgence.

In case of USA Agencies v. The Commercial Tax Officer, Attur [Rural] Assessment Circle, Attur., reported in [2013] 5 CST 63 in which validity of subsection 11 of Section 19 of the Tamil Nadu Value Added Tax Act came up for consideration. Section 19 pertains to input tax credit in respect of any transaction of taxable purchases in any month and provides that the dealer shall make a claim before the end of financial year or before ninety days from the date of purchase; whichever is later. In the context of this challenge, the Court considered whether section was inconsistent with the charging section and whether the same was directory and not mandatory. While upholding the validity of the section, it was further held that the legislature consciously wanted to set up the time frame for availment of the input tax credit. Such conditions therefore must be strictly complied with.

Therefore often quoted case of Eicher Motors or Jayram Motors are perhaps not applicable to the present controversy as held by the Supreme Court in Osram Judgment. And in fact these cases support the view of the Revenue that claim of input tax credit is nothing but a concession given or an indulgence shown by the Legislature.

It is well settled that there is a presumption of constitutionality of a statute. In case of State of Jammu & Kashmir vs. Triloki Nath Khosa & Ors., reported in AIR 1974 SC 1, the Constitution Bench of the Supreme Court upheld the legislation classifying Assistant Engineers into Degree holders and Diploma holders for the purpose of promotion. It was observed that there is a presumption of constitutionality of a statute and the burden is on one who canvasses that certain statute is unconstitutional to set out facts necessary to sustain the plea of discrimination and to adduce cogent and convincing evidence to prove those facts.

What has been done by retrospective amendment is only to legalise the limitation already prescribed under Rule 117 by doing a small repair to the drafting of Section 140; this limitation existed in the Statute and many High Courts have held that by operation of Section 164(2) the limitation under Rule 117 (max 180) days was constitutionally valid. But notwithstanding by retrospectively amending Section 140 this deficiency has been removed by the Parliament and this limitation will be applicable w.e.f. 1.7.2017. Shockingly, the Government did not bring to the notice of the High Courts this amendment especially before Delhi High Court in Brand Equity case which was decided in May 2020; and prior to this Nelco case of Bombay; and Shree Motors case of Rajasthan.

But my view is that no one has challenged the Rule itself providing limitation for claiming transition input tax credit; I am aware of a case of Gujarat High Court in Baroda Rayon Corporation Limited v Union of India 306 ELT 551 the High Court held that by amending the procedure in Rule 57G the Central Government had no power to take away the right to claim the CENVAT. Of course after I went through this Judgment I noticed that Osram judgment was not brought to the notice of the High Court.Would it have made any difference? Perhaps yes or no. Therefore, unless we challenge the Rule 117 itself that prescribes the Limitation of 90 plus 90 days and unless this is struck down as unfair and against the constitution, I do not think retrospective amendment can be bad in law.

The proviso to Section 140(1) specifically delineates those circumstances/conditions under which credit availed may not be utilised and there is nothing thereunder, to militate against the availment in

question. A possible view is that Section 140 no where provides in specific terms that if the transition credit is not claimed within the period prescribed by Rule 117, then such a credit will lapse – though by default this could be a possible interpretation. However, the law is settled if the law makers want to take away a right it must be so specifically provided. This is just a view many of us hold.

Section 140 contains a provision which is in the nature of enabling the dealers to take credit of existing taxes paid by them but not utilized for discharging their tax liabilities. It contains conditions subject to which the benefit can be enjoyed.

Section 140 of the Act envisages certain benefits to be carried forward during the regime change. As is well settled, the reduced rate of duty or concession in payment of duty are in the nature of an exemption and is always open for the legislature to grant as well as to withdraw such exemption. As noted in case of Jayam & Company [Supra], the Supreme Court had observed that input tax credit is a form of concession provided by the legislature and can be made available subject to conditions. Likewise, in the case of Reliance Industries Limited [Supra], it was held and observed that how much tax credit has to be given and under what circumstances is a domain of the legislature. In case of Godrej & Boyce Mfg. Co. Pvt. Limited [Supra], the Supreme Court had upheld a rule which restricts availment of MODVAT credit to six months from the date of issuance of the documents specified in the proviso. The contention that such amendment would take away an existing right was rejected.

The question is whether we can challenge the vires of rule 117 or for that matter Section 140 itself. There may be different opinions on this issue. But as noted in case of USA Agencies [Supra], the Supreme Court had upheld the vires of a statutory provision contained in the Tamil Nadu Value Added Tax Act which provided that the dealer would have to make a claim for input tax credit before the end of the financial year or before ninety days of purchase; whichever is later. The vires was upheld observing that the legislature consciously wanted to set up the time frame for availment of the input tax credit. Such conditions therefore must be strictly complied with. Thus, merely because the rule in question prescribes a time frame for making a declaration, such provision cannot necessarily be held to be directory in nature and must depend on the context of the statutory scheme.

In the case of Mafatlal Industries Limited & Ors., [Supra]. Mr. Justice B.P Jeevan Reddy speaking for the majority, summarized the conclusions

in para 108 of the judgment. Portions relevant for our purpose, read as under :

> "108. Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff – whether before the commencement of the Central Excise and Customs Laws [Amendment] Act, 1991 or thereafter – by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 – and of this Court under Article 32 – cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it…"

Therefore, the majority of SC judgments on this issue have held such rights not as vested rights but a concession or indulgence. Notwithstanding the contention that claim of transition input tax is a vested right or not Osram case clearly spelt out the law i.e. a vested right, if it may be so called, is not being taken away but this right is subject to time limitations and this has to be held valid.

Let the story unfold……

Q.8 Works Contract now is a "deemed composite service". We find the provisions of Section 17(5) dealing with ITC very intriguing? Especially with regard to the difference between construction services; works contract services; denial of ITC to the final developers? Let us know very briefly the implications of this Section and possible precautions to be taken.

In terms of Section 2(119) of the CGST Actthe term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only.

Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.

In the definition of Works contract under Section 2(119) of the CGST Act that any activity specified therein carried out with regard to an immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract, comes under its purview.

The first part of the definition uses the word 'means'. It has referred to fourteen action words all of which arein relation to immovable property. Hence, this part purports to include within its ambit these treatments made to immovable property

GST. As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.As per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Thus, ITC for works contract can be availed only by one who is in GST the same line of business and is using such services received for further supply of works contract service. For example, a building developer may engage services of a sub-contractor for certain portion of the whole work. The sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However, if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company.

Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for

the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. **This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.**

Safari Retreats Judgment and its essence:

The benefit of input tax credit was denied to the petitioner by applying Section 17(5) (d) of the CGST Act as well as of the OGST Act and the language of the said sub-section in both the Acts is identical. The said Section 17(5) (d) of both the aforesaid Acts inter alia provides that notwithstanding anything contained in sub section (1) of Section 16 of both the aforesaid Act and sub section (1) of Section 18 of both the aforesaid Acts, input tax credit shall not be available in respect of the goods and services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

In Safari Retreats Judgment the Odisha High Court While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put-forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis. **But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable.In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in EICHER MOTORS LTD. VERSUS UNION OF INDIA [1999 (1) TMI 34 – SUPREME COURT] ,** the very purpose of the credit is to give benefit to the assessee..

Valuation: Valuation of a works contract service is dependent upon whether the contract includes transfer of property in land as a part of the works contract.

In case of supply of service, involving transfer of property inland or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount

charged for such supply less the value of land or undivided share of land, as the case maybe, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

The question is what is immoveable property? This term is not defined in the Act.

Q.9 No GST on sale of immovable property or property after completion certificate or first occupation (this is different from CENVAT Rules? I am of the view the TD/Development rights qua the land, it can fruitfully be argued that it too forms part of the land itself- but revenue treats this as a difference service? Do you think we can challenge this and get the relief for real estate sector?

My opinion: A developer or promoter is the person who develops a plot into apartments and promotes it for sale. A landowner is a person who transfers the plot or his development rights to a developer. So as to get properly built an apartment on such a plot and to further independently sell such apartments to the buyers. landlord transfers his development rights to a developer. And for such transfer, he gets either the constructed units or money or both. Hence, these rights are commonly known as Transferable Development Right (TDR).

Under the GST, the term 'supply' is defined in a wider manner which also includes barter/ exchange of goods or services; whereas the term 'services' is defined to be anything other than goods under section 2(102) of CGST Act, 2017. Further, Entry No. 5 of Schedule III of the CGST Act, 2017, explicitly excludes sale of land from the scope of supply. Still there was certain ambiguity regarding taxability of transfer of development rights under Joint Development Agreement (JDA), as to whether the same are liable to GST or not. However, the **Notification no. 4/2019 dated 29/03/2019**, clarifies that the transfer of development rights from the landowner to a developer to be taxable.

Recently, the Authority for Advance Ruling (AAR) Karnataka, in the case of **Maarq Spaces Pvt. Ltd. (order no. KAR ADRG/199/2019) dated 30/09/2019**, had held that the activities envisaged under the JDA between a developer and land owner tantamount to a supply of service and not of land and is therefore liable to be taxed under GST at 18%.

A writ petition, *Nirman Estate Developers Private Limited, - 2018 – TIOL – 2935 – HC – MUM – GST*, challenging the notification no. 4/2018 to

be ultra vires the GST laws on the ground that TDR does not qualify as a supply of service, was withdrawn and consequently, no judicial scrutiny of the issue could take place under GST. Without discussing the jurisprudence relating to taxability of TDR and other related aspects, by simply relying on the notification, an advance ruling in the case of *Patrick Bernardinz D'sa, - 2018 – TIOL – 292 – AAR – GST* was pronounced, holding TDR to be a taxable supply of service and, therefore, exigible to GST.

Based on the numerous representations received from the trade and industry and to address the issues being faced by the real estate sector which was going through acute slow down and turmoil, the GST Council formed a sub-group to examine all such issues. This resulted in introduction of various changes in the GST laws relating to real estate sector effective from April 1, 2019 (in GST Council's 33rd and 34th meetings). From the perspective of taxability of TDR, without examining the aspect of nature and taxability, amending rate notifications and FAQs by way of TRU Circulars effective from April 1, 2019 were issued *inter alia* deeming TDR to be a taxable supply of service for which GST was payable under reverse charge by the developer and exemption was also provided for residential projects proportionate to the apartments sold prior to receipt of completion certificate.

In the case of *Chheda Housing Development Corporation v. Bibijan Shaikh Farid*, *2007 (3) MhLJ 402*, the Bombay High Court held that development rights being a benefit arising from the land must be held to be immovable property. Following this decision, Bombay High Court in the case of *Sadoday Builders Pvt Ltd v. Joint Charity Commissioner, Order dated 23.06.2011 in WP No. 4543/2010* observed that development rights being a benefit arising from the land, must be held to be immovable property.

In re Vilas Chandanmal Gandhi (GST AAR Maharashtra)

Question A: Whether GST is leviable on sale of Transferable Development Rights ('TDR')/ Floor Space Index ('FSI') received as consideration for surrendering the joint rights in land in terms of Development Control Regulations and granted in light of the article of agreement dated 18 December 2017 entered between the Applicant and Pune Municipal Corporation ('PMC') read with Development Control Regulations?

Maharashtra AAR holds that GST is chargeable at the rate of 18% under Heading 9972 on sale of Transferable Development Rights (TDR)/ Floor Space Index (FSI) received as consideration for surrendering the

joint rights in land in terms of Development Control Regulations; Notes that such rights have been granted in light of the article of agreement entered between the applicant and Pune Municipal Corporation (PMC); Clarifies that vide Notification No. 5/2019-Central Tax (Rate)

Taxability of TDR in the Service Tax regime

Prior to July 2012, Finance Act, 1994 adopted a selective approach, whereby it identified the services exigible to service tax. The scope of these services was clearly delineated in the definition of 'taxable services' under Section 65(105). With each succeeding year, the Parliament extended the tax net by providing for more and more services. Activities such as 'construction', 'works contract' and renting were made taxable, but out of the several services listed, none of the entries found kinship to TDR.

Effective July 1, 2012, the positive list approach to tax specified services was substituted by a negative list regime which sought to tax all services except those excluded from the definition of service or were part of the negative list or were specifically exempted. 'Service' was defined under Section 65B(44) to mean *"any activity carried out by a person for another for consideration...but shall not include an activity which constituted merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or..."*

My Take is that this issue is highly debatable issue and it should be challenged in High Court. In my view such transactions are not subject to GST.

It appears that this vexed issue will settle only with the intervention of Courts or the Government.

Q.10 Registration for infra projects or services in relation to works contract is very controversial; the law is clear a person must register itself in the State from where a taxable supply is made? What your brief view this and final view?

The registration in GST is PAN based and State specific. Supplier has to register in each of such Stateor Union territory from where he effects supply.

Section 22 of CGST Act makes is obligatory for all suppliers to register in each State *from where he makes a taxable supply of goods or services or both.* From a bare understanding of this section it can be understood that

for the purpose of registration it is important to determine the *location of the supplier* ,*aggregate turnover* in a financial year and place of business from where supplier makes a taxable supply.

However, there has been much confusion when it comes to registration in different states and when does a service provider need to look at a multi-state registration. To make things very clear, merely because you provide services in a particular state, you are not required to register in that state. That is not required at all. It is only when you have operations in a particular state, which is a place of business or office that you have to register in that state. .

When you have a setup with more than one state of operation, you are required to obtain multiple registrations, you have to do the compliance of each of those registrations, the invoicing has to be organized according to that state and therefore the input tax credit also becomes state-centric. This is the reason that for multiple state service providers, it is a mixed bag.

My take is that without getting into interpretational issues it is better to have a small set up in each State, even though for specific duration project, and keep a man to coordinate things with you rather than flying out frequently to take care of things. It avoid interpretations and ensuing litigations. I would not like to get into IGST supply etc. especially when the POS for infra projects is where the immoveable property is located. Go and get registered in the State where the service is being provided.

Does a company that rents out heavy infrastructure equipment for projects needs to register in each state where the machinery is used? A rentacab operator should also obtain registration in every state where his car provides service with a driver? Is the IGST payment of GST not enough: and is there is need of compulsive registration based on place of provision of services? Questions with no easy answer. States are issuing notices to such service providers and asking them to register in the each State where services are being provided. And if enforced this will be quite an expensive exercise for such service providers. Such issues can be debated and whether IGST or CGST plus SGST should be paid is a decision one has to take. I for one would avoid dispute and take registration as such.

THERE IS a wonderful advance ruling on this issue T&D Electricals, Karnataka. Please go through it.Of course the interplay of Section 22 read with Section 10(1)(b) of the IGST Act does allow the service provider to operate with one GSTIN in a State from where he makes the taxably supply of goods or service or both based on movement of GOODS on the

his direction and since POS is his principal place of business all supplies can be arranged to be billed in his name and with full availability of ITC. The AAR of T & D Electricals of Karnataka deals with such an issue and is an interesting read.

In re M/s T & D Electricals (AAR Karnataka)

1. Whether separate registration is required in Karnataka state? If yes, whether agreement would suffice as address proof since nothing else is with the assesse and service recipient will not provide any other proof?

In the instant case, the applicant intends to supply goods or services or both from their principle place of business, which is located in Rajasthan. The applicant has only one principle place of business, for which registration has been obtained and does not have any other fixed establishment other than the principle place of business, as admitted by the applicant. Therefore the location of the supplier is nothing but the principle place of business which is in Rajasthan. Thus there is no requirement for a separate registration in Karnataka for execution of the contract referred supra.

So, The applicant need not obtain a separate registration in Karnataka, to execute the project in Karnataka. However, they are at liberty to obtain the said registration, if they are able & intend to have a fixed establishment at the project site in Karnataka.

2(a) If registration is not required in Karnataka state and if we purchase goods from dealer of Rajasthan and want to ship goods directly from the premises of dealer of Rajasthan to township at Karnataka then whether CGST & SGST would be charged from us or IGST by the dealer of Rajasthan ?

(b) If registration is not required in Karnataka state and if we purchase goods from dealer of Karnataka to use the goods at township at Karnataka then whether IGST would be charged from us or CGST & SGST by the dealer of Karnataka?

(a) The dealer in Rajasthan has to charge CGST & SGST when the goods, purchased by the applicant, are shipped to project site in Karnataka, under bill to ship to transaction in terms of Section 10(1)(b) of the **IGST Act 2017**.

(b) The dealer in Karnataka has to charge IGST when the goods, purchased by the applicant, are shipped to project site in Karnataka, under bill to ship to transaction in terms of Section 10(1)(b) of the IGST Act 2017.

MY TAKE – If the facts are in my favour and through technology I can manage my affairs, I will go for single registration for all the projects I may work outside my State of Registration – the law permits me.

Q.11. How do we define Works Contract in GST? Denial of input tax credit in one scheme or the other is a very controversial issue; Article 366(29(a)(b) remains in the Constitution and then how GST law taxes even the land and that too on notional value? The Orissa High Court judgment in Safari Retreat allowing input tax credit for commercial property built for letting out; we understand, has been challenged in Supreme Court? Do you think land could be taxed as a composite component and whether Orissa High Court judgment can be invoked in rem? The phrase used in Section 17(5) "on his account" raises serious interpretational issues? What is your take on this?

Ans: Section 2(119) and section 8 of CGST Act,2017 to be read with schedule II Para 6(a) , has provided that the work contract is a composite service and in case of composite supply, the taxis to be made on the basis of the principal supply. Thus, the said definition is taking the route of so called pre-dominant test/ test of main object and same is not in line with established position post 46th Amendment to the Constitution of India

It is a well-established principle that what cannot be done directly cannot be done indirectly. Against the object and intent of 46thamendment and thus unconstitutional. The Intent of 46th amendment is the history for its enactment.

It is also worth examining whether the Judgment of the SC in State of Andhra Pradesh v Larsen and Toubro145 STC 1 laying down that once the sub -contractor pays the tax the contractor does not have to pay the tax – though rendered on the interpretation of 46th amendment; but we should examine its applicability even in GST law?

The Hon'ble High Court of Orissa, vide its order dated 17 April 2019 (Order), in in Safari Retreats Private Limited v Chief Commissioner of Central Goods & Service Tax [W.P. (C) 20463 of 2018], has allowed availment of input tax credit (ITC) on goods and services used for construction of immovable property and used in the course or furtherance of business.

The petitioner therein was engaged in the business of constructing shopping malls for the purpose of letting out for commercial purposes. Inputs in the form of cement, sand, steel, aluminum, wires, plywood, paint, escalators, electrical equipment as also and input services such as architect

fees etc. were used in construction of the complex that was ultimately leased out for commercial purposes (attracting goods and services tax). Section 17(5)(d) of Central Goods and Services Tax Act, 2017 (CGST Act) restricts ITC on goods and services received by a taxable person for construction of an immovable property on his own account even though such immovable property is used in the course or furtherance of business.

On account of the restriction prescribed in Section 17(5)(d) of the CGST Act, the petitioner was ineligible to avail ITC on aforesaid inputs and input services. The petitioner filed a writ petition challenging the vires of Section 17(5)(d) of the CGST Act and a separate prayer for allowing ITC.

The principal argument taken in the petition was that Section 17(5)(d) of the CGST Act restricts the seamless flow of credit and that denial of ITC in is unjust, arbitrary, oppressive and contradictory to the basic rationale of GST. The Petitioner argued that the restriction under Section 17(5)(d) of the CGST Act should apply only in those cases where there is a break in the tax chain. However, in the present case, there is no breakage in the tax chain as the Petitioner would be liable to pay goods and services tax (GST) on letting out of such properties for commercial purposes.

The counsel for the Government argued that the said provision should be given a literal interpretation and the restriction of Section 17(5)(d) of the CGST Act should apply accordingly to all circumstances.

Key Highlights of Order

- The purpose of the CGST Act is to provide a uniform law for levy and collection of tax on intra state supply of goods and services, and to prevent multi taxation.

- Section 17(5)(d) of the CGST Act is to be read down and a narrow interpretation of Section 17(5)(d) of the CGST Act is frustrating the objective of the CGST Act.

- If the petitioner is required to pay GST on rental income arising out of the investment on which he has paid GST, he is entitled to avail the ITC for the inputs and input services consumed by them.

Considering the above, the Hon'ble High Court of Orissa allowed ITC on goods and services used for construction of immovable property meant for letting out for commercial purposes (in the course or furtherance of business).

The Judgment has been challenged in the Supreme Court of India where the SLP of the State of Odisha has been admitted. But the apex Court has not granted any stay on the operation of the Judgment.

My TAKE is that the judgment has interpreted a central enactment and should be binding on all the States; but it has not been accepted by other States

Q 12. The issue of stock transfer of capital equipment in works contract projects in GST? Pay IGST and claim ITC? And this chain continues infinitely? Do you think this can be challenged as this blocks a lot of cash even though the transferee gets ITC and suppose the output liability is zero - PM Ghar Yojna etc. then what happens?

The introduction of GST appears to be a mixed bag for the infrastructure sector—predictability and efficiency being the key advantages, while discontinuity of exemptions, higher rate credit restrictions and credit reversals are negatives.

The GST law specifically provides that 'works contract' as well as 'construction of a complex or a building, civil structure or a part thereof' shall be treated as supply of services. Even though such provision will provide clarity to a great extent, it may not be able to eliminate ambiguity completely. Contracts in the infrastructure sector can be complex, and determining the nature of these contracts would be difficult, particularly in the context of the peculiar and varied nature of arrangements involving multiple scope of work and multiple participants (consortium) for either full project or for parts of a single project.

However, the question involving how a particular contract involving both supply of goods and services should be taxed, which had typically sparked differences between central and state indirect tax authorities, would be put to rest with the GST legislation laying down unambiguously that works contracts would be regarded as supply of services.

As works contracts are limited to only immovable properties, turnkey or other contracts which do not result in creation of immovable property would possibly be treated as "composite supplies" and depending on the principal supply, tax liability would arise either as a supply of goods or services since only works contracts relating to immovable property is treated as a service.

The GST law restricts ITC of GST paid on goods and services procured for construction of an immovable property (other than plant and machinery)

which is used for one's own account. The interpretation of the term "used for own account" is unclear as it ideally should mean an immovable property which does not constitute "plant and machinery" and which is used for one's own business.

Under the GST Law each registration of a branch and the head office will be considered as a distinct person, the services provided by them to each other shall be considered as supply under the provisions of the GST law. Thus, there has to be charge for these internally provided support services. This poses a question for the valuation of these services, as these services are provided to the related parties and there may be cases where full credit of the services is not received by the services recipient. Further, in cases of common services received by the head office, there is an ambiguity as to where the credit of these services should be cross charged or distributed as input services distribution credit.

In case goods are transferred by a works contractor between two locations having separate registrations, the same shall be treated as 'supply' and GST shall be payable. This leads to an increased effort in terms of valuation, invoicing, compliance, etc. Not to mention, this will mean blocking of working capital for the contractor company. In this regard, a recent circular issued by the Government clarifies that inter-state movement of rigs, tools and spares, and all goods on wheels (like cranes) between distinct persons for repairs and maintenance shall be treated neither as supply of goods or supply of service, except in cases where movement of such goods is for further supply of the same goods.

Q 13.Inverted Duty structure is another controversial area qua the works contract services. Will Section 54 and corresponding refund will be applicable for works contract service? How do we decide the nature of plant and machinery defined in the exclusion clause to Section 17 dealing with works contact ITC?

Section 2(119) of CGST Act defines **Works contract** as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning **of any immovable property** wherein transfer of property in goods (whether as goods or in someother form) is involved in the execution of such contract"The GST law too does not define "immovable property". However, it provides an exhaustive definition of "plant and machinery" as follows (refer Explanation to Section 17 of the CGST Act, 2017):

The expression 'plant and machinery' is specifically defined in the GST Acts. In the explanation below section 17 of the GST Acts, the definition 'plant and machinery' uses the term 'means'. As per the principles of interpretation of law laid down by the higher judiciary, the definition using the term 'means' has to be strictly construed to mean only what is stated therein, nothing more, nothing less.

- It means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both;
- It includes such foundation and structural supports;
- But it excludes:
    - land, building or any other civil structures;
    - telecommunication towers; and
    - pipelines laid outside the factory premises.

The words apparatus, equipment and machinery have not been defined in the Act.

Section 17(5) of the CGST Act blocks input tax credit (ITC) in respect of:

- works contract services when supplied for construction of an immovable property:
    - except in case of plant and machinery; or
    - except where it is an input service for further supply of works contract service;
- goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

From the above, it is clear that ITC is not available in respect of construction of immovable property but plant and machinery is excluded from the scope of immovable property. Hence, ITC is available in respect of construction of plant and machinery which are used for making outward supplies.

Thankfully, the definition of "plant and machinery" clearly brings 'machinery fixed to earth' within its ambit. Hence, the position under GST law is unambiguous and saves a ton of litigation for the assessees.

In re: Sirpur Paper Mills Ltd. [1997 taxmann.com 265 (SC)], the Apex Court dealt with the issue on whether the paper machine assembled at site (mainly with the help of components bought from the market) and embedded in earth can be subject to excise duty. The assessee argued that since the machine was embedded in a concrete base, it was immovable property though such embedding was meant only for a wobble-free operation. The Court disagreed w In the instant case (viz., in re: Vodafone Mobile Services Ltd.) too, the entire tower was fabricated in the factory of the manufacturer and supplier in CKD condition. It was merely fastened to the civil foundation to make it wobble-free and ensure stability. They can be unbolted and reassembled in a new location without damage. Thus, there was no intent to annex it to earth permanently for the beneficial enjoyment of land. The leave & license agreements also evidenced that the licensee had the right to add or remove the aforesaid appliance, apparatus, equipment, etc. On account of these, it was held that a telecommunication tower is not an immovable property under the erstwhile CENVAT regime. The Supreme Court's decision in re: Solid and Correct Engineering Works [(2010) 5 SCC 122] too was on the same footing.

On the other hand, in Duncans Industries Ltd. Vs. State of U.P. and Ors., AIR 2000 SC 355. The Court held :

> "We are inclined to agree with the above finding of the High Court that the plant and machinery in the instant case are immovable properties. The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such construction was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set

up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted. Nor can it be said that the plant and machinery could have been transferred by delivery of possession on any date prior the date of conveyance of the title to the land.

Whether chattel attached to the earth or building constitute an immoveable property, would depend upon degree, manner, extent and strength of attachment of chattel to earth or building. Broadly speaking, there are certain broad features, which are to be looked into in such cases. The attachment should be such as to partake the character of attachment of trees or shrubs, rooted to earth, or walls or buildings, embedded in that sense, and, further test is whether, such an attachment is for permanent beneficial enjoyment of immovable property to which it is attached. For a property and to be regarded as such property, it must become attached to immovable property as permanently as a building or a tree is attached to earth. If, in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to embed it or fix it on earth, though permanently, that is, when it is in use, it may not be regarded as immovable property, but not otherwise.

One has to understand the concept of fastening of plants and machinery to earth or its fixing or attached to earth in a reasonable and practicable manner. Scientifically speaking, nothing can be treated immoveable. In the context of plants and machinery, where it is permanently fastened or attached to earth, it has to be seen from the point of utility also. If it cannot be used without being attached to earth, it may be immovable property in the industries like one up for consideration in this matter. Unless, such fastening is there, the plant and machinery cannot be put to a rational use. They generally do not move or taken away unless a particular plant and machinery has become obsolete or when the factory is closed or otherwise circumstances so warrant and the owner decide to remove and sell it. Such contingency do not arise every day. They are very rare and occasional. Removal of plants and machinery

from earth in a working unit is a decision which is not normally taken in ordinary circumstances, that too when entire land, building along with machinery is leased out for the purpose of running the same.

THE WORDS APPARATUS, EQUIPMENT AND MACHINES HAVENOT BE DEFINED IN THE ACT BUT AS PER JUDICIAL PRONOUCMENTS THEIR MEANINGS ARE GIVEN BELOW.

Hon'ble Supreme Court in the case of *CC* v. *C - Net Communications (I) (P) Ltd.* - 2007 (9) TMI 15 - SUPREME COURT held that the word 'apparatus' would certainly mean the compound instrument or chain of series of instrument designed to carry out specific function or for a particular use (in para 17). It follows that "apparatus" are normally instruments or equipment's enhancing, reducing or controlling certain function of a principal system and does specific function or serve specific purpose.

Even if the works contract service and goods and / or services are received for construction of immovable property, if such construction of immovable property is 'plant and machinery', the same would be outside the purview of clauses (c) and (d) of Section 17(5) of the CGST Act, 2017 and eligible for input tax credit.

The foundation or Structural support, which have been used to fix the apparatus, equipment, and machinery to earth, may be in the nature of civil structure, but such foundation and structural supports have been specifically included in the main part of the definition of 'plant and machinery'. When the exclusion clause (i) excludes 'land, building or any other civil structures' from the purview of the definition of 'plant and machinery', the phrase 'any other civil structures' naturally refers to all other civil structures, other than foundation and structural supports used to fix the apparatus, equipment, and machinery to earth.

*National India Rubber Works Ltd Versus Union Of India And Others [*1987 (10) TMI 63 - DELHI HIGH COURT*]-* The word 'machine' as defined in the New Webster's Dictionary of the English Language is as follows : "contrivance, an apparatus, a mechanical apparatus or contrivance; something operated by a mechanical apparatus'' and the 'machinery' has been defined as :"Any collection or functioning unit of machines or mechanical apparatus; the parts of a machine, collectively; any combination or system of agencies by which action is maintained".

In an application filed before AAR under GST, Karnataka by Shri Keshav Cement & Infra Ltd reported in 2019 (10) TMI 570 - AUTHORITY

FOR ADVANCE RULING, KARNATAKA Apparatus, equipment, and machinery which are fixed to earth by foundation or structural support alone are entitled to qualify as plant and machinery for admissibility of credit, otherwise not.

First proviso to Section 54(3) of the CGST Act, 2017, states that,

"no refund of unutilised input tax credit shall be allowed in cases other than— (i) zero rated supplies made without payment of tax; (ii) where the credit has accumulated ***on account of rate of tax on inputs being higher than the rate of tax on output supplies*** *(other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council."*

The formula for maximum refund amount prescribed under Rule 89(5) of the CGST Rules, 2017 included turnover for inverted rated supply of goods only (inverted rated supply of services was initially not included therein). Further, explanation to Rule 89(5) stated that for the purpose of the sub-rule, the expression "Net ITC" shall have the same meaning as assigned to it for refund of accumulated ITC on account of zero rated supplies under Rule 89(4). According to Rule 89(4), "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. Thus, it appeared that refund of GST under Inverted duty structure is available only to supplier of goods, but for both Inputs and input services.

According to Instruction No. 8 to Form GST RFD-01 (form for claiming refund), such net ITC was to include inputs only for the purposes of refund under inverted duty structure creating a confusion as to whether the expression "inputs" used in Section 54(3) should be interpreted in terms of the definition of inputs under Section 2(59) and if so, refund for capital goods and input services cannot be availed or, should the provision be interpreted as if refund of all of the unutilized ITC is permitted once credit has been accumulated on account of rate of tax on inputs being higher than that of output?

Thereafter, Rule 89(5) was amended by way of Notification No. 21/2018-Central Tax dated 18th April, 2018 wherein, the formula for maximum refund amount was amended to specifically include the turnover of inverted rated supply of services as well in a welcome move for service providers. However, the Notification also amended the scope of expression "Net ITC" to specifically remove Input services therefrom (earlier cross

reference to Rule 89(4) was removed). This was a strong signal to restrict the refund in respect of input services under inverted duty structure. Thereafter, a retrospective amendment was carried out to the CGST Rules (by Notification No. 26/2018-Central Tax dated 13th June 2018) to substitute the formula for "Maximum refund amount" and the scope of "Net ITC" under Rule 89(5) with effect from July 1, 2017.

Under the Central Excise or Service Tax regime, there were no provisions for refund under an Inverted duty / tax structure. While GST sought to provide relief to such suppliers of service by allowing refund, who are such suppliers of service who predominantly use inputs for supplying services?

While there may be judicial precedents that can be used to interpret the word "inputs" but the consequent amendments in the formula and RFD 01 the legislature intention is clear they refund on account of services under inverted duty structure under section 54(3) is not intended at all and the word "inputs" is only plural word of "input" that means goods excluding capital goods.

- **Section 54(3)(ii) of the CGST Act talks** *of "where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies".* It is clear that this clause speaks only in respect of credit availed on inputs being higher i.e. credit availed on tax paid on goods being higher.

- Definition of **'Net ITC' only considers ITC on 'inputs' for computing the amount of eligible refund,** therefore, any portion of ITC availed on 'input service' is not available as refund under CGST Rules, 2017 (**"CGST Rules"**).

- The formula for computing refund was made retrospectively effective from July 1, 2017 vide Notification No. 26/2018 – Central Tax dated June 13, 2018.

- **Rejected the contention of the Applicant that "***Section 54 in no manner provides or stipulates that amount of refund would be granted subject to restriction specified in rules"***,** while explaining that Section 54 has to be applied in accordance with the Rule 89 of the CGST Rules and there is nothing in the given rule that overrides Section 54;

We need to challenge this provision as ultra vires the scheme of the GST spirit and perhaps a judgment like Safari Retreats may come up on this issue also?

Q. 14: Capital Goods and Input Tax Credit is another area where GST mechanism is better than CENVAT Rules – full credit is given in one go. What are the key issues affecting this aspect of ITC mechanism including for job workers? And what happens we the tax payer sells such capital goods or disposes them otherwise?

As per section 2(19) of CGST Act, capital goods means goods, the value of which is capitalised in the books of account of the person claiming the credit and which are used in the course of or furtherance of business. Capital goods shall include Plant and Machinery such as apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes

- Land, building or any other civil structures
- Telecommunication towers
- Pipelines laid outside the factory premises

Input tax credit of capital goods

Entire ITC of GST paid on capital goods will be available in the first year itself as capital goods fall in the category of "goods" as defined by the CGST Act.

Depreciation claimed on value of capital goods

As per section 16(3) of the CGST Act, in case the registered taxable person has claimed depreciation on the tax component of the value of capital goods, ITC on the said tax component shall not be allowed.

Subsequent sale of capital goods

Where a registered taxable person purchases capital goods and claims the ITC with respect to such purchase but subsequently sells such capital goods, special provisions of section 18 (6) of the CGST Act shall apply. According to this provision, the registered taxable person shall pay the following amount:

- Input Tax Credit paid on said capital goods Less : Percentage point as may be specified in the CGST and SGST Rules,2017 or,

- Tax on the transaction value of such capital goods determined under section 15 of CGST Act, Whichever is higher.

As per rule 40(2) of CGST and SGST Rules, 2017, ITC on credit in the case of supply of capital goods and plant and machinery shall be reduced by the ITC at five percentage point for every quarter or part thereof, from the date of issue of invoice for such capital goods or plant and machinery.

Where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the registered taxable person may pay tax on the transaction value of such goods determined under section 15.

Q.15 A lot of people have problems in appreciating the ITC mechanism for a Job worker both for intra and inter- state jobs: and also, when the job worker does not do only the job work as defined in Section 2 but also adds transferable materials to complete that job? Let us know in brief the controversies involved in this? And the impact on ITC

Job work means processing or working on raw materials or semi-finished goods supplied by the principal manufacturer to the job worker. This is to complete a part or whole of the process which results in the manufacture or finishing of an article or any other essential operation.

As per GST Act, job work means any treatment or process undertaken by a person on goods belonging to another registered person. The person doing the job work is called job worker.

Section 19 of the CGST Act, 2017 defines provisions in respect of ITC for inputs and capital goods sent for Job Work. ... Furthermore, the Principal can also claim ITC if such inputs or capital goods are sent to the job worker for job work without being first brought to the place of business of the Principal.

Thus, a Principal needs to report the details of the goods sent or received from a job worker during a particular quarter in Form GST ITC-04.

GST ITC-04 is a Form that contains details of the inputs or capital goods sent to and received back from such a job worker. Such a Form needs to be filed by the registered manufacturers/Principal sending inputs or capital goods on job work every quarter.

Further, the Principal sends inputs or capital goods to a job worker by issuing a Challan to the job worker in respect of such inputs or capital goods.

The principal manufacturer must receive the goods back within the following period:

1. Capital Goods- 3 years from effective date
2. Input Goods- 1 year from effective date

In case goods are not received within the period as mentioned above, such goods will be deemed as supply from effective date. The principal manufacturer will have to pay tax will on such deemed supply.

The challan issued will be treated as an invoice for such supply.

The principal manufacturer can supply the goods from the place of business of a job worker *only if* he (the principal) declares such place of business as his additional place of business.

This rule does not apply for the following-

(i) The job worker is registered

(ii) The principal supplies goods which are specifically notified by the Commissioner to be allowed to sell directly from job worker's place.

FORM GST ITC-04 must be submitted by the principal every quarter. He must include the details of challans in respect of the following-

- Goods dispatched to a job worker or
- Received from a job worker or
- Sent from one job worker to another

WHEN the job worker also adds transferable materials from his side while doing the job work he would come in the category of composite service supplier and the principal activity shall still remain in the nature of job work and he would pay tax accordingly.

Q.16. In Indian GST zero rated supplies are exports (out of India) and supplies made to SEZ etc.? We are aware of LUT/TAX paid supplies etc. and claim of refund? The legal question is whether GST mechanism can at all levy IGST if a tax payer fails to bring documents on record as required but factum of exports is not doubted – this is more so in case of export of services? We want your views ?

My opinion: What is the concept of zero rating?

As per section 2(47) of the CGST Act, 2017, a supply is said to be exempt, when it attracts nil rate of duty or is specifically exempted by a notification or kept out of the purview of tax(i.e. a non-GST supply). But if a good or service is exempted from payment of tax, it cannot be said that it is zero rated. The reason is not hard to find. The inputs and input services which go into the making of the good or provision of service has already suffered tax and only the final product is exempted. Moreover, when the output is exempted, tax laws do not allow availment/utilisation of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the outputs and input services have suffered tax and since availment of tax on input side is not permitted, that becomes a cost for the supplier.

The concept of zero rating of supplies aims to correct this anomaly.

What is Zero Rating?

By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. Such an approach would in true sense make the goods or services zero rated. All supplies need not be zero-rated. As per the GST Law exports are meant to be zero rated the zero-rating principle is applied in letter and spirit for exports and supplies to SEZ. The relevant provisions are contained in Section 16(1) of the IGST Act, 2017, which states that "zero rated supply" means any of the following supplies of goods or services or both, namely: —

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

As already seen, the concept of zero rating of supplies requires the supplies as well as the inputs or input services used in supplying the supplies to be free of GST. This is done by employing the following means:

a) The taxes paid on the supplies which are zero rated are refunded;

b) The credit of inputs/ input services is allowed;

c) Wherever the supplies are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services i.e. the unutilised input tax credit is refunded. The provisions for the refund of unutilised input credit are contained in the explanation to Section 54 of the CGST Act, 2017,which defines refund as below: "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).Thus, even if a supply is exempted, the credit of input tax maybe availed for making zero-rated supplies.

Any person making a Zero Rated Supply can opt for one of the following two options, as per Section 16(3) of the IGST Act:

- Supply goods or services (or both) under a bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilised ITC, or

- Supply goods or services (or both) on payment of IGST and claim GST refunds of such tax paid.

My take is that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. This is for the export of goods.

However for zero rating of export of services (where the POS is outside India) in my view the pre-conditions mentioned in Section 2(6) of the IGST Act must be satisfied to claim benefit of zero rating of export of services and to pay zero tax.

Q.17: What is the significance of ITC utilization as per Section 49 and what is the consequence if a tax payer does not follow the same? ITC in case of Imports – and its utilization – if the finished product is an exempt supply?

Input Tax Credit means reducing the taxes paid on inputs from taxes to be paid on output. When any supply of services or goods is supplied to a taxable person, the GST charged is known as Input Tax. The scope of ITC has been widened in GST Regime.

Section 49 of Central Goods and Service Tax Act, 2017 ("CGST Act") deals with order of utilisation of ITC. However, Central Goods and Services Tax (Amendment) Act, 2018 ["CGST (Amendment) Act"] amended the provisions of Section 49 and also inserted Section 49A and 49B thereafter. Further, Rule 88A also got inserted in Central Goods and Service Tax Rules, 2017 ("CGST Rules") vide power conferred u/s 49B of CGST Act.

CBIC has also issued Circular98/17/2019 dated 23rd April, 2019**.**

Gist of provisions given under Section 49, 49A and 49B of CGST Act read with Rule 88A of CGST Rules and above mentioned circular is as follows:

Order and Manner of Utilization of ITC lying under IGST

ITC lying in IGST shall be utilised toward payment of following taxes in this order only *(Section 49B of CGST Act read with Rule 88A of CGST Rules)*:

- IGST Output Liability
- CGST/SGST/UTGST Output Liability, any order

Section 49(5)(a) provides that ITC on account of IGST should be first utilised toward IGST and amount remains, if any, should be utilised for CGST & SGST/UTGST respectively. However, Provisions of section 49B of CGST Act read with Rule 88A of CGST Rules overrides entire chapter V of ITC.

- ITC on account of CGST & SGST/UTGST shall be utilised only after the ITC available on account of IGST has first been utilised fully towards such payment. *(Section 49A read with Rule 88A).*

2 Order and manner of utilization of ITC lying in CGST

- ITC lying in CGST shall be utilised toward payment of output liability in following order *(Section 49(5)(b) of CGST Act)*:
  - CGST output liability
  - IGST Output Liability
- ITC lying in CGST account shall not be utilised towards payment of SGST/UTGST output liability *(Section 49(5)(e) of CGST Act).*

- ITC on account of SGST/UTGST shall be utilised only after the ITC available on account of IGST has first been utilised fully towards such payment. *(Section 49A read with Rule 88A)*

3. Order and manner of utilization of ITC lying in SGST/UTGST

- ITC lying in SGST/UTGST shall be utilised toward payment of output liability in following order *(Section 49(5)(c)/(d) of CGST Act)*:
    - SGST/UTGST output liability
    - IGST Output Liability
- ITC on account of SGST/UTGST shall be utilised towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST. *(Proviso to Section 49(5)(c)/(d)).*
- SGST Shall not be utilised for payment of CGST *(Section 49(5)(f)).*
- ITC on account of SGST/UTGST shall be utilised only after the ITC available on account of IGST has first been utilised fully towards such payment. *(Section 49A read with Rule 88A)*

The IGST (Integrated Goods and Services) Act, 2017, defines the import of goods as bringing commodities from overseas into India. As such, all imports are considered as inter-state supplies. IGST will be applicable to all imported goods along with custom duties as applicable.

As for the import of services, the IGST Act, 2017, defines it as the supply of a service by a supplier who is based outside the company, but the recipient of the services is based in India, and the place at which the service is supplied is also within the geographical boundaries of the country. In this article, we will discuss in depth the import of goods and services under GST.

Import of Goods

Following the implementation of GST, the import of commodities will not be impacted by charges such as safeguard duty, education cess, basic customs duty, anti-dumping duty, etc. All these additional custom duties will be subsumed by GST.

Article 269A of the GST regime states that the supply of commodities or services or both, if imported into India, will be considered as supply

under inter-state commerce or trade and will attract integrated tax. For instance, if the assessable value of a commodity imported into the country is Rs.500, basic customs duty is 10%, and the integrated tax rate levied is 18%, the taxes shall be computed in the following manner:

Assessable Value	=	Rs.500	
Basic Customs Duty	=	Rs.50	
Value for the levy of integrated tax	=	Rs.500 + Rs.50	
	=	Rs.550	
Integrated Tax	=	18% of Rs.550	
	=	Rs.99	
Overall Taxes	=	Rs.50 + Rs.99	= Rs.149

Over and above these taxes, commodities may also attract an additional cess under the GST regime. This cess shall be collected on the value chosen for the levy of integrated tax. In the aforementioned example, the cess will be levied on Rs.550.

Import of Services

The import of services is defined as the supply of a service by a supplier who is based outside the company, but the recipient of the services is based in India, and the place at which the service is supplied is also within the geographical boundaries of the country.

The provisions present in Section 7(1)(b) of the Central Goods and Services Tax Act, 2017, mentions that when services are imported with consideration, it will be deemed as a supply, regardless of whether it is utilised in the continuance or course of business. When services are imported without consideration, they will not be deemed as supply. Businesses, however, are not mandated to undertake any tests for service imports to be deemed as a supply.

Moreover, the provisions present in Schedule I of the Central Goods and Services Tax Act, 2017, services imported by registered taxable individuals from relatives or distinct individuals as stated in Section 25 of the Central Goods and Services Tax Act, 2017, in the continuance or course of a business will be considered as supply regardless of whether or not it has been made without consideration.

Input Tax Credit

Under the GST regime, an importer who is registered can use the IGST levied to them when importing goods as input tax credit. During the outward supply of goods by the importer, the input tax credit could be used to pay taxes such as CGST / SGST / IGST. The importer can also avail GST Compensation Cess along with the input tax credit of IGST before transferring it to the ones in the supply chain. The importer, however, will not be able to avail the credit of basic customs duty. In any case, if the importer wishes to avail input tax credit of GST Compensation Cess and IGST, he/she will have to compulsorily declare GSTIN (GST Registration Number) in the Bill of Entry

For exempt supply ITC can be used to get refund only for zero rated supplies of exports.

Q.18 Golden Rule is that ITC can be claimed if a taxpayer makes a taxable supply except for zero rated supplies as per Section 16 of IGST Act where ITC is allowed in full even when taxpayer makes exempt supplies? Suppose tax payer is unable to bring on record the essential pre-conditions within the time lines substantiating his claims for zero rated supplies- what happens to input tax credit then? Can SEZ developer or unit claim cash refund for the input tax credit that they may be entitled to? Can Any provision SEZ Act take precedence over GST Law – both being Central Laws?

In order to avoid the cascading effect of various input taxes, Section 16 of the CGST as well as DGST Acts which provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49 of the CGST Act as well as Section 49 of the DGST Act, be entitled to take credit of the input tax charged on any supply of goods or services or both made 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.

Section 16 provides for eligibility, conditions and time period for taking input tax credit. This clause provides that a registered person is 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.

Section 17(5) of both the aforesaid Acts inter alia provides that notwithstanding anything contained in sub section (1) of Section 16 of both

the aforesaid Act and sub section (1) of Section 18 of both the aforesaid Acts, input tax credit shall not be available in respect of the goods and services or both received by a taxable person for receipt of goods or services or both specified in this Section. This is very important to go through. It is crucial to appreciate the provisions of this Section before claiming input tax credit in GST returns. Each entry in Section 17(5) also has an exclusion and before you claim benefit under that exclusion please ensure you strictly satisfied the conditions mentioned for claiming benefit under that.

The concept of zero rating of supplies requires the supplies as well as the inputs or input services used in supplying the supplies to be free of GST. This is done by employing the following means: a) The taxes paid on the supplies which are zero rated are refunded; b) The credit of inputs/ input services is allowed; c) Wherever the supplies are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services i.e. the unutilised input tax credit is refunded.

Refunds cannot be stopped. If the law permits, then if the preconditions for qualifying exports are not satisfied; then the law provides mechanism under Section 73 or Section 74 to claim back the refund given with interest.

My personal view is that GST may prevail over SEZ provisions as article 246A provide powers to central / state governments for taxing goods or services notwithstanding anything contained in Article 246. Consequently GST provisions shall prevail over SEZ Act as I have taken a view that SEZ provisions cannot be overpower the provisions of the GST Law.

Q.19 Reverse Charge mechanism is a menace in GST law. Whether RCM on supplies from unregistered suppliers or on services as notified in CGST or IGST law? RCM is a part of definition of input tax credit. And it is subject to time of supply as well under Section 12. Obviously if the preconditions are not fulfilled; many hold a view that ITC may be denied? What about credit notes issued under Section 34 after time of supply is over? What are the intricacies on such issues? How do we ensure ITC benefit is not lost on RCM?

Reverse charge is provided in the case of intra-State supplies listed vide notification 4/2017- Central Tax (Rate) dated 28 June, 2017 with respect to supply of goods and 13/2017-Central Tax (Rate) dated 28 June, 2017 (“the notification’) with respect to supply of services.

As per 2(98) of the CGST Act, 2017, ‘’reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both

instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9 of the CGST Act, 2017, or under sub-section (3) or subsection (4) of section 5 of the IGST Act, 2017.

- `Reverse charge is applicable to services provided by Government or local authorities Yes, reverse charge is applicable in respect of services provided by Government or local authorities to any person whose turnover exceeds Rs.20 lakhs (Rs.10 lakhs for Special Category States) excluding the following services:(i) renting of immovable property;(ii) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;(iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port;(iv) transport of goods or passengers. Thus, the recipient of supply of goods or services is liable to pay the entire amount of tax involved in such supply of services or goods or both.

-Supply from an Unregistered dealer to a Registered dealer shall be liable to reverse charge based on self-invoicing by the tax payer who pays RCM including for interstate purchases. (TILL DATE IT IS NOT EFFECTIVE)

Services through an e-commerce operator

If an e-commerce operator supplies services then reverse charge will be applicable to the e-commerce operator. He will be liable to pay GST.

For example, Urban Clap provides services of plumbers, electricians, teachers, beauticians etc. Urban Clap is liable to pay GST and collect it from the customers instead of the registered service providers.

The readers should go through the Notifications issued for goods and services for which the recipient has to pay GST on reverse charge basis.

What we need to appreciate is that the definition of RCM given in Section 2(98) of CGST Act 2017 read with Section 9(4) of the Act makes the recipient liable to pay tax as a Supplier supplying the services or goods, as the case may be.

Time of Supply under Reverse Charge

A. Time of Supply in case of Goods

In case of reverse charge, the time of supply shall be the earliest of the following dates:

- the date of receipt of goods
- the date of payment*
- the date immediately after 30 days from the date of issue of an invoice by the supplier

If it is not possible to determine the time of supply, the time of supply shall be the date of entry in the books of account of the recipient. (Notification 66/2017) –

Registration Compulsory to pay tax under reverse charge

A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of Rs. 40 lakhs is not applicable to him. Notwithstanding that a person may be supplying fully exempted supplies but once he faces the liability chargeable to RCM he pays the tax as if he is the supplier and hence RCM supplies become taxable in hands taking him out of Section 23 – registration not required if a person supplies fully exempt supplies

- As per section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.

- Supply must be a taxable *qua* the unregistered supplier – this is a case where the inward supply (so called for ease of reference) is not a 'taxable supply' in the hands of the person supplying (who is found to be unregistered). For example, press release (unnumbered) dated 13 July, 2017 states that gold ornaments 'traded in' by a consumer (sold to jeweller) does not attract section 9(4) in the hands of the registered jeweller for the reason that this is not a 'taxable supply'. NO RCM if not taxable supply

- Supplies that are excluded by Schedule III such as payments to employees and duly subjected to income-tax as salary. Here too, another press release (unnumbered) and dated 10 July 2017 has been issued offering clarity and causing some ambiguity that perquisites that are subject to income-tax are excluded from GST if they comprise of contractual obligations of employer to pay the employee. NO RCM

Q. 20 Could you enlighten us on the definition of the works Contract in Section 2(119)- what do you think is the scope of this definition?

Simply put, a works contract is essentially a contract of service which may also involve supply of goods in the execution of the contract. It is basically a composite supply of both services and goods, with the service element being dominant in the contract between parties. In a general sense, a contract of works, may relate to both immovable and immovable property. E.g. if a sub-contractor, undertakes a sub-contract for the building work, it would be a works contract in relation to immovable property. Similarly, if a composite supply in relation to movable property such as fabrication/ painting/annual maintenance contracts etc. is undertaken, the same would come within the ambit of the broad definition of a works contract.

GST Under GST laws, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the existing VAT and Service Tax provisions where works contracts for movable properties were also considered. The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract." Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

As per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Ofcourse, this restriction is subject to interpretation by Courts like judgment of Safari Treats of Odisha High Court under SLP before the Supreme Court now.

ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example, a building developer may engage

services of a sub-contractor for certain portion of the whole work. The sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However, if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company. Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.

Q 21 TAX RATES AND ITC issues affecting the hospitality industry; Restaurants/take away joints/van food operations/ Five Star hotels; tours and travel; event management – the key takeaways only.

Hospitality Industry and ITC

GST Rates for Hotels based on Room Tariff (with effect from 01.10.2019)	
Tariff per Night	GST Rate
< INR 1,000	No Tax
INR 1,001 -7,500	12%
= or > INR 7,501	18%
GST Rates applicable for Hotel Industry	

The tourism and hospitality industry will find it easier to claim and avail input tax credit (ITC) and will get full ITC on their inputs subject to Section 17.

Restaurants etc.

GST Rates on Eating Out (with effect from 01.10.2019)

S No	Type of Restaurants	GST Rate
1	Railways/IRCTC	5% without ITC
2	Standalone restaurants	5% without ITC
3	Standalone outdoor catering services	5% without ITC
4	Restaurants within hotels (Where room tariff is less than Rs 7,500)	5% without ITC
5	Normal/composite outdoor catering within hotels (Where room tariff is less than Rs 7,500)	5% without ITC
6	Restaurants within hotels* (Where room tariff is more than or equal to Rs 7,500)	18% with ITC
7	Normal/composite outdoor catering within hotels* (Where room tariff is more than or equal to Rs 7,500)	18% with ITC

All 5 per cent without ITC and 18 per cent with ITC.

Tours and Travels.

GST @ 5% has been applied on services of tour operator without benefit of Input Tax Credit (ITC) on goods and services. 5% GST will be payable on the gross amount charged by the tour operator from the customer. This GST is uniform for all services – package tours, hotel accommodation only etc.

Services by the way of admission to amusement parks including theme parks, water parks, joy rides like camel ride, elephant ride, horse ride, jeep safari, merry go rounds, go carting & ballet will attract 18% GST from 25th January 2018 via **notification no.01/2018**.However the benefits of ITC will not be available to tour operator paying 5% GST.

Event Management

Event Management means planning, organizing, hosting, promoting, conducting any kind of services such as festivals, conferences, ceremonies, weddings, formal parties, concerts, conventions and marriages, from booking the venue to organizing the party. In respect to this, the service provider would charge some kind of fees.

Event Manager

Event Manager is a person who handles all the activities of event management.

18% GST Rate on Event Management Services

The 18 GST Rate is being levied by the Indian Government on the Event Management Services.

Input Tax is a tax being levied on every stage of the supply chain when you are dealing in goods & services for the business purpose. When the individual will go for filing the taxes then he is liable to claim the input tax credit that he paid earlier.

An event management company which has claimed input tax credit can utilize the same while paying tax for supplies of event management services.

Air Ticket & Commission from Airlines Companies:

Basically, Air travel agents derive following two type of income so air travel agent will raise 2 invoices.

1. Service fees @ 18% on invoice value to passenger.1st Invoice)

2. Commission/incentive earning from airlines: (2nd Invoice)

Option A: GST Rate on 18% on Commission on issue of invoice on Airlines.

Option B: Domestic Fair: 5 % of Basic Fair i.e. 0.9 % basic fair (18%*5%)

International Fair 10% of Basic Fair i.e.1.8 % basic fair (18% *10%)

Here basic fare means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

Q.22. Wrong claim of ITC: What is this? How do we define wrong claim of ITC for the purposes of Section 73 and Section 74? What are the possible consequences?

There is no definition of wrong input tax credit in the law. Any claim which is not claimed in accordance with provisions of the Act or where

there is a mis-match or where the pre-conditions of Section 16 have not been satisfied, in my view will be a wrong claim from revenue point view.

The GST Act contains elaborate provisions for the recovery of tax under various situations, which can be broadly classified into the following two categories:(i) Tax short paid or erroneously refunded or Input Tax Credit wrongly availed.

For all types of incidences of short payment or erroneous refund or wrong availment of Input Tax Credit, there are incentives for the person who accepts tax liability and readily discharges the same. The law provides an opportunity for the payment of tax, interest and a nil or nominal penalty (depending on the nature of offence) before the issuance of Notice and emphatically stipulates that in all such cases no Notice shall be issued and consequently there shall be no other consequences for any default. However, this is not the end of the road and there is another chance to discharge tax and interest liability with nil or nominal penalty (depending on the nature of offence) within 30 days of issuance of the Notice and the law provides that all proceedings in respect of the said Notice shall be deemed to be concluded.

Section 73 and Section 74 deal with such a situation.

Under the CGST Act, the provision for recovery of wrong input tax credit is dealt under Section 73 and it reads as under:

> *"1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or* ***where input tax credit has been wrongly availed or utilized for any reason****, …, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the* ***notice along with interest payable thereon under section 50*** *and a penalty leviable under the provisions of this Act or the rules made thereunder."*

Furthermore, with respect to recovery of transitional credits, Rule 121 of the CGST provides for recovery under Section 73 as follows:

> *"RULE 121.Recovery of credit wrongly availed. — The amount credited under sub-rule (3) of rule 117 may be verified and proceedings* ***under section 73*** *or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly."*

Now Section 73 provides that where input tax credit has been **wrongly availed or utilised**, notice will be served for its recovery along with interest and penalty. Further, if such input tax credit has been wrongly availed or utilised by reason of fraud or wilful misstatement or suppression of fact, provisions of Section 74 of the CGST Act are attracted.

Position under erstwhile laws vis-a-vis applicability of interest on wrongly availed credit

Whether availment or utilization of CENVAT Credit – what would be the relevant for prompting the interest clock was a contentious issue even under the Central Excise and Service Tax laws. This was so as the relevant provisions dealing with the applicability of interest on incorrect availment of credit were initially worded in disjunctive manner with the usage of word "or" between taken and utilized under Rule 14 of the CENVAT Credit Rules, 2004 ("Credit Rules/ CCR").

As far as this provision is concerned, some Tribunal decisions ruled that a liberal view needs to be accorded to such provision and interest would not apply if the credit, though wrongly availed has not been utilized, since there is no revenue loss to the exchequer. However, the issue was finally settled against the taxpayer by Apex Court vide *Union of India v. Ind-Swift Laboratories Ltd., (2011) 4 SCC 635* wherein it was made crystal clear that the word "or" between taken and utilized is disjunctive and suggests the intention to tap cases even where credit has been wrongly availed (and may not have been utilized). Post this, the provisions under Rule 14 were rejigged and the word "and" was substituted for the word "or" between taken and utilized under Credit Rules. Accordingly, it was provided that interest will be applicable when the CENVAT is wrongly availed and utilised.

At a first glance, provisions of Section 73 appears simple and somewhat similar to the original Rule 14 of the CCR prior to its amendment in the year 2012 since it uses the phrase 'wrongly availed or utilised'. Thus, on a bare perusal, it can be discerned that Section 73 imposes interest on wrongful availment, with or without utilization.

An analysis of the provisions of Section 73 of the CGST reveals that levy of interest would ensue once the wrong input tax credit is taken and the fact of utilization may not be material on application of the rule of strict interpretation. The word "or" used between the expression availed – utilized manifests the legislative intent to cover either of the cases.

As on today, tin my view, he ratio laid down in the *Ind Swift decision* (*Supra*) wherein similar provision under Rule 14 of the Cenvat Credit Rules

was interpreted clearly holds the field in favour of the Department in case of any dispute being raised by the taxpayer on such account. Some decisions of High Courts have provided relief to the taxpayers on this count but this decision of Apex Court has been conscientiously followed by authorities to attach interest liability even in cases of wrong availment of input credit. In fact the drafting of Section 73 and the language used therein makes the provision more imperative now.

Before I end this answer we must know that the scope of these two sections is all pervasive – it can be used for anything that you claimed wrongly or was given wrongly subject to limitation periods. There is a plethora of judgments on such provisions in Customs and Excise and in Service Tax law where the provisions were almost identical and hence the judgments pronounced in those Acts can be made use by us.

Q.23. Composition Scheme; ITC and its implications for composition dealers – when they opt out of it or when they came in it?

A Composition Dealer has to issue Bill of Supply. They cannot issue a tax invoice. This is because the tax has to be paid by the dealer out of pocket. A Composition Dealer is not allowed to recover the GST from the customers.

A registered taxpayer whose turnover is below Rs 1.5 crore can opt for Composition Scheme

As per the CGST (Amendment) Act, 2018, a composition dealer can also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher. This amendment will be applicable from the 1st of Feb, 2019.

Turnover of all businesses registered with the same PAN should be taken into consideration to calculate turnover.

The following people cannot opt for the scheme-

- Manufacturer of ice cream, pan masala, or tobacco
- A person making inter-state supplies
- A casual taxable person or a non-resident taxable person
- Businesses which supply goods through an e-commerce operator

The following conditions must be satisfied in order to opt for composition scheme:

- No Input Tax Credit can be claimed by a dealer opting for composition scheme
- The dealer cannot supply GST exempted goods
- The taxpayer has to pay tax at normal rates for transactions under the Reverse Charge Mechanism
- If a taxable person has different segments of businesses (such as textile, electronic accessories, groceries, etc.) under the same PAN, they must register all such businesses under the scheme collectively or opt out of the scheme.
- The taxpayer has to mention the words 'composition taxable person' on every notice or signboard displayed prominently at their place of business.
- The taxpayer has to mention the words 'composition taxable person' on every bill of supply issued by him.

Businesses/individuals registered under the composition scheme are required to pay GST at 1% to 6% depending on the type of business activity conducted by the registered person/business entity. The applicable composition scheme GST rate features equal SGST/UGST and CGST split i.e. 1% GST = 0.5% CGST + 0.5% SGST/UGST, 6% GST = 3% SGST/UGST + 3% CGST. The composition levy rates under GST are as follows:

- 1% of the turnover for traders and other suppliers eligible for composition scheme registration
- 2% of the turnover for manufacturers apart from manufacturers of products not eligible for GST composition scheme
- 5% of the turnover for restaurant services
- 6% of the turnover for businesses providing services/mixed services (other than restaurant services). This is applicable from 1st April 2019 onwards.

The composition levy on services sector businesses other than restaurants is a recent addition to this list after the 32ndGST Council Meeting announced the composition scheme for services and mixed

services. This composition scheme under GST Act will be applicable from 1st April 2019 onwards. Prior to this announcement, services/mixed services businesses and individuals were not allowed to register under the GST composition scheme.

- As per the CGST (Amendment) Act, 2018, a manufacturer or trader can now also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher. This amendment will be applicable from the 1st of Feb, 2019.

When a normal registered tax payer switches to Composition Scheme as per conditions mentioned hereinabove including the turnovers, he may face the following situations:

- The goods or services or both supplied by him become wholly exempt, on switch over date

- Where the taxpayer has availed input tax credit, opts to pay tax under Composition scheme

Effect on input tax credit while switching to composition scheme :

On the date of Switching from normal scheme to composition scheme, taxpayer shall be liable to pay an amount equal to the credit of input tax by way of debiting in the electronic credit /cash ledger in respect of inputs held in stock on the day immediately preceding the date of such switch over. Any residual input tax credit after payment of such amount, if any lying in the credit ledger shall lapse.

The person opting to switch to composition scheme would also have to furnish the statement in FORM GST ITC-03 which is a declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods within a period of sixty days from the commencement of the relevant financial year.

There is another relevant question : when the composition dealer closes his business and surrenders his registration; whether the stock he is holding will be liable to tax? Well in the absence of any law made in this regard in the Act, the stock will not be liable to tax. Simply because there is no provision made in this regard. Moreover once the Composition Dealer was debarred from claiming ITC; then how could his closing stocks be taxed under GST law? But this is a tricky.

Q.24: Cross Charge issue – what is the controversy and how do professional sort this out? In brief.

GST Law has a theory of Distinct person. Different units of the same entity functioning in different States are treated as "distinct persons" under the GST law and supply of goods or services or both between such "distinct persons", even if made without consideration are treated as supply, as per Schedule I of the CGST Act.

Every entity may have a registered office / Corporate office / Head office /Marketing office, etc. (hereinafter referred to commonly as HO) which would cater to all units of the entity, situated in different States. Thus, the employees working in HO are working for all units of the entity. Once the said HO on the one hand and other units of the same entity in different States are deemed as "distinct persons", the question arises as to whether the HO is supplying the services of its employees to its other units, warranting payment of GST for such deemed supply.

In this connection, it is also relevant to note that as per Schedule III of the CGST Act, "Services by an employee to the employer in the course of or in relation to his employment" is not at all treated as a supply. In this context, the Authority for Advance Ruling (AAR) has held in the case of Columbia Asia Hospitals Pvt Ltd –2018-TIOL-113-AAR-GST, since the HO and other Units in a different State of an entity are distinct persons, the employees of HO are not employees of the Unit indifferent States and hence, the transaction is covered by Schedule I of the Act, and GST is payable. Assuming that an entity is having 4 units in 4 different State sand a Corporate office. If the employee cost has to be shared among the four units, by raising a GST invoice, in what proportion the employee cost can be shared among the units for the purpose of GST valuation? There are, however, no guidelines in this regard in the statutory provisions.

As regards determination of status of different units of the same entity situated in different States, to quality as Distinct Persons, we had to look to provision of Section 25(4) of the Act.

To quote, Sec. 25 (4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act"

It may be noted that any legal fiction created by a Statute is for a specific purpose and the above deeming fiction is only "for the purposes of this Act".

AAAR Ruling in the matter:

The India Management Office (IMO) of the Appellant is providing a service to its other distinct units by way of carrying out activities such as accounting, administrative work, etc with the use of the services of the employees working in the IMO, the outcome of which benefits all the other units and such activity is to be treated as a taxable supply in terms of the entry 2 of Schedule I read with Section 7 of the CGST Act."

This is only an advance ruling decision. For final determination of the matter we will have to wait for the final adjudication by the superior courts or through a clarification by the Government.

Q:25. What is the entire law on Goods Transport Agency? In Brief

Transportation of Goods by Road In terms of Notification no. 12/2017-Central Tax (Rate) dated28.06.2017 (sr.no.18), the following services are exempt from GST Services by way of transportation of goods (Heading 9965):(a) by road except the services of:(i) a goods transportation agency;(ii) a courier agency;(b) by inland waterways. It would thus mean that mere transportation of goods by road, by any one except by a goods transportation agency, is exempt from GST.

GST Under GST laws, the definition of Goods Transport Agency is provided in clause (ze) of notification no.12/2017-Central Tax(Rate) dated 28.06.2017.(ze) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. Issuance of a consignment note is the sine-qua-non for a supplier of service to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency.

Where a consignment note is issued, it indicates that the lien on the goods gets transferred (to the transporter) and the transporter becomes responsible for the goods till it's safe delivery to the consignee.

It is only the services of such GTA, who assumes agency functions, that is being brought into the GST net. Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a corollary, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at s.no.18of notification no.12/2017-Central Tax (Rate), which is exempt from GST.

To qualify as services of GTA, the GTA should be necessarily issuing a consignment note. Only services provided by a GTA are taxable under GST. Services of transportation of goods by a person other than GTA are exempt. Moreover, in cases where the service of GTA is availed by the specified categories of persons in the taxable territory, the recipients who avail such services are the ones liable to pay GST and not the supplier of services unless the GTA opts for collecting and paying taxes @ 12% (6% CGST + 6% SGST). In all other cases where GTA service is availed by persons other than those specified, the GTA service supplier is the person liable to pay GST. The GTA service supplier is not entitled to take ITC on input services availed by him if tax is being charged @ 5% (2.5% CGST + 2.5% SGST). In case the GTA service supplier hires any means of transport to provide his output service, no GST is payable on such inputs.

Charge of GST on services provided by GTA In terms of notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by notification no. 20/2017- Central tax (Rate) dated 22.08.2017, Sr. No. 9 and Sr. No. 11, (i) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use) (Heading 9965 & 9967 respectively) attracts GST @2.5% or 6%CGST. Identical rate would be applicable for SGST also, taking the effective rate to 5% or 12%. However, the rate of 5% is subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken. The Explanation to the notification further clarifies that it shall mean that,- (a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and (b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made there under. GTA as a branch of GST Law is totally chaotic law with so many notifications, exemptions and interpretations. I find it is impossible to give the entire gamut here.

Q.26. There is a lot of confusion between commercial credit notes and credit notes as per Section 34? Let us know the difference and ITC implications for the tax payers – for suppliers as well as recipients.

Two kinds of credit notes can be issued by a supplier. One is the tax credit note wherein the tax amount reflected on the credit note is sought as an adjustment against the output tax liability. In other words, the output tax liability is sought to be reduced by issuing such tax credit note. Another

is the commercial credit note wherein tax amount is NOT reflected. Hence no tax adjustment is sought on the basis of such credit note. Only the basic value is adjusted. The former is called Commercial Credit Notes and the latter is called Credit Note as per Section 34.

A registered tax payer can issue against tax invoices a credit note with tax amount to account for the return of the goods. However the said credit note needs to be reflected in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier.

As per scheme of Section 34 the issuance of credit note is not compulsory as this section uses the words "may issue"

Proviso to Sec. 34(2) clearly provides that no tax adjustment will be permitted when the incidence of tax has been passed i.e. the buyer has paid the tax.

For further discussions the readers can refer to a Clarificatory **Circular No. 72/46/2018-GST dated 26.10.2018** issued by the GST Policy Wing.

Q.27: The price of goods or services is renegotiated in Covid 19 times. Invoices have been raised, accounted for in the returns; taxes paid; Now the supplier agrees to issue the Credit Notes? ITC implications for the recipients for intra state and interstate transactions including exports and the time lines issues?

Where the bills had been raised and reflected in the GST return, then no alternative but to issue post supply credit note and I think we will get claim provided the recipient reverses the input tax credit to the extent mentioned in the credit note issued in his favor.

Q. 28: Section 171 is another menace we have in GST and it is following the tax payers after every amendment in tax rate on the reduction side? Anti -profiteering measures? What is your take on it? What are the key lessons learnt so far?

Section 171 of CGST Act, 2017, provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

If the sum total of taxes being levied on a supply prior to GST regime is more than the GST levy on the said supply, then there has to be equivalent reduction in prices of the supply. E.g. if sale of a manufactured good subject

to levy of a total tax of approx.24.5% (12.5% as Excise Duty and 12% as VAT) in the pre-GST regime and now under GST attracts 18% GST, there is a reduction in rate of tax of about 6.5%.The wilful action ofnot passing on the above benefits to the recipients in the manner prescribed is known as"profiteering".

The word 'profiteering' finds no place in the text of section 171; As per Black's Law Dictionary – *'Profiteering'* is *"taking advantage of unusual or exceptional circumstances to make excessive profits…*

Chapter XV of the CGST Rules, 2017 comprising of 16 Rules (Rule 122 to Rule 137),contains the detailed mechanism and procedure.

In terms of Rule 137 of the CGST Rules, 2017, the Anti-profiteering Authorityshall cease to exist after the expiry of two years from the date on which the Chairman ofthe Authority enters upon his office unless the GST Council recommends otherwise.

The different situations in which Section 171 of CGST Act, 2017 & the identicalprovision in State/ UT GST Act will get attracted if there is:

i. reduction in tax rate;

ii. benefit of Input Tax Credit (ITC) available with the registered person/ supplier.

The National Anti-Profiteering Authority (NAA) appointed by the Central Government shall be required to determine whetherthe benefit of input tax credit or reduction in the tax rate has actually resulted in acommensurate reduction in the price of the goods or services or both. The NAA has the power to identify the registered person who has not passed on the benefitof reduction in tax rate or input tax credit by way of commensurate reduction in pricesand it may order reduction in prices; return to the recipient, an amount equivalent to theamount not passed on by way of commensurate reduction in prices along with interest;cancellation of registration of the supplier and imposition of penalty. In case the eligiblerecipient is not identifiable or does not claim return of the amount, the NAA may order thesupplier to deposit the amount in the Consumer Welfare Fund.

Q. 29: The law uses two phrases "in the course of" and "in furtherance of" business: How do you cull out their scope for GST qua the business of the tax payers – goods or services or both: and will Section 16(1) prevail over other machinery sections?

Section 16(1) provides eligible criteria for availment of ITC subject to the satisfaction of the following twin conditions:-

- ➢ Supplies should be made to a registered person; and
- ➢ Such supplies are meant to be used or intended to be used by such registered person in the course or furtherance of his business.

Legislative intent for availment of input tax credit under the CGST Act - inputs must be used in the course or furtherance of business. Under the pre-GST regime which was predicated on inputs and input services being used "*in the manufacture of goods"* or *"provision of output services*".

The term business has been defined in Section 2 very expansively and we have sufficient number of SC judgments in VAT era and the same can be applicable here also should such a situation arise.

The Supreme Court in State of Tamil Nadu v. Binny Ltd. Madras; AIR 1980 SC 2038 held- sale of provisions to workmen employed in the factory where textiles were being manufactured was incidental to the business of manufacture of textiles and such sales fell within the definition of the term 'business' under the Tamil Nadu Sales Tax Act.

In my view all those activities that are held to be incidental to business or ancillary to business may also be covered by this phrase. And again we have many Judgments on this issue in the earlier tax regime.

The Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. And Anr.; AIR 1973 SC 1045 held - Where the primary business of the Petitioner was trading in oil and oil related products it was held that periodic selling of scrap, unserviceable oil drums, old furniture, etc. was an activity ancillary and incidental to its business.

Yes the pre conditions of Section 16(1)must be satisfied before any claims for input tax credit can be allowed. I am now refer to some important judicial precedents as to the eligibility of input tax credit.

Orissa High Court explored this and gave relief in that Reality case- Safari Retreats? The Court said in no uncertain terms that the provisions of Section 17(5)(d) have to be read down to follow the true spirit of GST law? I mean if I prove that certain expenditure I incurred for satisfying these phrases and there is no bar in Section 17(5)(d) ; can the proper officer reject my claim for ITC?

The DB of the Court observed that:

"The benefit of input tax credit has been denied to the petitioner by applying Section 17(5) (d) of the CGST Act as well as of the OGST Act and the language of the said sub-section in both the Acts is identical. The said Section 17(5) (d) of both the aforesaid Acts inter alia provides that notwithstanding anything contained in sub section (1) of Section 16 of both the aforesaid Act and sub section (1) of Section 18 of both the aforesaid Acts, input tax credit shall not be available in respect of the goods and services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put-forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis. But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable.In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in EICHER MOTORS LTD. VERSUS UNION OF INDIA [1999 (1) TMI 34 – SUPREME COURT] , the very purpose of the credit is to give benefit to the assessee."

Q:30. When A business is closed the registered tax payer has to file a final return in GSTR 10 and pay even the tax on closing stock as per law – of course in my view the tax payer can pay through unutilised ITC? Why won't a tax payer get the refund of the balance left in ECR after discharging all the liabilities and after getting final assessment done?

Yes when business is closed the registered tax payer has to pay tax on the closing stock of inputs held i.e. finished goods, trading goods, semi -finished stocks or even work in progress at itemised rates. If he has sufficient balance in the electronic credit ledger balance he can adjust the tax payable. And if still some balance is left, then there is no provision in the Act i.e. Section 54(3) to refund that amount on closure of business. It is better to take shelter under Section 18 of the CGST Act and merge with

some other business to ensure unutilised input tax credit is not lost. Of course it will differ from case to case.

Even in the earlier indirect tax regimes cash refund was not visualised of the unutilised input tax credit on closure of the business. Latest Bombay High Court Judgment (quoted below) is there to support the above proposition.

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, TIRUPATI Vs RANI PLASTIC PIPE INDUSTRIES

Central Excise - refund claim in cash on the ground that the unit was closed and appellants were not able to utilise the MODVAT credit which they were entitled to – revenue in appeal against impugned order allowing refund of the MODVAT / CENVAT in cash – HELD - Rule 5 of CENVAT Credit Rules, 2004 is the only provision under which a refund of CENVAT credit can be allowed. Such refund is also subject to conditions notified by the Government. There is no provision in the CENVAT Credit Rules for refund of CENVAT credit if the assessee is not able to utilise it for any other purpose, such as the factory being closed – further, the Larger Bench of Hon'ble High Court of Bombay has held that no refund can be sanctioned under Section 11B if the assessee is unable to utilise CENVAT credit on account of closure of the manufacturing activities. In view of the above, the ratio of the judgment of the Larger Bench of the Hon'ble High Court of Bombay is binding and prevails and accordingly no refund of MODVAT / CENVAT credit can be sanctioned to the respondent – revenue appeal is allowed

Q: 31. When can the Department effect Provisional Attachment under Section 83 of the CGST Act/DGST Act and what are the legal remedies open to the tax payers? Can the provisional attachment order under Section 83 be extended beyond a period of one year as prescribed under section 83(2)?

*Where **during the pendency of any proceedings** under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, **the Commissioner is of the opinion** that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*

in relation to provisional attachment. Section 83 of the CGST Act, 2017 has to be read with Sections mentioned in Section 83 and Rule 159 of the CGST Rules, 2017.

If there is no proceeding pending in the sections mentioned in Section 83 in my view no provisional attachment of any property including the bank account or even the input tax credit (that Delhi GST Department is doing regularly)can be made by the Commissioner and if made will be illegal- for example.

Also the authorities attach property etc. under Section 83 on the grounds of proceedings instituted under Section 71 of the Act: we can always argue that this section is not mentioned in Section 83 and hence attachment is patently illegal. There is no power vested in the authorities to invoke the provisions of Section 83 during the pendency of the proceedings instituted under Section 71(1) of the Act.

ENPROCON ENTERPRISE LTD VS THE ASSISTANT COMMISSIONER OF STATE TAX- Dated 8.1.2020

GST - Validity of delegation of powers of Commissioner of State Tax under Section 83 of the SGST Act to the Assistant Commissioner State Tax - whether the order of provisional attachment passed by the Assistant Commissioner in exercise of powers under Section 83 of the Gujarat GST Act, 2017 is sustainable in law – HELD - the Commissioner ought not to have delegated his powers of provisional attachment under Section 83 of the Act to the Assistant Commissioner. In the present case, the order of provisional attachment as well as the order of prohibition are not sustainable on two counts, i.e. (i) the order has been passed by the Assistant Commissioner, and (ii) the order has been passed without any credible materials, available for the purpose of passing such order of provisional attachment - The order of provisional attachment passed by the Assistant Commissioner, so far as the immovable property is concerned, is quashed and set aside. In the same manner, the order of provisional attachment of the bank accounts is also quashed and set aside - Writ Application succeeds and is allowed

The key issues for this Section are that the proceedings must be pending and not concluded; few High Courts have held that only Commissioner can authorise provisional attachment and he cannot delegate this power to any other officer. Under this provision it is clearly mentioned that any property including bank account can be attached. Input tax Credit is a property and hence this can also be attached or as we call can be blocked. But my view is that the provisions of Section 167 of the CGST Act authorise the Commissioner to even delegate this power; there is no apparent legal impediment.

The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.

Section 83 empowers the competent authority to issue an order for provisional attachment of property including bank accounts if it is of the opinion that such step is necessary for protecting the interest of the Revenue. It is palpably clear that Section 83(2) permits continuation of a provisional attachment order for a period of one year ***from the date of order after which it ceases to remain in effect****.*

Section 83 has to be construed literally and strictly. On a perusal of Section 83, it is evident that Section 83 does not provide for an extension of an order for provisional attachment and any such extension shall be dehors the statute.It is palpably clear that Section 83(2) permits continuation of a provisional attachment order for a period of one year from the date of order after which it ceases to remain in effect. Whether it could be extended beyond one year; my view is that it cannot be extended in the same proceedings.

An authority cannot act beyond the powers conferred by the statute. The Supreme Court has time and again held that strict interpretation is required to be followed and no liability of tax can be imposed dehors the statute. He further relied on the Supreme Court judgments in ***CIT Bombay Vs. Gwalior Rayon Silk Manufacturing Company Ltd.*** *[(1992) 3 SCC 326]* and ***State of Jharkhand and others Vs. Ambay Cements and another*** *[AIR 2005 SC 4168] - 2004-VIL-24-SC* to buttress the argument that when the language is plain and unambiguous and the provision penal in nature, the same must be strictly construed and the courts should not do violence to the provision by reading and/or adding something that is not intended by the legislature.

Where the authorities commit an illegality in invoking the provisions of Section 83, cross objections under the Rule 159(5). *The tax payers have a remedy against the order of attachment by way of filing objection under sub-rule (5) of rule 159 of the CGST Rules, 2017, and this must be done otherwise the High Court would be reluctant to entertain the petitions under Article 226 of the Constitution of India –on the ground that the petitioners have an efficacious alternative remedy before the competent authority before whom all the contentions raised in the present petitions can be raised.*

Officers acting under the relevant provisions are required to study the scope of their powers under the statutory provisions under which they are acting and cannot act on the basis of presumptions or past precedents under a previous enactment. If the common man is supposed to know the law and face penalty for any infraction thereof, the officers enforcing such provisions are required to be well versed with the statutory provisions and the scope and limits of their power and cannot take shelter behind ignorance of law to justify their illegal actions.

In the absence of pendency of any proceedings under sections 62, 63, 64, 67, 73 or 74 of the CGST Act, the orders of provisional attachment of the bank accounts of the petitioners under section 83 of the CGST Act are without authority of law and can be rendered unsustainable.

Q:33.The appellate mechanism in CGST Act provides that an aggrieved person can file appeal against an order or decision passed under the Act; within 3 months plus one month condonation before the AA; with a minimum pre deposit of 10 percent of amount in dispute which becomes 20 percent before the Tribunal in addition to this 10 percent? Tribunal also has limited power to condone the delay i.e. 45 days only.

The filing of appeals also mandates pre deposit of 10 percent before the AA and 20 percent in addition to 10 percent before the Tribunal of amounts in dispute from the respective orders appealed?

What is the implication of "aggrieved person"; the condonation issue and the mandatory pre deposits? It seems filing of appeals is going to be a very expensive thing to do?

1. Section 107 of CGST Act mandates that " an aggrieved person" can file the appeal.

Definition of person aggrieved. a person sufficiently harmed by a legal judgment, decree, or order to have standing to prosecute an appellate remedy. An aggrieved party is one whose interest in the order or decision passed is actual and practical, as opposed to merely theoretical

The words denotes the locus standi of the person filing the appeal – it has implications. For example a partnership firm is merged into a private limited company and an order against the partnership firm involving a huge demand is pending; then the aggrieved person definition will include the private limited company who can pursue the appeal against that order.

Another example will be when a firm is sold on “going concern basis “ then the buyer of that concern can be deemed to be aggrieved person.

Another example will be where some tax payers are mentioned in an order passed in third party cases as bogus; frauds; allies; then all such tax payers can be deemed to be aggrieved and they can also challenge the order even though passed in the matter relating to some other tax payer.

Viewed in this sense the law offers a greater flexibility to the tax payers to file appeals and challenge the orders or decisions passed by the authorities.

Limitation for filing the appeal – before the AA and before the Tribunals. Implications.

Friends here the tax payers have problems in my view. GST Act is a special statute and Limitation Act 1963 unless specifically made part of this law cannot be invoked for extending the limitations fixed for filing the appeals. We have to be careful about this. Appeals must be filed within the limitation period provided and if condonation is to be requested then the condonation cannot be more than the period allowed in the particular provision. Well this is the law and hence whenever a cause of action for filing of appeals occurs; ensure you strictly follow the law.

It is a well-settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment.

If you prefer to challenge a particular order by way of Writ Petition before the High Court then by operation of Section 14 of the Limitation Act the time taken in prosecuting that remedy before the High Court may be added to the limitation period provided under the GST Act provided you took the remedy within the limitation period and not after the limitation period.

Supreme Court of India M.P. Steel Corporation vs Commnr. Of Central Excise on 23 April, 2015- is a classic Judgment that you should read.

Supreme Court of India in M/S Patel Brothers vs State Of Assam And Ors on 4 January, 2017 was dealing with an identical question under Section 81 of Assam VAT Act dealing with revision to decide whether section 5 of the Limitation Act could be invoked to give relief for an extended limitation i.e. condonation…

Section 81 of the VAT Act also prescribes a limitation period of 60 days within which such revision petition is to be preferred to High Court. Since there was a delay of 335 days in filing these revision petitions, these petitions were filed along with applications under **Section 5** of the Limitation Act, 1963, seeking condonation of delay. The High Court has dismissed the applications for condonation of delay holding that provisions of Section 5 of the Limitation Act, 1963 are not applicable. For this purpose, the High Court has referred to **Section 84** of the VAT Act which makes provisions of **Sections 4** and **12** of the Limitation Act, 1963 to such petitions. On that basis, it is held by the High Court that since only **Sections 4** and **12** of the Limitation Act, 1963 are made specifically applicable to these proceedings, by necessary implication **Section 5** of the Limitation Act stands excluded. The Supreme Court after deliberating a number of its own rulings gave the final verdict as follows and confirmed the decision of the High Court that limitation period as provided in Section 81 cannot be extended:

> "What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking **Section 5** of the Limitation Act, 1963 so as to supplement the provisions of the **VAT Act** which excludes the operation of **Section 5** by necessary implications."

However, Supreme Court judgment under Article 142 dated 23.3.2020 will have the effect of extending limitation period for appeals filed between 15th March till the orders of the SC is in operation as the Order of the SC clearly mandates that time for filing appeals/ petitions etc will be extended notwithstanding the fact that period was codonable or not condonable. But this is restricted only for the locked down period and till the SC order is in operation.

Pre Deposits.

The provisions put an absolute bar to file appeals before the AA or before the Tribunals unless the condition precedent as stipulated in the provisions are fulfilled. In my view it would be mandatory for the tax payers to make the pre-deposit before filing an appeal and the appellate authority cannot have any discretion in the matter.

1. The Supreme Court referred to its earlier decision in Narayan Chandra Ghosh vs UCO Bank & Ors (2011) 4 SCC 548, where it was held that there is an absolute bar to the entertainment of an appeal under Section 18 of the SARFAESI Act,2002, unless the condition precedent, as stipulated, is fulfilled. It affirmed that the

it's mandatory for a borrower to make the pre-deposit before filing an appeal and the appellate tribunal can at best, after recording the reasons, reduce the pre-deposit to twenty five percent of the debt as referred to in the second proviso. It also remarked that the language of the said proviso is clear and unambiguous.

2. The Supreme Court on March 2, 2020 in Union Bank of India vs. Rajat Infrastructure Private Limited has held that the pre-deposit as required under Section 18 of the SARFAESI Act, 2002, is mandatory for entertaining an appeal before the DRAT.

3. M/s Tecnimont Pvt. Ltd. Vs State of Punjab & Others (Supreme Court)

   In this case Supreme Court reversed the decision of Punjab and Haryana High Court in the case of PSPCL ltd Vs state of Punjab wherein the HC had held that appellate authority can in appropriate cases reduce or waive 25% of pre-deposit u/s 62(5) of Punjab VAT Act, now after the decision of SC it is mandatory to deposit 25% of additional demand u/s 62(5) of Punjab VAT act before an appeal be heard on merits. It held that Any such exercise would make the provision itself unworkable and render the statutory intendment nugatory. Supreme Court observed that the Appellate Authority cannot override statutory requirement of pre-deposit when the statute mandates that no appeal can be entertained unless such requirement is satisfied.

4. The Supreme Court has even held that the High Court cannot give directions that are contrary to the law.

   So there is no choice but to make a pre-deposit of 10 percent and if you lose the appeal make a further deposit of 20 percent of the amounts in dispute before the appeals could be entertained.

Writ Jurisdiction can be invoked to avoid pre-deposits provided the orders fall in the categories about to be discussed.

Article 226, empowers the high courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them.

Under Article 226 of the Constitution, writ can be issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted:

(i) without jurisdiction, by assuming jurisdiction where there exists none, or

(ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or

(iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Therefore, when you are confronted by an order that falls in the above categories the condition of ,pre-deposit could be avoided and advise you client to approach the jurisdictional High Court directly and High Courts will hear notwithstanding the conditions for entertaining the appeals by the appellate authorities.

Q: 34. Can goods and vehicle be detained on the ground of Undervaluation of Goods in the Invoice by invoking Section 68, 129 and Rule 138?

In my view and this view is supported by many also merely because the manufacturer sells his products to its customer or dealer at a price lower than the MRP, as such cannot be a ground on which the product or the vehicle could be seized or detained. More so, when the details in the invoice bill as well as in the e-way bill matched the products found in the vehicle at the time of inspection except for the price of sale. Undervaluation of a goods in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the CGST Act, 2017 read with Rule 138 of the CGST Rules, 2017. And if the authorities do it the entire proceedings for detention of the vehicle and the seizure of the goods will be in total contravention to the GST law. In my view Writ shall lie before the High Court of the State .

Q.35. Could you enlighten the audience about the provisions of GST Law dealing with arrest of tax payers and other issues connected therewith?

Section 69 states the **powers** of **Arrest** and can be understood as follows: 1. If the Commissioner has ‹reason to believe› that a person has committed anoffence **under** s. 132(1) (a) to (d), he may by order authorise to **arrest** that person.

Therefore, there are three primary conditions which are required to be fulfilled:

1. Commissioner must have a “Reason to Believe”.
2. Offence as specified in Section 132 (clauses (a), (b), (c) or (d)) of the CGST Act.
3. Commissioner may authorize any officer under the Central Tax to arrest.

A. Commissioner has ‘Reason to believe’

In section 69(1) of CGST Act, phrase ‘reason to believe’ holds utmost importance. As per Indian Penal Code, Sec. 26, “A person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing, but not otherwise.

Offences where the arrest can be made are following: -

1. Supply of any goods or services or both without issue of an invoice with the intention to evade tax.
2. Issue of any invoice or bill without supply of goods or services or both.
3. Availing of input tax credit using such invoice or bill referred to above.
4. Collection of any amount as tax but failing to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.

Section 132(1)(i) and Section 132(1)(ii) also specifies that in case the amount evaded or ITC wrongly availed or utilized or the amount of refund wrongly taken exceeds five crores then imprisonment may extend for a term upto five years and fine and in case evasion is above two crores but below five crores, imprisonment may be for a term upto three years and fine

Reason to believe is very subjective phrase and may vary in the circumstances of each case. In many cases, the meaning of phrase ‘reason to believe’ have been discussed in length.

The Supreme Court, on the government approaching it for clarification, has referred the matter to a three-judge bench on May 29, 2019, on the ground that different high courts have expressed conflicting views on such powers. Previously, a two-judge bench of Supreme Court had vide its order

dated May 27, 2019, affirmed the judgement dated April 18, 2019, of the Telangana High Court in P.V. Ramana Reddy versus Union of India [2019 (4) TMI 1320 - TELANGANA AND ANDHRA PRADESH HIGH COURT] case, wherein powers of GST officers were succinctly explained. There were contrary judgments too. Matter pending to be decided by larger Bench of the Supreme Court of India.

Commissioner may authorize any officer under the central tax to arrest.

According to section 69(1) CGST Act, Commissioner can authorise any officer of central tax to arrest. However, according to circular No. 171/6/2013-ST dated 17.09.2013, issued under The Central Excise and Custom Act, officer not below the rank of Superintendent could be authorised by Commissioner for making arrest. Accordingly, under the erstwhile Laws any officer below the rank of Superintendent was not authorized to arrest. However, under GST laws there is no such clarification issued and therefore, any central tax officer can be authorised by the Commissioner to arrest.

There is no provision under CGST Act 2017, specifically providing any procedure for investigation, inquiry or trial of an offence under Section 132 of the CGST Act. Section 132 of the Act indicates the offences and consequences / punishment for committing such offences, where an offence is proved and a person is found guilty. However, there is no procedure laid down in CGST Act in regard to Warrant, Bail, etc. Therefore, in the absence of such procedures, all such offences are to be investigated, inquired and tried as per the procedures provided under the CrPC.

Further, as per Section 132(5) of the CGST Law, where the tax evasion is above ₹ 5 Cr. and the offence falling either under clauses (a), (b), (c) or (d) of section 132 (1), the same shall be a cognizable and non-bailable and accordingly, warrant is not required. Further, as per Section 132(4) of the CGST Act, all other offences are bailable and non-cognizable and in such cases warrant is required.

Om Prakash & Anr vs Union Of India & Anr on 30 September, 2011- very useful read.

> "…..Accordingly, if the provisions of Part 2 of the First Schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only, being the third item under the category of offences indicated in the said Part. An offence

> punishable with imprisonment for three years and upwards, but not more than seven years, has been shown to be cognizable and non-bailable. If, however, all offences under Section 9 of the 1944 Act are deemed to be non-cognizable, then, in such event, even the second item of offences in Part 2 could be attracted for the purpose of granting bail since, as indicated above, all offences under Section 9 of the 1944 Act are deemed to be non-cognizable…"
>
> "…27. In our view, the definition of "non-cognizable offence" in Section 2(l) of the Code makes it clear that a non-cognizable offence is an offence for which a police officer has no authority to arrest without warrant. …."

It is to be kept in mind that under Section 69(4) of the CGST Act, the Commissioner can delegate this power to any other officer and read with Section 167 of the CGST Act a Notification must be issued in this regard and till that Notification is issued it is the Commissioner alone who can authorise arrest of any person after satisfying the requirements of Section 69 read with Section 132 of the CGST Act.

Before I conclude this question we all must keep in mind the expanded scope of Section 132, Introduced by Finance Act, 2020 now not only the register taxpayer who commits any of the offences enumerated in section 132 by all those who are this allies including professionals can also be arrested via section 69. Of course, Section 69 deals with only four offences mentioned in section 132(1)(A to D) BUT THEIR SCOPE IS VERY WIDE. A word of advice for all us, we should be very careful while dealing with our clients with not a clean background.

To conclude this Question Answer Session, I must put on record that tremendous effort of my dearest friend Raj Batra, Editor-in-Chief of a prestigious journal DSTC - it is he who prompted me to write this general and probing answers to the questions. We selected on topics as wide-ranging as these are. Friends, I must record that these answers are just the beginners, please do not test on legal touchstones. There could be more different views to an answer. But, that is the beauty of law and we must respect that.

There are some repetitions of provisions but these were required to simply answer the questions raised.

Thank you – Raj Batra

E-Invoicing System Under Goods and Services Tax – Frequently Asked Questions

PROPOSED E-INVOICING SYSTEM

The GST Council has approved introduction of 'E-invoicing' or 'electronic invoicing' in a phased manner for reporting of business to business (B2B) invoices to GST System, starting from 1st January 2020 on voluntary basis. Since there was no standard for e-invoice existing in the country, standard for the same has been finalized after consultation with trade/industry bodies as well as ICAI after keeping the draft in public place. Having a standard is a must to ensure complete interoperability of e-invoices across the entire GST eco-system so that e-invoices generated by one software can be read by any other software, thereby eliminating the need of fresh data entry – which is a norm and standard expectation today. The machine readability and uniform interpretation is the key objective. This is also important for reporting the details to GST System as part of Return. Apart from the GST System, adoption of a standard will also ensure that an e-invoice shared by a seller with his buyer or bank or agent or any other player in the whole business eco-system can be read by machines and obviate and hence eliminate data entry errors.

The GST Council approved the standard of e-invoice in its 37th meeting held on 20th Sept 2019 and the same along with schema has been published on GST portal. Standards are generally abstruse and thus an explanation document is required to present the same in common man's language. Also, there is lot of myth or misconception about e-Invoice. The present document is an attempt to explain the concept of e-invoice, how it operates and basics of standards. It also contains FAQs which answer the questions raised by people who responded to the draft e-invoice standard used for public consultation. It is expected that the document will also be useful for the taxpayers, tax consultants and the software companies to adopt the designed standard.

A. What is e-invoice?

If an invoice is generated by software on the computer or Point of Sales (PoS) machine then does it become an e-invoice? Is e-invoice as a system where taxpayers can generate the invoices centrally? Many such questions are raised when e-invoice gets discussed.

E-invoice does not mean generation of invoices from a central portal of tax department, as any such centralization will bring unnecessary

restriction on the way trade is conducted. In fact, taxpayers have different requirements and expectation, which can't be met from one software generating e-invoices from a portal for the whole country. Invoice generated by each software may look more or less same; however, they can't be understood by another computer system even though business users understand them fully. For example, an Invoice generated by SAP system cannot be read by a machine which is using 'Tally' system. Likewise there is hundreds of accounting/billing software which generate invoices but they all use their own formats to store information electronically and data on such invoices can't be understood by the GST System if reported in their respective formats. Hence a need was felt to standardize the format in which electronic data of an Invoice will be shared with others to ensure there is interoperability of the data. The adoption of standards will in no way impact the way user would see the physical (printed) invoice or electronic (ex pdf version) invoice. All these software would adopt the new e-Invoice standard wherein they would re-align their data access and retrieval in the standard format. However, users of the software would not find any change since they would continue to see the physical or electronic (PDF/Excel) output of the invoices in the same manner as it existed before incorporation of e-Invoice standard in the software. Thus the taxpayer would continue to use his accounting system/ERP or excel based tools or any such tool for creating the electronic invoice as s/he is using today.

To help small taxpayers adopt e-invoice system, GSTN has empanelled eight accounting & billing software which provide basic accounting and billing system free of cost to small taxpayers. Those small taxpayers, who do not have accounting software today, can use one of the empanelled software products, which come in flavors, online (cloud based) as well as offline (installed on the computer system of the user).

B. e-Invoice and Tax Department

The e-invoice system being implemented by tax departments across the globe consists of two important parts namely,

Generation of invoice in a standard format so that invoice generated on one system can be read by another system.

a) Reporting of e-invoice to a central system.

The basic aim behind adoption of e-invoice system by tax departments is ability to pre-populate the return and to reduce the reconciliation problems. Huge increase in technology sophistication, increased penetration of Internet along with availability of computer systems at reasonable cost has made this journey possible and hence more than 60 countries are in the process of adopting the e-invoice.

GST Council has given the responsibility to design the standard of e-invoice and update the same from time to time to GSTN which is the custodian of Returns and invoices contained in the same.

Adoption of e-invoice by GST System is not only part of Tax reform but also a Business reform as it make the e-invoices completely inter-operable eliminating transcription and other errors.

C. Other derived benefits of introduction of e-invoice from GST perspective

Objectives	Outcome
Better taxpayer services	One time reporting on B2B invoice data in the form it is generated to reduce reporting in multiple formats (one for GSTR-1 and the other for e-way bill). To generate Sales and purchase register (ANX-1 and ANX-2) from this data to keep the Return (RET-1 etc.) ready for filing under New Return. e-Way bill can also be generated using e-Invoice data It will become part of the business process of the taxpayer Substantial reduction in input credit verification issues as same data will get reported to tax department as well to buyer in his inward supply (purchase) register. On receipt of info thru GST System as buyer can do reconciliation with his Purchase Order and accept/reject in time under New Return
Reduction of tax evasion	Complete trail of B2B invoices System level matching of input credit and output tax
Efficiency in tax administration	• Elimination of fake invoices

Generation of e-invoice will be the responsibility of the taxpayer who will be required to report the same to Invoice Registration Portal (IRP) of GST, which in turn will generate a unique Invoice Reference Number (IRN) and digitally sign the e-invoice and also generate a QR code. The QR Code will contain vital parameters of the e-invoice and return the same to the taxpayer who generated the document in first place. The IRP will also send the signed e-invoice to the recipient of the document on the email provided in the e-invoice.

Note: *To begin with, there will be only one IRP, but more IRPs will be added to provide higher availability, redundancy, speed and a diversified and distributed service to tax payers with a choice.*

D. What types of documents are to be reported to GST System?

While the word invoice is used in the name of e-invoice, it covers other documents that will be required to be reported to IRP by the creator of the document:

i. Invoice by supplier

ii. Credit Note by Supplier

iii. Debit Note by Supplier

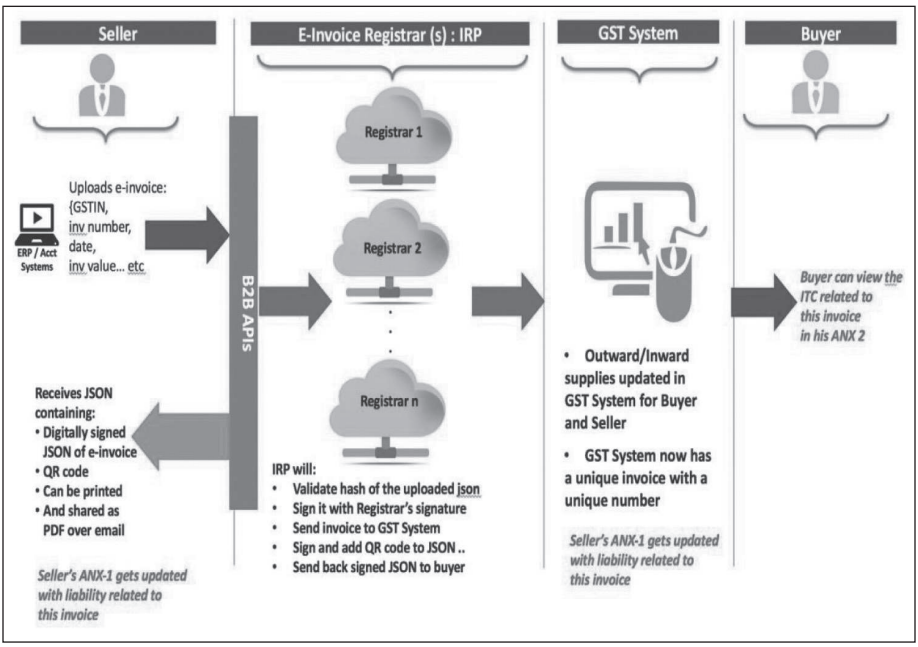
iv. Any other document as required by law to be reported by the creator of the document (as notified by the Government from time to time).

E. What will be the workflow involved?

The flow of the e-invoice generation, registration and receipt of confirmation can be logically divided into two major parts.

a) The first part being the interaction between the business (supplier in case of invoice) and the Invoice Registration Portal (IRP).

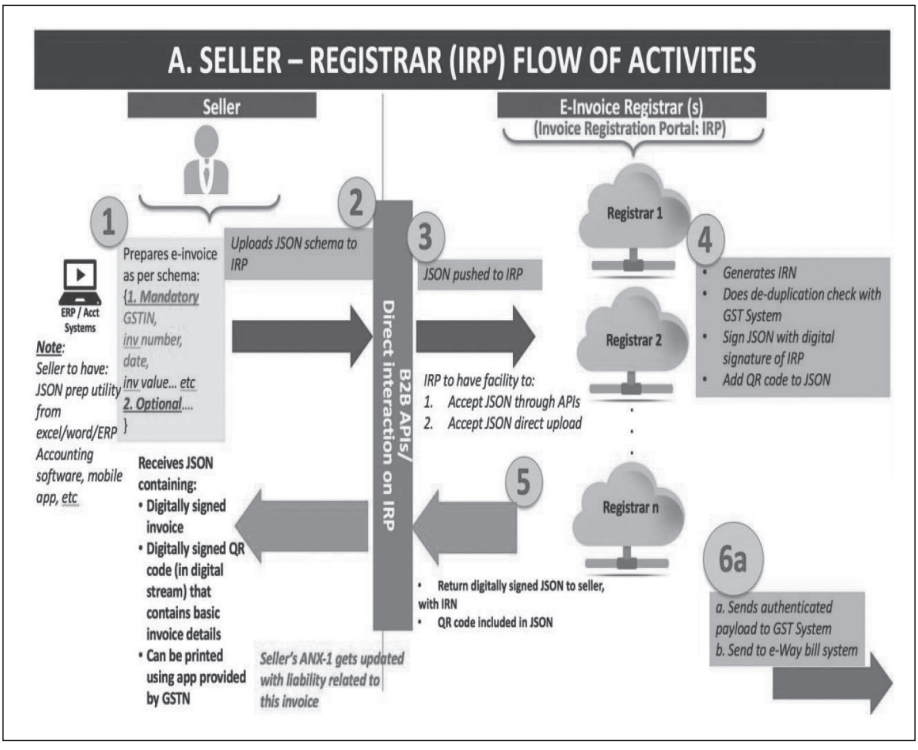
b) The second part is the interaction between the IRP and the GST/ E-Way Bill Systems and the Buyer.



The two parts of the workflow are depicted diagrammatically below and followed up with an explanation of the steps involved. As the process evolves and system matures the same would be intercommunicated between buyer's software and seller's software, banking systems etc.

Part A: Flow from Supplier (commonly known as seller) to IRP.

Step 1 is the generation of the invoice by the seller in his own accounting or billing system (it can be any software utility that generates invoice including those using excel or GSTN's provided Offline Utility). The invoice must conform to the e-invoice schema (standards) that is published and have the mandatory parameters. The optional parameters can be according to the business need of the supplier. The supplier's (seller's) software should be capable to generate a JSON of the final invoice that is ready to be uploaded to the IRP. The IRP will only take JSON of the e-invoice.



Note:

1. *Seller should have a utility that will output invoice data in JSON format, either from his accounting or billing software or his ERP or excel/word*

document or even a mobile app. Those who do not use any accounting software or IT tool to generate the invoice, will be provided an offline tool to key-in data of invoice and then submit the same.

2. *The small and medium size taxpayers (having annual turnover below Rs 1.5 Crores) can avail accounting and billing system being offered by GSTN free of cost.*

Step 2 and 3: is to upload and push the JSON of the e-invoice to the IRP by the seller. The JSON may be uploaded directly on the IRP or through GSPs or through third party provided Apps.

Step-4: The IRP will generate the hash based on seller's GSTIN, Document Type, Document Number and Financial Year and check the hash from the Central Registry of GST System to ensure that the same document (invoice etc.) from the same supplier pertaining to same Fin Year is not being uploaded again. On receipt of confirmation from Central Registry, IRP will add its signature on the Invoice Data as well as a QR code to the JSON. The QR code will contain GSTIN of seller and buyer, Invoice number, invoice date, number of line items, HSN of major commodity contained in the invoice as per value, hash etc. ***The hash computed by IRP will become the IRN (Invoice Reference Number) of the e-invoice.*** This shall be unique to each invoice and hence be the unique identity for each invoice for the entire financial year in the entire GST System for a taxpayer. [GST Systems will create a central registry where hash sent by all IRPs will be kept to ensure uniqueness of the same].

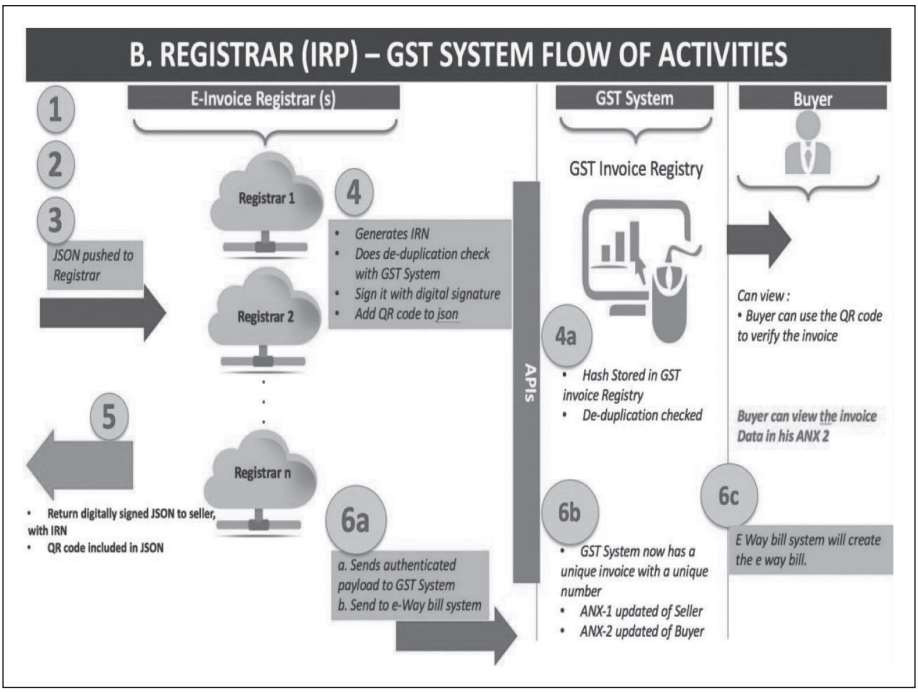
In case the same document has been uploaded earlier, the IRP will send an error code back to the seller, when he tries to upload a duplicate e-invoice.

Step 5 will involve returning the digitally signed JSON with IRN back to the seller along with a QR code.

Step 6 will involve sharing the uploaded data of accepted document (invoice etc.) with GST and e-way bill system. More details are given in Part-B below.

Part B: Flow from IRP to GST System/E-Way Bill System & Buyer

The following diagram shows how e-Invoice data would be consumed by GST System for generation of e-way bill or populating relevant parts GST Returns, stated in Step-6 above.



Step 6(a) will be to send the signed and authenticated e-invoice data along with IRN (same as that has been returned by the IRP to the seller) to the GST System as well as to E-Way Bill System.

Step 6 (b) The GST System will update the ANX-1 of the seller and ANX-2 of the buyer, which in turn will determine liability and ITC.

Step 6 (c). The e-invoice schema includes parameters e.g. 'Transporter Id' and 'Vehicle Number' that are required for creating and generating e-way bills. Provision has also been made to enter transporter code and vehicle number, if available with seller at the time of generation of e-invoice. In that case, e-way bill can be prepared fully. The E-Way bill system will accordingly create eway bill using this data.

Note 1*: The e-invoice standardized schema has mandatory and optional items. The e-invoice shall not be accepted in the GST System unless all the mandatory items are present. The optional items are to be used by the seller and buyer as per their business need to enforce their business obligations or relationships.*

Note 2*: Seller may send his e-invoice for registration to more than one registrar. But the GST system and IRP will perform a de-duplication check*

with central registry to ensure that the IRN that is generated is unique for each invoice. Therefore, the IRP shall return ONLY ONE registered IRN for each invoice to the seller. In case of multiple registrars (more than one IRPs) only one IRP will return a valid IRN to the seller. Except one, all other IRPs will reject the request of registration.

***Note 3**: The QR code will enable quick view, validation and access of the invoices from the GST system from hand held devices*.

F. Direct Invoice Generation on IRP (Invoice Registration Portal)

Many people think that e-invoice will be generated from government's tax portal. This is a myth and invoices will continue to be generated using an Accounting or a billing software by seller using their respective IT/ERP systems, keeping in view the varied need of item master, buyer master, UQC etc. **Thus, direct creation/generation of e-invoice from GST portal or any other government portal is not envisaged/planned.** This shall enable the IRP to have the single function of receiving e-invoices, validating and digitally signing them and performing the actions described in preceding paras and hence provide sub-second responses to sellers.

Small taxpayers, whenever so mandated, can use one of the eight free accounting/billing software currently listed by GSTN. Also, GSTN will provide Offline Tools where data of an invoice, generated on paper can be entered which in turn will create JSON file for uploading on the IRP. This upload to the IRP will also happen through APIs. Taxpayers may also use one of the many commercially available accounting/billing software for this purpose. All accounting and billing software companies are being separately asked to adopt the e-invoice standard so that their users can generate the JSON from the software and upload the same on the IRP.

G. Features of e-invoice system

The Format of Unique Invoice Reference Number (IRN)*:*

The unique IRN will be based on the computation of hash of GSTIN of generator of document (invoice or credit note or debit note), Financial Year, Document Type and Document number like invoice number. This hash will be as published in the e-invoice standard and unique for this combination. This way hash will always be the same irrespective of the registrar who processes it.

To ensure deduplication, the registrar will be required to send the hash to Central Registry of GST System to confirm whether the same has been

reported already. In case it has been reported by another registrar (as and when more registrars – IRPs – are added) and the Central Registry already has the same IRN, then the registrar will reject the registration and inform the sender by sending appropriate error code. Only unique invoices from a taxpayer will be accepted and registered by the registrar.

Digital Signing by e-Invoice Registration Portal: The invoice data will be uploaded on the IRP (Invoice Registration Portal), which will also generate the hash (as the IRN) and then digitally sign it with the private key of the IRP. The IRP will sign the complete e-invoice JSON payload (that includes the IRN/hash). Thereafter, this e-invoice signed by the IRP will be a valid e-invoice for the seller and can be used by the seller for his business transactions. The IRP will also push this signed e-invoice to the GST and the E-Way bill systems.

QR Code: The IRP will also generate a QR code containing the unique IRN (hash) along with some important parameters of invoice and digital signature so that it can be verified on the central portal as well as by an Offline App. This will be helpful for tax officers checking the invoice on the roadside where Internet may not be available all the time. The seller will be returned a signed JSON with all details including a QR code. The QR code will consist of the following e-invoice parameters:

a. GSTIN of supplier
b. GSTIN of Recipient
c. Invoice number as given by Supplier
d. Date of generation of invoice
e. Invoice value (taxable value and gross tax)
f. Number of line items.
g. HSN Code of main item (the line item having highest taxable value)
h. Unique Invoice Reference Number (hash)

Note: It is the signed QR code which will be easily verifiable by taxpayers as well as Tax Officers to validate whether the e-invoice has been reported to the IRP and accepted by it, as it will contain both the IRN as well as the Digital Signature of IRP as proof of having received and registered the e-invoice. If the signed JSON is tampered then e-invoice will become invalid and the digital signature will fail.

An offline app will be provided for anyone to download to authenticate the QR code of the e-invoice offline and its basic details. The facility to view

the e-invoice will be provided to buyersor tax officers, on the GST System / E-way bill system.

Note: *The facility of e-invoice verification will be made available only through the GST System and not the IRP. This is because the IRP will not have the mandate to store invoices for more than 24 hours. In order to achieve speed and efficiency, the IRP will be a lean and focused portal for providing invoice registration and verification service, IRN and the QR codes. Hence, storing of the invoices will not be a feature of the IRP.*

Multiple Registrar for IRN System: Multiple registrars (IRPs) will be put in place to ensure 24X7 operations without any break. To start with, NIC will be the first Registrar. GST System will also provide IRP services in due course of time. Based on experience, more registrars (IRPs) will be added.

Standardization of e-Invoice: A technical group constituted by the GST Council Secretariat has drafted standards for e-invoice after having industry consultation. The e-invoice schema and template, as approved by the GST Council, are available at https://www.gstn.org/e-invoice/. The same has been notified by the Govt of India vide Notification No. 02/2020 dated 01st Jan 2020.

H. Creation of e-Invoice

Modes for getting invoice registered: Multiple modes will be made available so that taxpayer can use the best mode based on his/her need. The modes given below are envisaged at this stage under the proposed system for e-invoice, through the IRP (Invoice Registration Portal):

a. Web based,
b. API based,
c. mobile app based,
d. offline tool based and
e. GSP based.

API mode: Using API mode, the applicable tax payers and their ERP/ internal IT services/accounting software providers can interface their systems and get the signed e-invoice from IRP - after passing the relevant invoice information in JSON format. API request will handle one invoice request at time to generate the IRN. This mode can also be used for multiple invoices (user can pass the request one after the other and get

the IRN response within fraction of second) as well. The e-way bill system provides the same methodology.

Printing of Invoice

The businesses will receive a signed JSON from the IRP. This payload can be received, converted to readable format and populated into a PDF file. The taxpayer can then print his paper invoice as he is doing today placing their logo and other information, as per business need. E-invoice schema only mandates what will be reported in electronic format to IRP and to receive the corresponding signed e-invoices from the IRP.

Cancellation of e-invoice

The seller can upload the IRN of the e-invoice already reported, if that invoice has been cancelled by him/her. The cancellation of an invoice will be done as per procedure given under accounting standards.

The cancellation of e-invoice will be done by using the 'Cancel IRN' API (published on the e-invoice portal). The API will be a POST API and will required the IRN that is to be cancelled as the key parameter of the payload.

Amendment of e-invoice already reported: Amendment of e-invoice already uploaded on IRP will be done ***only*** **on GST portal**. Any amended e-invoice, if reported to IRP, will get rejected as its IRN (unique hash) will be already be existing in the IRP system. Hence amendment of invoices will not be possible through the IRP.

Auto-population of e-invoice data in ANX-1 and ANX-2 during trial of New Return: During the trial phase, e-invoice data will not get populated in the ANX-1 and ANX-2.

General Questions on e-Invoice system

1. Will businesses now be required to generate e-invoices on the GST portal or the e-invoice portal or the IRN portal?

   a. No.

   b. Businesses will continue to generate e-invoices on their internal systems – whether ERP or their accounting / billing systems or any other application.

c. The e-invoicing mechanism only specifies the invoice schema and standard so as to be inter-operable amongst all accounting/billing software and all businesses.

2. Please clarify whether there the current e-invoice schema is for the invoice to be issued by Govt or has to be maintained in the IT system by the tax payer?

   a. The invoice schema has to be maintained and invoices generated using this schema by the taxpayer himself.

   b. The GST portal or Invoice Registration Portal (IRP) will NOT provide facility to generate invoices. IRP is only to report the invoice data.

   c. The ERP or accounting billing software or any other software tool to generate e-invoice of the seller shall only generate invoices.

3. Will there be separate invoice formats required for Traders, Medical Shops, Professionals and Contractors?

   a. No.

   b. Same e-invoice schema will be used by all kinds of businesses. The schema has mandatory and non-mandatory fields. Mandatory field has to be filled by all taxpayers. Non-mandatory field is for the business to choose. It covers all most all business needs and specific sectors of business may choose to use those non-mandatory fields which are needed by them or their eco-system.

4. How long will the e-invoice generated would be available at the Government portal?

   a. It is again clarified that the e-invoice will not be generated at the GST portal.

   b. It will be generated only at the seller's system – whether ERP or the accounting/billing system/other software tools of the seller.

   c. It will be uploaded into the IRP which will push it to the GST ANX-1, only once it has been validated and registered by the IRP.

   d. After it has been validated and is available in the ANX-1, it will be visible to the counter party in his ANX 2.

   e. Thereafter it will be visible and available for the entire financial year and archived.

   f. As far as data on IRP is concerned, it will be kept there only for 24 hours.

g. The e-invoice can be accessed by the authorized parties (seller/buyer/tax officer) on the GST System in their respective accounts/dashboards after login.

5. While all businesses generate invoice at the same time, how will the server react?

   a. The businesses will generate the invoice at their system and hence that will not impact the servers of IRP.

   b. The capacity of the system at IRP shall be built so as to handle the envisaged loads of simultaneous upload based on data reported in GSTR1 for last two years.

   c. Subsequently, multiple invoice registrars (IRPs) will be made available that will be able to distribute the load for invoice registration.

6. Is it possible to auto populating fields of the e-invoice based on credentials entered? That way it can minimize data entry errors.

   a. Since the invoice generation is to happen at the business end, this can be built into the ERP or invoicing system of the seller. Most of such software provides this facility in the name of item master, supplier master, buyer master etc.

7. Will it be possible to add transporter details as well?

   a. Yes.

   b. The transporter details parameter and vehicle details have also been made available as part of the e-invoice schema.

Contents of e-invoice

1. There are certain fields today which are optional and some mandatory. How are these to be used?

   a. The mandatory fields are those that MUST be there for an invoice to be valid under e-Invoice Standard.

   b. The optional ones are those that may be needed for the specific business needs of the seller/business. These have been incorporated in the schema based on current business practices in India.

c. The registration of an e-invoice will only be possible once it has ALL the mandatory fields uploaded into the Invoice registration Portal (IRP).

d. A mandatory field not having any value can be reported with NIL.

2. What is the maximum Number of line items supported by e-invoice?

   a. As of now, during the trial period, there is no limit.

3. Does the e-invoice schema provide the maximum length of the various fields in the schema?

   a. Yes.

   b. Each field specification has been provided with the type of characters that are to be entered and its length as well.

4. What will be the threshold requirement for E-Invoicing applicability?

   a. This has been notified by the Government as being > INR 100 Crores annual turnover on aggregate basis (based on PAN).

5. Will the e-invoice have columns to show invoice currency?

   a. Yes, the seller can display the currency. Default will be INR.

6. Whether the IRN is to be captured in the Supplier's ERP?

   a The IRN (hash) will be generated by IRP (registrar) using GSTIN of supplier or document creator, financial year and the unique serial number of the document/invoice along with the document type.

   b The serial number of invoice must be unique for a GSTIN for a Fin Year and the same has to be captured by Supplier's ERP.

   c Supplier should to keep the IRN against each of its invoice, once received by the seller from the IRP. It will be advisable to keep the same in the ERP as invoice without IRN will not be a legal document.

7. Whether e-invoice generated is also required to be signed again by the taxpayer?

   a Signing of invoice is required by the rules notified by the Govt of India. A placeholder for digital signature has been added in the e-invoice schema and hence if a signed e-invoice is sent to IRP, the same will be accepted.

b The e-invoice will be digitally signed by the IRP after it has been validated. The signed e-invoice along with QR code will be shared with creator of document as well as the recipient.

c Once it is registered, it will not be required to be signed by anyone else.

8. Whether the facility of adding discount amount at line item-level would be mandatory in nature?

   a. The e-invoice has a provision for capturing discount at line item level.

   b. The discounting at line item level is to be mentioned only when and if it is applicable in the particular transaction.

9. Can the seller place their LOGO in the e-Invoice Template?

   a. There will NOT be a place holder provided in the e-invoice schema for the company logo.

   b. This is for the software company to provide in the billing/accounting software so that it can be printed on his invoice using his printer. However, the Logo will not be sent to IRP. In other words, it will not be part of JSON file to be uploaded on the IRP.

10. There should be a space provided for the QR code to be placed.

    a. The QR code will be provided to the seller once he uploads the invoice into the Invoice Registration system and the same is registered there.

    b. Seller must print the QR code on the printed Invoice.

11. Will we be able to provide the address and bill-to party and PAN details in the e-invoice?

    a. Yes.

    b. It will be possible to provide all these details in the placeholders provided in the schema.

12. Would the Supplier be allowed to issue his own invoice and if yes, will the Invoice number and IRN be required to be mentioned?

    a. Yes, the supplier will issue his own system's invoice, in the standard e-invoice schema that has been published. IRN will be generated and returned by the IRP as per the process described in the concept and flow.

    b. E-Invoice will be valid only if it has IRN.

13. The current e-invoice template provides for total discount for all the products or services. Will this be possible in the e-invoice?

    a. Yes.

    b. There is a mechanism and placeholders to provide discounting on item level as well as total discounts on the invoice value.

14. Will there be an option for linking multiple invoices in case of debit note/ credit note?

    a. Yes, document type is one of the parameters in the e-invoice schema and is also used for the IRN (hash) generation.

15. Will the e-invoice schema cater to reverse charge mechanism?

    a. Yes.

    b. E-invoice system has a reverse charge mechanism reporting as well.

Method of Reporting e-Invoice to GST System

1. In addition to the above, we understand that electronic invoice which will be uploaded on GST portal will be authenticated and IRN will be allocated for each e-invoices generated.

    a. Yes, the e-invoice will be authenticated with the digital signature of the IRP (invoice registration portal).

    b. IRN (Invoice Reference Number) will be the hash generated by the IRP.

    c. The registered invoice will be valid to be used by the business.

2. Will it be possible for bulk uploading of invoices for e-invoicing as well?

    a. Invoices have to be uploaded on IRP one at a time.

    b. The IRP will be able to handle a large number of invoices for registration and validate them. Essentially bulk upload will be required by large taxpayers who generate large number of invoices. Their ERP or accounting system will be designed in such a way that it handles the requests one by one. For the user, it may appear as bulk upload.

    3. Will the requirement for such invoices to be authenticated by the supplier using a digital signature/signature be done away with?

a. The seller will need to upload the e-invoice into the Invoice Registration Portal.

b. The signing of e-invoice by seller is governed by the Govt of India rules and notifications.

c. The e-invoice schema provides for placing the seller's digital signature.

4. Will there be a time limit for e-invoice uploading for registration?

a. Once uploaded to the invoice registration portal (IRP), it will be registered immediately, on real-time basis.

b. Without the IRN, validation by IRP and hence its registration, e-invoice will not be valid.

Rollout Timeline	
On trial basis for taxpayers having aggregate turnover above Rs 500 Crores in previous Fin Year.	from 1stJan 2020
On trial basis for taxpayers having aggregate turnover above Rs 100 Crores in previous Fin Year.	from 1stFeb 2020
Mandatory rollout for taxpayers having aggregate turnover above Rs 100 Crores in previous Fin Year.	from 1stApril 2020

Note: Aggregate turnover is as defined under GST Law, which is at the PAN level and not at GSTIN level.

5. Will it be possible to allow invoices that are registered on invoice registration system/portal to be downloaded and/or saved on handheld devices?

a. Yes.

b. IRP System after registering the invoice, will share back digitally signed e-invoice for record of supplier.

6. Will it be possible to print the e-invoice?

a. Yes.

b. It will be possible for both the seller as well as the buyer to print the invoice, using the signed JSON payload returned by the Invoice Registration Portal (IRP).

c. The QR code will not be an image sent by the IRP but string, which the accounting/billing software or the ERP will read and convert into QR Code.

d. Seller must place the QR code on the print of the invoice. This will enable its validation.

Amendment/cancellation of e-invoice

1. Whether e-invoices generated through GST system can be partially/ fully cancelled?

   a. E-Invoice can't be partially cancelled. It has to be fully cancelled. Cancellation has to be done as per process defined under Accounting Standards.

   b. The e-invoice mechanism enables invoices to be cancelled. This will have to be triggered through the IRP, if done within 24 hours. After 24 hours, the same will need to be done on the GST System.

2. How would amendments be allowed in e-invoice?

   a. Amendments to the e-invoice will be allowed on GST portal as per provisions of GST law. All amendments to the e-invoice will be done on GST portal only.

Relationship with e-way bill

1. With the introduction of e-invoices, what are the documents need to be carried during transit of goods?

   a. For transportation of goods, the e-way bill will continue to be mandatory, based on invoice value guidelines, as hitherto fore.

   b. Any changes in this aspect will be notified by the Government.

Export/Import

1. Please clarify whether exports would require e-invoice compliance.

   a. Yes.

   b. The e-invoice schema also caters to the export invoices as well. The e-invoice schema is based on most common standard; this will help buyer's system to read the e-invoice.

   c. In this case, GSTIN of buyer located in another country will not be there.

2. Does the e-invoice allow the declaration of export invoices/ zero rated supplies?

   a. Yes.

   b. It allows the declaration of export invoices / zero rated supplies.

Others

1. What will be the workflow of the end to end e-invoice mechanism?

   a. The end to end workflow is described in the write-up and concept above.

2. Will the industry be provided sufficient time for preparation?

   a. Yes.

   b. The e-invoice mechanism has been rolled out in phases from 01st Jan 2020 on voluntary basis.

   c. Initially, the e-invoice mechanism will be allowed for tax payers above a certain turnover, as given above.

   d. Subsequently, it will be enabled for all tax payers in a phased step-wise manner.

   e. Details of these will be published subsequently.

Topic	Questions	Response
Offshore access to IRP	Can a foreign service provider integrate with IRP?	Yes, but only from within the shores of India.
	If yes, where can the integration specifications be found?	The API specifications have been released. They can be viewed at https://einvapisandbox.nic.in/
	If no, is GSP the right party to integrate against? What are GSP's responsibilities and liabilities in such setup towards the private service provider?	The APIs will be available over internet. GSPs are not the only entities who will be provided the API access. It will be widely made available to businesses of their software service providers.

ASP	We saw a term "Application Service Provider". What is the definition of this and how can one become ASP?	ASPs are software service providers who route their GST traffic through GSPs. Any software provider of financial services in the indirect tax domain can push data to GST system through GSPs. As far as IRP is concerned, access will be provided over internet. No such category of GSP/ASP will be created for access to IRP.
IRP - Bulk e-invoice	Is batch (bulk) submission of e-invoices to IRP allowed? We saw that this will be enabled in API based mode.	APIs will permit upload of JSON payloads. The invoices shall be accepted one at a time, though you may push invoices sequentially. The system shall be designed so as to scale and respond to API requests so as to enable the acceptance of millions of invoices per day, to start with.
IRP	What indicates for the supplier (and respectively) buyer that IRP has approved the e-invoice?	The IRP will respond with a signed IRN to the seller. IRP will also return a QR code, with digital signatures of the IRP. The QR code content is detailed in the description above. It has also been published in the FAQs on our website (www.gstn.org/e-invoice).
	The fact that QR code was assigned and IRN signature added?	Yes. As described above and in the FAQs.
	Or will there be another artifact returned?	No.
	Or the only way to ensure the validity of e-invoice is by manually logging into GSTN portal and manually / visually reviewing invoices available in the portal?	No. As described above.
IRP Validations	Can IRP reject the submitted invoice?	IRP will validate for GSTIN existence (of seller and buyer) and de-duplication of the invoice. If nonexistent GSTIN and/or a duplicate invoice are found, the invoice will be returned with relevant error codes, without registering it.
	If yes, what will be returned to the supplier?	Error codes.

	What validations will IRP be performing?	IRP will validate for correctness and whether invoice already exists in the GST system. (This validation of existence in GST system will be based on the GSTIN-Invoice Number- Type of document - FY combination, which also are used for the IRN generation) Certain other validations, if needed, will be notified from time to time.
Signing of JSON by seller	Is the supplier required to sign JSON before submitting it to the IRP?	The e-invoice schema contains the place holder for digital signature of the seller.
IRP	Will the IRP return both signed JSON and signed PDF? Or just JSON?	IRP will return the signed JSON. No PDF will be returned.
	Whose digital certificate will be used to sign the invoice- taxpayer's and or third parties along with the IRP's, total of 1 or 2 signatures?	The signature will be of IRP.
	How can the digital certificate be uploaded into IRP?	The digital certificate is not required (this is kept with the user). The signed (optional) JSON will be received at the IRP.
	What are other technical requirements to e-signature?	No other technical requirements are there. The seller can sign the JSON and upload it with the signature placed in the optional placeholder for the signature.
Mailing by IRP	Will IRP be email distributing to the buyer-JSON or PDF? Or both?	No mailing of the e-invoice will be done by IRP.
	What happens if the email bounces (does not reach the recipient)?	As above.

Business query	Is the supplier allowed to distribute the e-invoice to the buyer?	Yes.
	If yes, what must alt. is allowed to be distributed- the JSON, the PDF or both?	As deemed fit by the seller. However, in order to make use of the e-invoice schema, it should be shared in the JSON format so that it can be read by the ERP of the buyer and straight away visible in the buyer's relevant books. Also, the seller can generate a PDF from the received signed JSON and share it with buyer over mail etc.
	Is the supplier allowed to create and distribute business invoice, i.e. file that contains other elements in excess of what is required for clearance with IRP?	The e-invoice schema has mandatory and optional parameters. The optional parameters can also be sent by the seller to the buyer as per the published e-invoice schema and needed by business need.
	Are there any requirements to how non-Tax invoice must be marked up?	The invoice having no tax component is generally known as bill of supply. Thus, challan and bill of supply are not required to obtain IRN.
Changes in law / Rules	There are inconsistencies between content requirements of the published invoice template and the GST law. When and how will this be addressed?	These are being addressed by relevant notifications and rule changes from time to time.
IRN	As IRN can be created by the supplier / supplier's vendor directly:	No
	Where can we find detailed specifications for this?	IRN will be generated by IRP only. It is not required to be generated by the business. Just for information, SHA256 is the algorithm that is to be used to generate the IRN using 3 parameters viz: GSTIN of seller, invoice number of seller, financial year.
	Who has to apply for this, the supplier or the technology provider?	As answered above.

Changes in law / Rules	In the current legislation it is required to issue invoice triplicate [two documents marked accordingly] for sale of goods and invoice duplicate [two documents marked accordingly] for sale of services.	
	Will this requirement be abolished for all taxpayers?	The rules are proposed to be changed so as to address these issues.
	Will this requirement be abolished only for those taxpayers issuing invoices via the IRP system? In other words, will there be two parallel invoicing processes?	As above.
	The sub rules mandate signing of invoice by seller. Will this be amended?	Signing of invoice is also based on the business need and relationship between buyer and seller. This need shall continue as per existing rules and also the business flow between seller/buyer. Signing of the json payload to IRP has already been answered to be optional (see response above).
Invoice PDF	Invoice legibility:	
	Under the current regulations, invoice legibility must be ensured and use of PDF is strongly recommended.	QR code will provide the requisite and relevant information about the invoice. PDF will not be returned by IRP. PDF can be generated by the seller using the signed QR code that will be returned by the IRP.
	How does this requirement look under the new regulations?	The machine readability will eliminate the need for printing. Moreover, the QR code will enable to validate the important contents of the invoice as registered by the IRP.

Other Documents	Which documents are exactly included in the scope of the mandate?	
	What are the requirements for other document types, such as credit/ debit note, ISD invoice, Bill of supply, Delivery challan, Receipt voucher, advance receipt, Payment voucher, Self-invoice?	ISD invoice and ISD credit note are the documents issued by input service distributor; therefore, IRN will also be required on these documents as per provisions of the law.
	What applies to export transactions / invoices?	Exporter has also to issue tax invoice which is required to be reported like any other transaction. It is applicable in export invoices.
	What applies to import transactions / invoices?	Creator of document is required to generate the e-invoice. Hence bill of entry generated by customs on import of goods is not required to obtain IRN.
	The April 1, 2020 mandate, Are there any exceptions, e.g. armed forces, banks, telecom companies?	From Jan 2020, companies with annual turnover > 500 crores may begin using e-invoice. Thereafter, from 01st Feb 2020, as per notifications of the Govt, companies with turnover > 100 Crores may also require to use e-invoice. From 01st April 2020, it shall be mandatory for companies having turnover > INR 100 crores on aggregate basis to use e-invoice.
Schema	Is it possible to annotate a document type in the schema?	It has been provisioned as per the e-invoice schema.
IRP	Is there any contingency process for when IRP is not accessible / available?	Yes.
	If yes, where can specifications are found?	There will be more than 1 IRP to ensure continuity of business. All IRPs will use a common set of APIs to ensure compatibility and interoperability from businesses.

	If no, how should the supplier issue e-invoices during the time IRP is down?	As above.
Archiving	Will anything change from e-archiving perspective?	This service is not to be provided by IRP.
Exemption for industry	Banks and telecom companies do not use ERPs and they have multiple applications and also generate large number of invoices each month. They may be exempted from the trial for a month and may be brought from 1/2/2010.	From Jan 2020, it is to be rolled out as per the implementation plan of the Government. Exemptions, if any will be as per notifications by the Government.
IRN	IRN is to be generated using GSTIN of seller, Inv number and Date. CN/DN may have the same serial number as the Inv number as they are not generated using the same series. Thus there is need to incorporate Document type in generation of IRN.	The e-invoice schema is capturing the type of document which are addressing the issues raised.
IRN	The writing of hash (64 digit string) on Invoice is not desirable on account of the following:	
	Mere writing will not indicate that it has been reported to IRP. The current proposal to allow generation of hash (as IRN) will not serve any purpose.	IRN is necessary to ensure the uniqueness of the invoice across ALL businesses in a particular FY across India. Hence, IRN will be included in the QR code. It is not needed to be generated by the business or printed separately on the invoice.
	In case it has to be validated, one will have to enter 64 digits to compare the same with generated hash.	This is going to be done by the systems. No human is required to manually calculate, generate, remember or write the IRN (hash).

	Thus, it is better to make digitally signed QR Code as response which will be proof of registration and can be used to read the main contents of Invoice.	QR code will include the IRN.
QR code	Will QR code be required to be printed?	QR code returned by the IRP will be printed by the business, if invoice is being printed.
API specs	In absence of API specifications, development work can't be done by S/W companies.	These have been published on:https://einv-apisandbox.nic.in/.
API specs	Will NIC provide new APIs for e-way bill?	E-way bill will continue to function as it is. No new APIs for e way bill are required to be published.
Business Query	Large taxpayers (who will be mandated to generate e-invoice and report to IRP) will be selling to smaller ones who will not be required to be on e-invoice. How will small guys get the invoice and ITC?	The large tax payers can convert the signed e-invoice from the IRP into a PDF and send these PDFs or printouts, or as they are conducting their business, to their small buyers.
Schema	Line items in an invoice be increased to 1000 from current limit of 250.	The line items in e-invoice are not limited.
Amend-ments	Can invoice uploaded on IRP be amended? If yes, how will amendment of Invoice data uploaded on IRP be done?	E-invoice reported to IRP will be pushed to the GST System. Any amendments to be made will be done on the GST system only ***and not on the IRP***. However, if the business wants to cancel an already reported invoice, he may do so by uploading the IRN on the IRP by using the Cancel IRN API (with IRN as the parameter). Once an invoice is cancelled, the same invoice number cannot be used again to generate another invoice. All cancellations will be done via the IRP, by using the IRN as the parameter for cancellations.

Applica-bility	Will there be any exempt sectors from the e-invoice mandate	Government will notify the exemptions, if required.
Schema	Is there any Place of Supply in the schema?	Yes, it is covered in the e-invoice schema.
Mapping of e-invoice to ANXs	Will the e-invoice be mapped to the ANX 1 / 2 by IRP or will the tax payer have to do that?	The IRP will push the data (payload) to the GST System. The GST system will convert the e-invoice received and populate it into the GST ANX 1 and GST ANX 2 of the seller and buyer respectively.
E-Way Bill	How does the user get the e way bill?	The Part A and Part B of the E way bill details are included in the e-invoice schema and can be used to populate the contents of the e-way bill Performa.
	Is the IRN needed to be printed on the invoice?	The IRN is a mandatory part of the e-invoice and hence has to be a part of the invoice for all formal purposes. However, since IRN will be a part of the QR code, it is not required to be printed separately.
IRN	Will the e-invoice schema have the transporter id so that e way bill can also be generated using this?	Transporter ID parameter are there in the e-invoice schema. Part A and B of the e-way bill will be populated from the e-invoice schema data itself.
E-Way Bill	Can e-commerce companies generate invoices for the sellers on their platform?	The matter will be notified by the Government to allow E-commerce operators, (as approved by the Government from time to time), to generate the invoices on behalf of sellers, provided the sellers explicitly authorize them to do so.
E-Com-merce	What will happen if ANX 1 is updated after the invoice has been pushed into the IRP?	Both the versions will be kept and available in the GST system, as part of the e-invoice registration at the IRP and secondly in the GST system, when being amended.
ANX 1	When is the section on delivery or invoice period mandatory?	In case of continuous supply of services.
Schema	For “supplier legal name” which name is needed – as per PAN or as per GSTIN?	Legal name of PAN is taken as the input for registration of GSTIN.

	When does the "payee information" become mandatory?	This is optional.
	For 'modeofpayment' would a supplier know whether the payment by buyer would be by cash or credit?	Seller may dictate and specify the mode of payment to the buyer.
	For 'document total' the section is mentioned as optional but the field is mentioned as mandatory. Pl clarify.	The field becomes mandatory only if you choose to use and fill the section A1.3. Else it remains optional.
	Pl explain the mechanism of handling TCS by e-commerce players. Where and how will this be reported?	Invoice is issued by supplier and IRN will also be obtained by the supplier whereas e-commerce operator facilitates such supply and is not required to obtain IRN. Therefore, TCS is not a part of the invoice of e-commerce operator.
	Is the physical copy of invoice needed for movement of goods? The current law provision mandates this. How will it be treated with e-invoice?	Relevant changes will be notified by the Government.
	Is it possible to have more than one QR code on the invoice?	Yes, the seller is free to use his business flow/process as he is currently doing, by using the e-invoice schema. The IRP's QR code has to be in the e-invoice, as it validates the invoice. If seller wishes to place more than 1 QR code, then he needs to properly annotate them to clarify which is which. On a printed invoice, QR code returned by IRP will be printed on top right of the printed invoice.
	What parameters will be validated by the IRP	The IRP will check for the GSTIN, invoice number, financial year and also for de-duplication of this unique combination in the GST system.
	How will IRP validate for wrong GSTIN or cancelled GSTINs?	IRP will have the existing and valid GSTINs for validation. Incorrect GSTINs, cancelled GSTINs will be rejected by the IRP.

Tax Collected at Source	Taxpayers will be allowed to upload e-invoices created for B2C supplies also.	In long run, this may be allowed.
E Way Bill	Taxpayer may sign the e-invoice payload before sharing the same with buyer as well as IRP. This should be allowed.	Seller can digitally sign the e-invoice and upload the same to the IRP. Seller can share the e-invoice with the buyer only after it has been signed by the IRP.
QR Codes	In case of export, the tab of 'with/without payment' should be made mandatory.	It has been made mandatory in the e-invoice schema.
IRP	Large business (> 100 crores) also has B2B and B2C door to door delivery. Will he also be required to print QR codes on the invoices?	Yes.

MINISTRY OF FINANCE
(Department of Revenue) NOTIFICATION

New Delhi, the 12th February, 2020

G.S.R. 109(E).—In exercise of the powers conferred by section 184 of the Finance Act, 2017 (7 of 2017) , the Central Government hereby makes the following rules, namely:—

1. Short title, commencement and application. - (1) These rules may be called the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These rules shall apply to the Chairman, Vice-Chairman, Chairperson, Vice- Chairperson, President, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority as specified in column (2) of the Eighth Schedule of the Finance Act, 2017 (7 of 2017).

2. Definitions. - In these rules, unless the context otherwise requires, -

(a) “Act” means an Act specified in column (3) of the Eighth Schedule of the Finance Act, 2017(7 of 2017);

(b) “Accountant Member”, “Administrative Member”, “Judicial Member ”, “Expert Member ”, “Law Member ”, “Revenue Member ” or “Technical Member” means the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member or Technical Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority appointed under the corresponding provisions of the Act;

(c) “Appellate Tribunal ”, “Authority ” or “Tribunal ” has the same meaning as assigned to it in the corresponding provisions of the Act;

(d) “Chairman” or “Chairperson‘‘ or “President” means the Chairman,

Chairperson or President of the Tribunal, Appellate Tribunal or, as the case may be, Authority appointed under the corresponding provisions of the Act;

(e) "Member" means the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member or Technical Member and includes the Chairman, Vice-Chairman, Chairperson, Vice-Chairperson, Presiding Officer of the Security Appellate Tribunal, President or, as the case may be, Vice-President;

(f) "Presiding Officer" means the Presiding Officer of the Security Appellate Tribunal appointed under section 15L of the Securities and Exchange Board of India Act, 1992 (15 of 1992), Presiding Officer of the Debts Recovery Tribunal appointed under sub-section (1) of section 4 of the Recovery of Debts due to Banks and Financial Institutions Act 1993, (51 of 1993) and Presiding Officer of the Industrial Tribunal appointed by the Central Government under sub-section (1) of section 7A of the Industrial Disputes Act,1947 (14 of 1947);

(g) "Search-cum-Selection Committee" means the Search-cum-Selection Committee referred to in rule 4;

(h) "Vice-Chairman " or "Vice- Chairperson" or "Vice-President" means the Vice-Chairman, the Vice-Chairperson or Vice-President of the Tribunal, Appellate Tribunal or, as the case may be, Authority;

(i) words and expressions used herein and not defined but defined in the Act shall have the same meanings respectively assigned to them in the respective Acts.

3. **Qualifications for appointment of Member.** – The qualification for appointment of the Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be such as specified in column (3) of the Schedule annexed to these rules.

4. **Method of recruitment**.-(1) The Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert

Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee constituted for the Tribunal, appellate Tribunal or, as the case may be, Authority specified in column (4) of the said Schedule in respect of the Tribunal, Appellate Tribunal or as the case may be, Authority specified in column (2) of the said Schedule.

(2) The Search-cum-Selection Committee shall determine its procedure for making its recommendation and, after taking into account the suitability, record of past performance, integrity as well as adjudicatory experience keeping in view the requirements of the Tribunal, Appellate Tribunal or, as the case may be, Authority, recommend a panel of two or three persons for appointment to each post.

(3) No appointment of Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or Authorities shall be invalid merely by reason of any vacancy or absence in the Search- cum-Selection Committee.

(4) Nothing in this rule shall apply to the appointment of Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority functioning as such immediately before the commencement of these rules.

5. **Medical fitness.** - No person shall be appointed as the Chairman, Chairperson, President, Vice- Chairman, Vice- Chairperson, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or Authority, or as the case may be unless he is declared medically fit by an authority specified by the Central Government in this behalf.

6. **Resignation by a Member.** -A Member may, by writing under his hand addressed to the Central Government, resign his office at any time:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish office sooner, continue to hold office until the

expiry of three months from the date of receipt of such notice or until a person duly appointed as a successor enters upon his office or until the expiry of his term of office, whichever is earlier.

7. **Removal of Member from office.** - The Central Government shall, on the recommendation of a Search-cum-Selection Committee, remove from office any Member, who-

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest: Provided that where a Member is proposed to be removed on any ground specified in clauses (b) to (e), he shall be informed of the charges against him and given an opportunity of being heard in respect of those charges.

8. **Procedure for inquiry of misbehavior or incapacity of the Member.** - (1) If a written complaint received by the Central Government, alleging any definite charge of misbehavior or incapacity to perform the functions of the office in respect of a Chairman, Vice-Chairman, Chairperson, Vice- Chairperson, President, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member, it shall make a preliminary scrutiny of such complaint.

(2) If on preliminary scrutiny, the Central Government is of the opinion that there are reasonable grounds for making an inquiry into the truth of any misbehavior or incapacity of a Chairman, Vice- Chairman, Chairperson, Vice-Chairperson, President, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member, it shall make a reference to the Search-Cum-Selection Committee to conduct the inquiry.

(3) The Search-Cum-Selection Committee shall complete the inquiry within such time or such further time as may be specified by the Central Government.

(4) After the conclusion of the inquiry, the Search-Cum-Selection Committee shall submit its report to the Central Government stating therein its findings and the reasons therefor on each of the charges separately with such observations on the whole case as it may think fit.

(5) The Search-Cum-Selection Committee shall not be bound by the procedure laid down by the Code of Civil Procedure,1908 (5 of 1908) but shall be guided by the principles of natural justice and shall have power to regulate its own procedure, including the fixing of date, place and time of its inquiry.

9. **Term of office of Member.** – (1) The Chairman, Chairperson or President shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier.

(2) The Vice-Chairman, Vice-Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or, as the case may be, Member shall hold office for a term of four years or till he attains the age of sixty-five years, whichever is earlier.

10. **Casual vacancy.** – (1) In case of a casual vacancy in the office of, -

(a) the Chairman, Chairperson, President, or Presiding Officer of the Security Appellate Tribunal, the Central Government shall have the power to appoint the senior most Vice-Chairperson or Vice- Chairman, Vice-President or in his absence, one of the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority to officiate as Chairperson, Chairman, President or Presiding Officer.

(b) the Chairperson of the Debts Recovery Appellate Tribunal, the Central Government shall have power to appoint the Chairperson of another Debts Recovery Appellate Tribunal to officiate as Chairperson and in case of a casual vacancy in the office of the Presiding Officer of the Debts Recovery Tribunal, the Chairperson of the Debts Recovery Appellate Tribunal shall have power to appoint the Presiding Officer of another Debts Recovery Appellate Tribunal to officiate as Presiding Officer.

11. **Salary and allowances**. - (1) The Chairman, Chairperson or President of the Tribunal, Appellate Tribunal or, as the case may be, Authority or the Presiding Officer of the Security Appellate Tribunal shall be paid a salary of Rs. 2,50,000 (fixed) and other allowances and benefits

as are admissible to a Central Government officer holding posts carrying the same pay.

(2) The Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or, as the case may be, Member shall be paid a salary of Rs. 2,25,000 and shall be entitled to draw allowances as are admissible to a Government of India officer holding Group 'A' post carrying the same pay.

(3) A Presiding Officer of the Debts Recovery Tribunal or a Presiding Officer of the Industrial Tribunal constituted by the Central Government shall be paid a salary of Rs.1,44,200 – 2,18,200 and shall be entitled to draw allowances as are admissible to a Government of India officer holding Group ,A' post carrying the same pay.

(4) In case of a person appointed as the Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member, as the case may be, is in receipt of any pension, the pay of such person shall be reduced by the gross amount of pension drawn by him.

12. **Pension, Gratuity and Provident Fund.** - (1) In case of a serving Judge of the Supreme Court or a High Court or a Judicial Member of the Tribunal or a member of the Indian Legal Service or a member of an organised Service appointed to the post of the Chairperson, Chairman, President or Presiding Officer of the Security Appellate Tribunal , the service rendered in the Tribunal, Appellate Tribunal or, as the case may be, Authority shall count for pension to be drawn in accordance with the rules of the service to which he belongs and he shall be governed by the provisions of the General Provident Fund (Central Services) Rules, 1960 and the rules for pension applicable to him.

(2) In all other cases, the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member shall be governed by the provisions of the Contributory Provident Fund (India) Rules,1962 and the Contribution Pension System.

(3) Additional pension and gratuity shall not be admissible for service rendered in the Tribunal, Appellate Tribunal or, as the case may be, Authority.

13. **Leave.** - (1) The Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, Presiding Officer or a Member shall be entitled to thirty days of earned Leave for every year of service.

(2) Casual Leave not exceeding eight days may be granted to the Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, or Technical Member, Presiding Officer or a Member in a calendar year.

(3) The payment of leave salary during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.

(4) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member shall be entitled to encashment of leave in respect of the earned Leave standing to his credit, subject to the condition that maximum leave encashment, including the amount received at the time of retirement from previous service shall not in any case exceed the prescribed limit under the Central Civil Service (Leave) Rules,1972.

14. **Leave sanctioning authority. -** (1) Leave sanctioning authority, -

(a) for the Vice-Chairman, Vice-Chairperson, Vice-President, Presiding Officer of the Debts Recovery Tribunal and Industrial Tribunal, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member shall be Chairman, Chairperson or, as the case may be, President; and

(b) for the Chairman, Chairperson, Presiding Officer of Security Appellate Tribunal or President, shall be the Central Government, who shall also be sanctioning authority for Accountant Member, Administrative Member, Judicial Member, Expert Member or Member in case of absence of Chairman, Chairperson, Presiding Officer of Security Appellate Tribunal or President.

(2) The Central Government shall be the sanctioning authority for foreign travel to the Chairman, Chairperson, President, Vice-Chairman,

Vice- Chairperson, Vice President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or a Member.

15. **House rent allowance.** - The Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member or Member shall be entitled to house rent allowance at the same rate are admissible to a Government of India officer holding Group ‚A' post carrying the same pay .

16. **Transport allowance.** - The Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall be entitled to the facility of staff car for journeys for official and private purposes in accordance with the facilities as are admissible to a Government of India officer holding Group 'A' post carrying the same pay as per the provisions of Staff Car Rules.

17. **Declaration of Financial and other Interests.** - The Chairman, Chairperson, President, Vice- Chairman, Vice- Chairperson, Vice President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall, before entering upon his office, declare his assets, and his liabilities and financial and other interests.

18. **Other conditions of service.** - (1) The terms and conditions of service of a Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member with respect to which no express provision has been made in these rules, shall be such as are admissible to a Government of India officer holding Group ‚A' post carrying the same pay.

(2) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall not practice before the Tribunal, Appellate Tribunal or Authority after retirement from the service of that Tribunal, Appellate Tribunal or, as the case may be, Authority.

(3) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Accountant Member, Administrative Member,

Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall not undertake any arbitration work while functioning in these capacities in the Tribunal, Appellate Tribunal or Authority.

(4) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal, Appellate Tribunal or, as the case may be, Authority:

Provided that nothing contained in this rule shall apply to any employment under the Central Government or a State Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

19. **Oath of office and secrecy.** - Every person appointed to be the Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall, before entering upon his office, make and subscribe an oath of office and secrecy in Forms I and II annexed to these rules.

FORM I
(See rule 19)

Form of Oath of Office for Chairman/Vice-Chairman/ Chairperson/ Vice-Chairperson/ President/Vice-President/ Presiding Officer/ Administrative Member/ Judicial Member/ Expert Member / Law Member/ Revenue Member/ Technical Member, /Member of the (Name of the Tribunal/ Appellate Tribunal/Authority)

I, A. B., having been appointed as Chairman/Vice-Chairman/ Chairperson/ Vice-Chairperson/ President/Vice-President/ Presiding Officer/ Accountant Member/ Administrative Member, Judicial Member/ Expert Member / Law Member/ Revenue Member/ Technical Member/ Member of the (Name of the Tribunal/Appellate Tribunal/Authority

do solemnly affirm/do swear in the name of God that I will faithfully and conscientiously discharge my duties as the Chairman/Vice-Chairman/ Chairperson/ Vice-Chairperson/ President/Vice-President/ Presiding Officer/ Accountant Member/ Administrative Member/ Judicial Member/ Expert Member / Law Member/ Revenue Member/ Technical Member/ Member (Name of the Tribunal/Appellate Tribunal/Authority) to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws of land.

FORM II
(See rule 19)

Form of Oath of Secrecy for Chairman/Vice-Chairman/ Chairperson/ Vice-Chairperson/ President/Vice-President/ Presiding Officer / Accountant Member/ Administrative Member/ Judicial Member/ Expert Member / Law Member/ Revenue Member/ Technical Member /Member of the (Name of Tribunal/Appellate Tribunal/Authority)

I, A. B., having been appointed as the Chairman/Vice-Chairman/ Chairperson/ Vice-Chairperson/ President/Vice-President/ Presiding Officer/Member of the(Name of Tribunal/Appellate Tribunal/Authority), do solemnly affirm/do swear in the name of God that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as Chairman/Vice-Chairman/ Chairperson/ Vice-

Chairperson/ President/Vice-President/ Presiding Officer / Accountant Member/ Administrative Member, Judicial Member/ Expert Member / Law Member/ Revenue Member/ Technical Member

/Member of the said (Name of Tribunal/Appellate Tribunal/Authority) except as may be required for the due discharge of my duties as the Chairman/Vice-Chairman/ Chairperson/ Vice-Chairperson/ President/ Vice-President/ Presiding Officer/Member.

SCHEDULE
(See rules 3 and 4)

Sl. No.	Name of Tribunal, Appellate Tribunal or Authority.	Qualification for appointment of Chairperson, Chairman, President, Vice-Chairperson, Vice-Chairman, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member or Technical Member or Member.	Composition of Search-cum-Selection Committee
(1)	(2)	(3)	(4)
1.	Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947 (14 of 1947)	A person shall not be qualified for appointment as Presiding Officer, unless he,– (a) is, or has been, a Judge of a High Court; or (b) has, for a combined period of ten years, been a District Judge and Additional District Judge.	Search-cum-Selection- Committee for the post of the Presiding Officer,– (i) Chief Justice of India or a Judge of Supreme Court nominated by him - chairperson; (ii) Outgoing Presiding Officer of the National Industrial Tribunal – member; (iii) Secretary to the Government of India, Ministry of Labour and Employment – member; (iv) Secretary to the Government of India, Ministry of Commerce (Department for Promotion of Industry and Internal Trade) – member.
2.	Income-tax Appellate Tribunal under the Income-tax Act, 1961 (43 of 1961)	(1) A person shall not be qualified for appointment as President unless he is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court or a Vice-President of the Income-tax Appellate Tribunal. (2) The Central Government may appoint one or more members of the Income-tax Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof. (3) A person shall not be qualified for appointment as a Judicial Member, unless, — (a) he has, for a combined period of ten years, been a District Judge and Additional District Judge; or (b) he has been a member of the Indian Legal Service and has held a post of Additional Secretary or any equivalent or higher post for two years; or	Search-cum-Selection Committee for the post of the President, Vice-President, Accountant Member or Judicial Member - (i) Chief Justice of India or a Judge of the Supreme Court nominated by him - chairperson; (ii) (a) In case of appointment of President, the Outgoing President, Income-tax Appellate Tribunal- member; or (b) In case of appointment of Vice- President or Accountant Member or Judicial Member, the President, Income-tax Appellate Tribunal – member ; (iii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs) – member; and

		(c) he has been an advocate for twenty-five years. (4) A person shall not be qualified for appointment as an Accountant Member, unless, — (i) he has for twenty-five years been in the practice of accountancy, - (a) as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or (b) as a registered accountant under any law formerly in force; or partly as such registered accountant and partly as a chartered accountant; or (ii) he has been a member of the Indian Revenue Service (Income-tax Service Group ‗A') and has held the post of Principal Commissioner of Income-tax or any equivalent or higher post for two years and has performed judicial, quasi-judicial or adjudicating function for three years.	(iv) Secretary to the Government of India, Ministry of Finance, (Department of Revenue) – member.
3.	The Customs, Excise and Service Tax Appellate Tribunal under the Customs Act, 1962 (52 of 1962)	(1) A person shall not be qualified for appointment as President unless, - (a) he is or has been a Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or (b) he is the member of the Appellate Tribunal. (2) A person shall not be qualified for appointment as a Judicial Member, unless, - (a) he has, for a combined period of ten years, been a District Judge and Additional District Judge; or (b) he has been a member of the Indian Legal Service and has held a post of Additional Secretary or any equivalent or higher post for two years; or (c) he has been an advocate for twenty-five years. (3) A person shall not be qualified for appointment as a Technical Member unless he has been a member of the Indian Revenue Service (Customs and Central Excise Service Group ‚A') and has held the post of Principal Commissioner of Customs or Central Excise or any equivalent or higher post for	Search-cum-Selection Committee for the post of President, Judicial Member and Technical Member- (i) Chief Justice of India or a Judge of the Supreme Court nominated by him - chairperson; (ii) (a) In case of appointment of President, the Outgoing President of the Customs Excise and Service Tax Appellate Tribunal – member; or (b) In case of appointment of Judicial Member and Technical Member, the President, Customs and Excise and Service Tax Appellate Tribunal-member; (iii) Secretary to the Government of India, Ministry of Finance (Department of Revenue)- member; (iv) Secretary to the Government of India, Ministry of Personal, Public Grievances and Pensions (Department of Personnel and Training) -member.

		two years and has performed judicial, quasi-judicial or adjudicating function for three years.	
4.	Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976)	(1) The Chairman of the Appellate Tribunal shall be a person who is or has been a Judge of a Supreme Court or a Chief Justice of a High Court. (2) The Member of the Appellate Tribunal shall be a person not below the rank of Additional Secretary to the Government of India or any equivalent or higher post for two years and has performed judicial, quasi-judicial or adjudicating function for three years.	Search-cum-Selection Committee for the post of Chairman and Member, - (i) Chief Justice of India or a Judge of the Supreme Court nominated by him– chairperson; (ii) (a) in case of appointment of Chairman, the Outgoing Chairman of the Appellate Tribunal – member; or (b) in case of appointment of Member, the Chairman of the Appellate Tribunal-member; (iii) Secretary to the Government of India, Ministry of Personal, Public Grievances and Pensions (Department of Personnel and Training)- member; (iv) Secretary to the Government of India, Ministry of Finance (Department of Revenue)- member.
5.	Central Administrative Tribunal under the Administrative Tribunal Act, 1985 (13 of 1985).	(1) A person shall not be qualified for appointment as the Chairman, unless he, – (a) is, or has been, a Judge of a High Court; or (b) has, for a period of not less than three years, held office as Administrative Member or Judicial Member in the Central Administrative Tribunal; (2) A person shall not be qualified for appointment,– (a) as a Judicial Member, unless he,– (i) is, or has been, a Judge of a High Court; or (ii) has, for one year, held the post of Secretary to the Government of India in the Department of Legal Affairs or the Legislative Department including Member –Secretary, Law Commission of India; or	

		(iii) has, for two years, held a post of Additional Secretary to the Government of India in the Department of Legal Affairs or Legislative Department; or (iv) has, for a combined period of ten years, been a District Judge and Additional District Judge. (b) as an Administrative Member, unless he, - (i) has, for one year, held the post of Secretary to the Government of India or any other post under the Central Government or a State Government and carrying the scale of pay which is not less than that of a Secretary to the Government of India for one year; or (ii) has, for two years, held a post of Additional Secretary to the Government of India, or any other post under the Central or State Government carrying the scale of pay which is not less than that of Additional Secretary to the Government of India for a period of two years: Provided that the officers belonging to the All-India services who were or are on Central deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be , and the period spent on Central deputation after such date shall count for qualifying service for the purpose of this clause.	Search-cum-Selection Committee for the post of Chairman, Administrative Member and Judicial Member – (i) Chief Justice of India or Judge of the Supreme Court as nominated by him- chairperson; (ii) (a) in case of appointment of Chairman the Outgoing Chairman of the Central Administrative Tribunal – member; or (b) in case of appointment of Administrative Member and Judicial Member, the Chairman, Central Administrative Tribunal – member; (iii) Secretary to the Government of India, Ministry of Personal, Public Grievances and Pensions (Department of Personnel and Training) - member; (iv) Secretary to the Government of India, Ministry of Law and Justice, (Department of Legal Affairs) –member.
6.	Railway Claims Tribunal under the Railway Claims Tribunal Act, 1987 (54 of 1987)	(1) A person shall not be qualified for appointment as the Chairman, unless he, – (a) is, or has been, a Judge of a High Court; or (b) has, for a period of not less than three years, held office as Vice-Chairman, Judicial Member or Technical Member, as the case may be. (2) A person shall not be qualified for appointment as the Vice-Chairman(Judicial), unless he, –	Search-cum-Selection Committee consisting for the post of the Chairman, Vice-Chairman (Judicial), Vice-Chairman (Technical), Technical Member and Judicial Member: - (j) Chief Justice of India or Judge of the Supreme Court nominated by him - chairperson; (ii) (a) in case of appointment of Chairman, the Outgoing Chairman, Railway Claim Tribunal – member; or

		(a) is, or has been, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post of Additional Secretary or any equivalent or any higher post for two years; or (c) has, for two years, held a civil judicial post carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or (d) has, for a period of not less than three years, held office as a Judicial Member. (3) A person shall not be qualified for appointment as the Vice-Chairman (Technical), unless he, – (a) has, for a period of not less than three years, held office as a Technical Member; (b) has, for two years, held a post under a railway administration carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways. (4) A person shall not be qualified for appointment as a Judicial Member, unless he, – (a) is, or has been, a Judge of a High Court; (b) has, for a combined period of ten years, been a District Judge and Additional District Judge. (5) A person shall not be qualified for appointment as a Technical Member unless he is a person of ability, integrity and standing having special knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways of not less than twenty-five years.	(b) in case of appointment of Vice- Chairman (Judicial), Vice- Chairman (Technical), Technical Member and Judicial Member, the Chairman Railway Claim Tribunal – member; or (iii) Member (Traffic) of the Railway Board- member; (iv) Secretary to the Government of India, Ministry of Law and Justice, (Department of Legal Affairs) – member.
7.	Securities Appellate Tribunal under the Securities Exchange Board of India Act, 1992 (15 of 1992)	(1) A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he, —	Search and Selection Committee for Post of the Presiding Officer, Judicial Member and Technical Member.

		(a) in the case of the Presiding Officer, is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court; or (b) in the case of a Judicial Member, is, or has been, a Judge of a High Court; or (c) in the case of a Technical Member,— (i) is, or has been, an Additional Secretary for two years or Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than twenty five years, in financial sectors including securities market or pension funds or commodity derivatives or insurance. (2) A Member or Part time Member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities. (3) The Presiding Officer or Member of the Securities Appellate Tribunal shall be a person who does not have any financial or other interest as are likely to prejudicially affect their functions as such Presiding Officer or Member.	(i) Chief Justice of India or Judge of the Supreme Court of India nominated by him – chairperson; (ii) (a) in case of appointment of Presiding Officer, the Outgoing Presiding Officer of the Securities Appellate Tribunal– member; (b) in case of appointment of Judicial Member and Technical Member, the Presiding Officer of the Securities Appellate Tribunal– member; or (iii) Secretary to the Government of India, Ministry of Finance, (Department of Economic Affairs) – member; and (iv) Secretary to the Government of India, Ministry of Finance, (Department of Revenue) – member.
8.	Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)	A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, unless he, is, or has been, a District Judge.	Search-cum-Selection Committee for the post of Presiding Officer of the Debts Recovery Tribunal, - (i) Chief Justice of India or Judge of the Supreme Court nominated by him-chairperson;

			(ii) Outgoing Presiding Officer of the Debts Recovery Tribunal – member; (iii) Secretary to the Government of India, Ministry of Finance (Department of Financial Services)- member; and (v) Secretary to the Government of India, Ministry of Corporate Affairs - member.
9.	Debts Recovery Appellate Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)	A person shall not be qualified for appointment as Chairperson, unless he,– (a) is, or has been, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post of Additional Secretary or any equivalent or any higher post for two years; or (c) has held office as the Presiding Officer of a Debts Recovery Tribunal for three years.	Search-cum-Selection Committee for the Chairperson of the Debts Recovery Appellate Tribunal, - (i) Chief Justice of India or any Judge of the Supreme Court as nominated by him - chairperson; (ii) Outgoing Chairperson of the Debts Recovery Appellate Tribunal – member; (ii) Secretary to the Government of India, Ministry of Finance (Department of Financial Services)– member; (iv) Secretary to the Government of India, Ministry of Corporate Affairs – member.
10.	Airport Appellate Tribunal under the Airport Authority of India Act, 1994 (55 of 1994)	A person shall not be eligible for appointment as Chairperson, unless he, is, or has been, a judge of a High Court.	Search-cum-Selection Committee for the post of Chairperson of Airport Appellate Tribunal, — (i) Chief Justice of India or any other judge of Supreme Court nominated by him -chairperson; (ii) Outgoing Chairperson of Airport Appellate Tribunal – member; (iii) Secretary to the Government of India, Ministry of Civil Aviation - member; (iv) Secretary to the Government of India, (Department of Economic Affairs) - member;
11	Telecom Disputes Settlement and Appellate Tribunal under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997)	(1) A person shall not be qualified for appointment as Chairperson, unless he, – (a) is, or has been, a Judge of Supreme Court; or	Search-cum-Selection Committee for the post of the Chairperson and Member, — (i) Chief Justice of India or any judge of the Supreme Court nominated by him -chairperson;

		(b) is, or has been, Chief Justice of a High Court. (2) A person shall not be qualified for appointment as Member unless he is a person of ability, integrity and standing having special knowledge of, and professional experience of, not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, telecommunications or any other matter which is useful to the Telecom Disputes Settlement and Appellate Tribunal.	(ii) (a) in case of appointment of Chairperson, the Outgoing Chairperson of the Telecom Disputes Settlement and Appellate Tribunal – member; or (b) in case of appointment of Member, the Chairperson of the Telecom Disputes Settlement and Appellate Tribunal – member; or (iii) Secretary to the Government of India, (Department of Telecommunications)- member; (iv) Secretary to the Government of India, Ministry of Civil Aviation - member
12.	Appellate Board under the Trade Marks Act, 1999 (47 of 1999)	(1) A person shall not be qualified for appointment as Chairman, unless he,- (a) is, or has been, a Judge of High Court; or (b) has, for a period of not less than three years, held office as Vice-Chairperson of the Appellate Board. (2) A person shall not be qualified for appointment as Vice-Chairman, unless he, - (a) is, or has been, a Judge of High Court; or (b) has, for two years, held the office of Judicial Member or a Technical Member, and has a degree in law with twelve years of practice at bar or twelve years' experience in a State Judicial Service. (3) A person shall not be qualified for appointment as Judicial Member, unless he, - (a) is, or has been, a Judge of High Court; or (b) has, for a combined period of ten years, been a District Judge and Additional District Judge. (4) A person shall not be qualified for appointment as Technical Member (Trademark), unless he, - (a) has, for ten years, exercised functions of a Tribunal under the Trade Marks Act, 1999 (47 of 1999) and has held a post not lower than the post of Registrar for five years and has a degree in law with twelve years of practice at bar or twelve years' experience in a State Judicial Service, or	(A) Search-cum-Selection for the post of the Chairman, Vice- Chairman, Judicial Member and Technical Member of the Appellate Board,- (i) Chief Justice of India or any Judge of the Supreme Court nominated by him - chairperson; (ii) (a) in case of appointment of Chairman, the Outgoing Chairman of the Appellate Board– member; or (b) in case of appointment of Vice- Chairman, Judicial Member and Technical Member (Trade mark), Technical Member (Patent) and Technical Member(Copyright) of the Appellate Board, the Chairman of the Appellate Board-member;or (iii) Secretary to the Government of India, (Department for Promotion of Industry and Internal Trade) -member; (iv) Secretary to the Government of India, Ministry of Consumer Affairs Food and Public Distribution -member;

		(b) has, for twenty-five years, been an advocate of a proven specialised experience in trade mark law. (5) A person shall not be qualified for appointment as Technical Member (Patent), unless he, - (a) has, for five years, held the post or exercised the functions of the Controller under the Patents Act, 1970 (39 of 1970); or (b) has, for twenty-five years, functioned as a registered patent agent and possesses a degree in engineering or technology or a master's degree in science from any University established under law for the time being in force. (6) A person shall not be qualified for appointment as Technical Member (Copyright), unless he, – (a) is, or has been a member of the Indian Legal Service and is holding, or has held a post of Additional Secretary or any equivalent or any higher post for two years; or (b) has, for a combined period of ten years, been a District Judge and Additional District Judge; or (c) is, or has been a member of a Tribunal or Civil Service not below the rank of an Additional Secretary to the Government of India with three years' experience in the field of Copyright; or (d) has, for twenty-five years, been an advocate of a proven specialized experience in Copyright Law: Provided that one member of the Appellate Board for purposes of the Copyright Act shall have qualification as in (a), (b) or (d) above.	
13.	National Company Law Appellate Tribunal under the Companies Act, 2013 (18 of 2013).	(1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court. (2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the National Company Law Tribunal for five years.	Search-Cum-Selection Committee for the post of Chairperson, Judicial Member and Technical Member – (i) Chief Justice of India or any Judge of the Supreme Court nominated by him –chairperson; (ii) (a) in case of appointment of Chairperson, the Outgoing Chairperson of the National Company Law Appellate Tribunal – member; or

		(3) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy or any other matter which is useful to the National Company Law Appellate Tribunal	(b) in case of appointment of Judicial Member and Technical Member the Chairperson of the National Company Law Appellate Tribunal – member; or (iii) Secretary to the Government of India, Ministry of Corporate Affairs – member; (iv) Secretary to the Government of India, Ministry of Finance (Department of Financial Services) – member.
14.	Authority for Advance Ruling under the Income-tax Act, 1961 (43 of 1961)	A person shall be qualified for appointment as, - (a) Chairman, who: - (i) is, or has been, a Judge of the Supreme Court; or (ii) is or has been a Chief Justice of a High Court. (b) Vice-chairman, who is, or has been, a Judge of a High Court; (c) Law Member, who has, for a combined period of ten years, been a District Judge and Additional District Judge; or (d) Revenue Member from the Indian Revenue Service who is qualified to be a Member of the Central Board of Direct Taxes and an officer of the Indian Customs and Central Excise Service, who is qualified to be a Member of the Central Board of Excise and Customs and has performed judicial, quasi-judicial or adjudicating function for three years.	Search-cum Selection Committee for the post of Chairman, Vice-Chairman, Law Member and Revenue Member - (i) Chief Justice of India or any Judge of the Supreme Court nominated by him – chairperson; (ii) (a) in case of appointment of Chairman, the Outgoing Chairman to the Authorities for Advance Ruling- member; or (b) in case of appointment of Vice-Chairman, Law Member and Revenue Member, the Chairman to the Authorities for Advance Ruling- member; (iii) Secretary to the Government of India, Ministry of Finance (Department of Revenue) - member; and (iv) Secretary to the Government of India, Ministry of Personal, Public Grievances and Pensions (Department of Personnel and Training) –member.
15.	Film Certification Appellate Tribunal under the Cinematograph Act, 1952 (37of 1952)	(1) A person shall not be qualified for appointment as Chairman, unless he, - (a) is, or has been, a Judge of a High Court; or (b) has, for a period of not less than three years, held office as member (2) A person qualified to judge the effect of films on the public shall be qualified for appointment as a Member.	Search-cum-Selection Committee for post of the Chairman and Member of the Appellate Tribunal, — (i) Chief Justice of India or any Judge of the Supreme Court nominated by him – chairperson; (ii) (a) in case of appointment of Chairman, the outgoing Chairman of the Appellate Tribunal-member; or (b) in case of appointment of Member, the Chairman of the Appellate Tribunal-member;

			(iii) Secretary to the Government of India, Ministry of Information and Broadcasting -member; and (iv) Secretary to the Government of India, Ministry of Culture-member.
16.	National Consumer Disputes Redressal Commission under the Consumer Protection Act, 1986 (68 of 1986)	(1) A person shall not be qualified for appointment as President, unless he, – (a) is, or has been, a Judge of the Supreme Court; or (b) is, or has been, Chief Justice of a High Court. (2) A person shall not be qualified for appointment as Member unless he,– (a) is, or has been, a Judge of a High Court; or (b) has, for a combined period of ten years, been a District Judge and Additional District Judge; or (c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which is useful to the National Consumer Disputes Redressal Commission.	Search-cum-Selection Committee for post of the President and Member of the National Consumer Disputes Redressal Commission, - (i) Chief Justice of India or any Judge of the Supreme Court nominated by him – chairperson; (ii) (a) in case of appointment of President, the Outgoing President of National Consumer Disputes Redressal Commission- member; or (b) in case of appointment of Member, the President of National Consumer Disputes Redressal Commission- member; (iii) Secretary to the Government of India, Ministry of Consumer Affairs, Food and Public Distribution-member; and (iv) Secretary to the Government of India, Ministry of Commerce (Department for Promotion of Industry and Internal Trade)-member.
17.	Appellate Tribunal for Electricity under the Electricity Act, 2003 (36 of 2003).	(1) A person shall not be qualified for appointment as Chairperson of the Appellate Tribunal, unless he, — (a) is, or has been, a Judge of Supreme Court; or (b) is, or has been, Chief Justice of a High Court. (2) A person shall not be qualified for appointment as Judicial Member, unless, he— (a) is, or has been, a Judge of a High Court; or (b) has, for a combined period of ten years, been a District Judge and Additional District Judge.	Search-cum-Selection Committee for the post of Chairperson, Judicial Member and Technical Member — (i) Chief Justice of India or any Judge of the Supreme Court nominated by him – chairperson; (ii) (a) in case of appointment of Chairperson, the Outgoing Chairperson of the Appellate Tribunal for Electricity - member; or (b) in case of appointment of Judicial Member and Technical Member, the Chairperson of the Appellate Tribunal for Electricity - member;

		(3) A person shall not be qualified for appointment as Technical Member unless he is a person of ability, integrity and standing having special knowledge of, and professional experience of, not less than twentyfive years in matters dealing with electricity generation, transmission, distribution, regulation, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which is useful to the Appellate Tribunal.	(iii) Secretary to the Government of India, Ministry Power-member; and (iv) Secretary to the Government of India, Ministry of Petroleum -member.
18.	Armed Forces Tribunal under the Armed Forces Act, 2007 (55 of 2007)	(1) A person shall not be qualified for appointment as Chairperson, unless, he, - (a) is, or has been, a Judge of Supreme Court; or (b) is or has been a Chief Justice of a High Court. (2) A person shall not be qualified for appointment as Judicial Member unless he is, or has been, a Judge of a High Court. (3) A person shall not be qualified for appointment as Administrative Member, unless he, - (a) has held or has been holding the rank of Major General or above for a total period of three years in the Army or equivalent rank in the Navy or the Air Force; or (b) has served for not less than one year as Judge Advocate General in the Army or the Navy or the Air Force, and is not below the rank of Major General, Commodore and Air Commodore respectively; or (c) is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than thirty years in, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter useful to the Armed Forces Tribunal.	Search-cum-Selection Committee for the post of Chairperson, Judicial Member and Administrative Member — (i) Chief Justice of India or any Judge of the Supreme Court nominated by him – chairperson; (ii) (a) in case of appointment of Chairperson, the Outgoing Chairperson of the Armed Force Tribunal - member; or (b) in case of appointment of Judicial Member and Administrative Member the Chairperson of the Armed Forces Tribunal - member; (iii) Secretary to the Government of India, Ministry of Defence-member; and (iv) Secretary to the Government of India, Ministry of Personal, Public Grievances and Pensions (Department of Personnel and Training)-member.
19.	National Green Tribunal under the National Green Tribunal Act, 2010 (19 of 2010)	(1) A person shall not be qualified for appointment as Chairperson, unless he, – (a) is, or has been, a Judge of Supreme Court; or	Search-cum-Selection Committee for the post of the Chairperson, Judicial Member and Expert Member of the National Green Tribunal, —

		(b) is, or has been, Chief Justice of a High Court. (2) A person shall not be qualified for appointment as Judicial Member, unless he, – (a) is, or has been, a Judge of a High Court; or (b) has, for a combined period of ten years, been a District Judge and Additional District Judge. (3) A person shall not be qualified for appointment as Expert Member, unless he, - (a) has a degree or Post-graduation degree or Doctorate Degree in Science and has an experience of twenty-five years in the relevant field including five years' practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or (b) has administrative experience of twenty years including experience of five years in dealing with environmental matters in the Central Government or a State Government or in a reputed National or State level institution.	(i) Chief Justice of India or any Judge of the Supreme Court nominated by him – chairperson; (ii) (a) in case of appointment of Chairperson, the Outgoing Chairperson of the National Green Tribunal - member;or (b) in case of appointment of Judicial Member and Expert Member the Chairperson of the National Green Tribunal - member; (iii) Secretary to the Government of India, Ministry of Environment and Forest-member; and (iv) Secretary to the Government of India, Ministry of Personal, Public Grievances and Pensions (Department of Personnel & Training)-member.

F. No. IT(A)/1/2020-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Dated: 4th March, 2020

Sub.: Clarifications on provisions of the Direct Tax *Vivad se Vishwas* Bill, 2020 - reg.

During the Union Budget. 2020 presentation, the '*Vivad se Vishwas*' Scheme was announced to provide for dispute resolution in respect of pending income tax litigation. Pursuant to Budget announcement, the Direct Tax *Vivad se Vishwas* Bill, 2020 (*Vivad se Vishwas*) was introduced in the Lok Sabha on 5th Feb, 2020. The objective of *Vivad se Vishwas* is to inter alia reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to *Vivad se Vishwas* have been proposed. These amendments seek to widen the scope of *Vivad se Vishwas* and reduce the compliance burden on taxpayers.

2. After introduction of *Vivad se Vishwas* in Lok Sabha, several queries have been received from the stakeholders seeking clarifications in respect of various provisions contained therein. Government has considered these queries and decided to clarify the same in form of answers to frequently asked questions (FAQs). These clarifications are, however, subject to approval and passing of *Vivad se Vishwas* by the Parliament and receiving assent of the Hon'ble President of India.

Questions on Scope/ Eligibility (Q. No.1 - 24)

Question 1. Which appeals are covered under the *Vivad se Vishwas*?

Answer: Appeals pending before the appellate forum [Commissioner (Appeals), Income Tax Appellate Tribunal (ITAT), High Court or Supreme Court], and writ petitions pending before High Court (HC) or Supreme Court (SC) or special leave petitions (SLPs) pending before SC as on the 31st day of January, 2020 (specified date) are covered. Cases where the order has been passed but the time limit for filing appeal under the Income-

tax Act, 1961 (the Act) against the order has not expired as on the specified date are also covered. Similarly, cases where objections filed by the assessee against draft order are pending with Dispute Resolution Panel (DRP) or where DRP has given the directions but the Assessing Officer (AO) has not yet passed the final order on or before the specified date are also covered. Cases where revision application under section 264 of the Act is pending before the Principal Commissioner or Commissioner are covered as well. Further, where a declarant has initiated any proceeding or given any notice for arbitration, conciliation or mediation as referred to in clause 4 of the Bill is also covered.

Question No. 2. If there is no appeal pending but the case is pending in arbitration, will the taxpayer be eligible to apply under *Vivad se Vishwas*? If yes what will be the disputed tax?

Answer: An assessee whose case is pending in arbitration is eligible to apply for settlement under *Vivad se Vishwas* even if no appeal is pending. In such case assessee should fill the relevant details applicable in his case in the declaration form. The disputed tax in this case would be the tax (including surcharge and cess) on the disputed income with reference to which the arbitration has been filed.

Question No. 3. Whether *Vivad se Vishwas* can be availed for proceedings pending before Authority of Advance Ruling (AAR)? If a writ is pending against order passed by AAR in a HC will that case be covered and how disputed tax to be calculated?

Answer: *Vivad se Vishwas* is not available for disputes pending before AAR. However, if the order passed by AAR has determined the total income of an assessment year and writ against such order is pending in HC, the appellant would be eligible to apply for the *Vivad se Vishwas*. The disputed tax in that case shall be calculated as per the order of the AAR and accordingly, wherever required, consequential order shall be passed by the AO. However, if the order of AAR has not determined the total income, it would not be possible to calculate disputed tax and hence such cases would not be covered. To illustrate, if AAR has given a ruling that there exists Permanent Establishment (PE) in India but the AO has not yet determined the amount to be attributed to such PE, such cases cannot be covered since total income has not yet been determined.

Question No. 4. An appeal has been filed against the interest levied on assessed tax; however, there is no dispute against the amount of assessed tax. Can the benefit of the *Vivad se Vishwas* be availed?

Answer: Declarations covering disputed interest (where there is no dispute on tax corresponding to such interest) are eligible under *Vivad se Vishwas*. It may be clarified that if there is a dispute on tax amount, and a declaration is filed for the disputed tax, the full amount of interest levied or leviable related to the disputed tax shall be waived.

Question No. 5. What if the disputed demand including interest has been paid by the appellant while being in appeal?

Answer: Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. If the amount of tax paid is more than amount payable under *Vivad se Vishwas*, the appellant will be entitled to refund without interest under section 244A of the Act.

Question No. 6. Can the benefit of the *Vivad se Vishwas* be availed, if a search and seizure action by the Income-tax Department has been initiated against a taxpayer?

Answer: Case where the tax arrears relate to an assessment made under section 143(3) or section 144 or section 153A or section 153C of the Act on the basis of search initiated under section 132 or section 132A of the Act are excluded if the amount of disputed tax exceeds five crore rupees in that assessment year.

Thus, if there are 7 assessments of an assessee relating to search & seizure, out of which in 4 assessments, disputed tax is five crore rupees or less in each year and in remaining 3 assessments, disputed tax is more than five crore rupees in each year, declaration can he filed for 4 assessments where disputed tax is five crore rupees or less in each year.

Question No. 7. If assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO. Can he avail the *Vivad se Vishwas* with respect to such additions?

Answer: If an appellate authority has set aside an order (except where assessment is cancelled with a direction that assessment is to be framed de novo) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction, the assessee would be eligible to avail *Vivad se Vishwas*. However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired. In such a case disputed tax shall be the tax (including surcharge and cess) which would have been payable had

the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner(Appeals).

Question No. 8. Imagine a case where an appellant desires to settle concealment penalty appeal pending before CIT(A), while continuing to litigate quantum appeal that has travelled to higher appellate forum. Considering these are two independent and different appeals, whether appellant can settle one to exclusion of others? If yes, whether settlement of penalty appeal will have any impact on quantum appeal?

Answer: If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form giving details of both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending.

Question No. 9. Is there any necessity that to qualify under the *Vivad se Vishwas*, the appellant should have tax demand in arrears as on the date of filing declaration?

Answer: *Vivad se Vishwas* can be availed by the appellant irrespective of whether the tax arrears have been paid either partly or fully or are outstanding.

Question No. 10. Whether 234E and 234F appeals are covered?

Answer: If appeal has been filed against imposition of fees under sections 234E or 234F of the Act, the appellant would be eligible to file declaration for disputed fee and amount payable under *Vivad se Vishwas* shall be 25% or 30% of the disputed fee, as the case may be.

If the fee imposed under section 234E or 234F pertains to a year in which there is disputed tax, the settlement of disputed tax will not settle the disputed fee. If assessee wants to settle disputed fee, he will need to settle it separately by paying 25% or 30% of the disputed fee, as the case may be.

Question No. 11. In case where disputed tax contains qualifying tax arrears as also non-qualifying tax arrears (such as, tax arrears relating 10 assessment made in respect of undisclosed foreign income):

(i) Whether assessee is eligible to the *Vivad se Vishwas* itself?

(ii) If eligible, whether quantification of disputed tax can exclude/ ignore non-qualifYing tax arrears?

Answer: If the tax arrears include tax on issues that are excluded from the *Vivad se Vishwas*, such cases are not eligible to file declaration under *Vivad se Vishwas*. There is no provision under *Vivad se Vishwas* to settle part of a pending dispute in relation to an appeal or writ or SLP for an assessment year. For one pending appeal, all the issues are required to be settled and if anyone of the issues makes the declaration invalid, no declaration can be filed.

Question No. 12. If a writ has been .filed against a notice issued under section 148 of the Act and no assessment order has been passed consequent to that section 148 notice, will such case be eligible to file declaration under *Vivad se Vishwas*?

Answer: The assessee would not be eligible for *Vivad se Vishwas* as there is no determination of income against the said notice.

Question No. 13. With respect to interest under section 234A, 234B or 234C, there is no appeal but the assessee has filed waiver application before the competent authority which is pending as on 31 Jan 2020? Will such cases be covered under *Vivad se Vishwas*?

Answer: No, such cases are not covered. Waiver applications are not appeal within the meaning of *Vivad se Vishwas*.

Question No. 14. Whether assessee can avail of the *Vivad se Vishwas* for some of the issues and not accept other issues?

Answer: Refer to answer to question no 11. Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must chose to settle all issues and then only he would be eligible to file declaration.

Question No. 15. Will delay in deposit of TDS/TCS be also covered under *Vivad se Vishwas*?

Answer: The disputed tax includes tax related to tax deducted at source (TDS) and tax collection at source (TCS) which are disputed and pending in appeal. However, if there is no dispute related to TDS or TCS and there is delay in depositing such TDS/TCS, then the dispute pending in appeal related to interest levied due to such delay will be covered under *Vivad se Vishwas*.

Question No. 16. Are cases pending before DRP covered? What if the assessee has not filed objections with DRP and the AO has not yet passed the final order?

Answer: Yes, a person who has filed his objections before the DRP under section 144C of the Act and the DRP has not issued any direction on or before the specified date as well as a person in whose case the DRP has issued directions but the AO has not passed the final assessment order on or before the specified date, is eligible under *Vivad se Vishwas*.

It is further clarified that there could be a situation where the AO has passed a draft assessment order before the specified date. Assessee decides not to file objection with the DRP and is waiting for final order to be passed by the AO against which he can file appeal with Commissioner(Appeals). In this situation even if the final assessment order is not passed on or before the specified date, the assessee would be considered as the appellant and would be eligible to settle his dispute under *Vivad se Vishwas*. Disputed tax in such case would be computed based on the draft order. In the declaration form, the appellant in this situation should indicate that time to file objection with DRP has not expired.

Question No. 17. If CIT(Appeals) has given an enhancement notice, can the appellant avail the *Vivad se Vishwas* after including proposed enhanced income in the total assessed income?

Answer: The amendment proposed in the *Vivad se Vishwas* allows the declaration even in cases where CIT (Appeals) has issued enhancement notice on or before 31 ,t January, 2020. However, the disputed tax in such cases shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued.

Question No. 18. Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy covered?

Answer: No. Only disputes relating to income-tax are covered.

Question No 19. The assessment order under section 143(3) of the Act was passed in the case of an assessee for the assessment year 2015-16. The said assessment order is pending with ITAT. Subsequently another order under section 147/143(3) was passed for the same assessment year and that is pending with CIT (Appeals)? Could both or one of the orders be settled under *Vivad se Vishwas*?

Answer: The appellant in this case has an option to settle either of the two appeals or both appeals for the same assessment year. If he decides to settle both appeals then he has to file only one declaration form. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.

Question No. 20. In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed off by CIT (Appeals) on 5th January 2020. Time to file appeal in ITAT against the order of Commissioner(Appeals) is still available but the appeal has not yet been filed. Will such case be eligible to avail the benefit?

Answer: Yes, the appellant in this case would also be eligible to avail the benefit of *Vivad se Vishwas*. In this case, the tenns of availing *Vivad se Vishwas* in case of disputed penalty/interest/fee are similar to tenns in case of disputed tax. Thus, if the time to file appeal has not expired as on specified date, the appellant is eligible to avail benefit of *Vivad se Vishwas*. In this case the appellant should indicate in the declaration form that time limit to file appeal in ITAT has not expired.

Question No. 21. In a case ITAT has quashed the assessment order based on lack of jurisdiction by the AO. The department has filed an appeal in HC which is pending. Is the assessee eligible to settle this dispute under *Vivad se Vishwas* and if yes how disputed tax be calculated as there is no assessment order?

Answer: The assessee in this case is eligible to settle the department appeal in HC. The amount payable shall be calculated at half rate of 100%,110%, 125% or 135%, as the case may be, on the disputed tax that would be restored if the department was to win the appeal in HC.

Question no 22. In the case of an assessee prosecution has been instituted and is pending in court. Is assessee eligible for the *Vivad se Vishwas*?

Answer: No. However, where only notice for initiation of prosecution has been issued with reference to tax arrears, the taxpayer has a choice to compound the offence and opt for *Vivad se Vishwas*.

Question no 23. If the due date of filing appeal is after 31.1.2020 the appeal has not been filed, will such case be eligible for *Vivad se Vishwas*?

Answer: Yes

Question No 24. If appeal is .filed before High Court and is pending for admission as on 31.1.2020, whether the case is eligible for *Vivad se Vishwas*?

Answer: Yes

Questions Related to Calculation (Q. No. 25-40)

Question No. 25. In a case appeal or arbitration is pending on the specified date, but a rectification is also pending with the A 0 which if accepted will reduce the total assessed income. Will the calculation of disputed tax be calculated on rectified total assessed income?

Answer: The rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any.

Question No. 26. Refer to question number 5. How will disputed tux be calculated in a case where disputed demand including interest has been paid by the assessee while being in appeal?

Answer: Please refer to answer to question no. 5. To illustrate, consider a non-search case where an assessee is In appeal before Commissioner (Appeals). The tax on returned income (including surcharge and cess) comes to Rs. 30,000 and interest under section 234B of Rs. 1,000. Assessee has paid this amount of Rs. 31,000 at the time of filing his tax return. During assessment an addition is made and additional demand of Rs. 16,000 has been raised, which comprises of disputed tax (including surcharge and cess) of Rs. 10,000 and interest on such disputed tax of Rs. 6000. Penalty has been initiated separately. Assessee has paid the demand of Rs. 14,000 during pendency of appeal; however interest under section 220 of the Act is yet to be calculated. Assessee files a declaration, which is accepted and certificate is issued by the designated authority (DA). The disputed tax of Rs 10,000 (at 100%) is to be paid on or before 31" March 2020. Since he has already paid Rs. 14,000, he would be entitled to refund of Rs. 4,000 (without section 244A interest). Further, the interest leviable under section 220 and penalty leviable shall also be waived.

Question No. 27. Refer to question no 7. How will disputed tax be computed in a case where assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO? Please refer to answer to question no. 7. To illustrate, return of income

Answer: was filed by the assessee. The tax on returned income was Rs 10,000 and interest was Rs 1,000. The amount of Rs. 11,000 was paid before filing the return. The AO made two additions of Rs. 20,000/- and Rs 30,000/-. The tax (including surcharge and cess) on this comes to Rs 6,240/- and Rs 9,3601- and interest comes to Rs.2, 500 and Rs. 3,500 respectively. Commissioner (Appeals) has confirmed the two additions. ITAT confirmed the first addition (Rs 20,000/-) and set aside the second addition (Rs 30,000/-) to the file of AO for verification with a specific direction. Assessee appeals against the order of IT AT with respect to first addition (or has not filed appeal as time limit to file appeal against the order has not expired). The assessee can avail the *Vivad se Vishwas* if declaration covers both the additions. In this case the disputed tax would be the sum of disputed tax on both the additions i.e. Rs. 6240/- plus Rs. 9,360/-.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals) .

Question No. 28. What amount of tax is required to be paid, if an assessee wants to avail the benefit of the *Vivad se Vishwas*?

Answer: Under the *Vivad se Vishwas*, declarant is required to make following payment for settling disputes:

A. In appeals / writ / SLP / DRP objections / revision application under section 264 / arbitration filed by the assessee -

(a) In case payment is made till 31st March, 2020-

(i) 100% of the disputed tax (125% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty levied or leviable), or

(ii) 25% of the disputed penalty, interest or fee where dispute relates to disputed penalty, interest or fee only.

(b) In case payment is made after 31 st March, 2020 -

(i) 110% of the disputed tax (135% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty), or

(ii) 30% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

However, if in an appeal before Commissioner(Appeals) or in objections pending before DRP, there is an issue on which the appellant has got favourable decision from ITAT (not reversed by HC or SC) or from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount. Similarly, if in an appeal before IT AT, there is an issue on which the appellant has got favourable decision from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount.

B. In appeals/writ/SLP filed by the Department -

(a) In case payment is made till 31 “March, 2020-

(i) 50% of the disputed tax (62.5% in search cases) in case of dispute related to disputed tax or

(ii) 12.5% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

(b) In case payment is made after 31”’ March, 2020 -

(i) 55% of the disputed tax (67.5% in search cases) in cases of dispute related to disputed tax, or

(ii) 15% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

Question No. 29. Whether credit for earlier taxes paid against disputed tax will be available against the payment to be made under *Vivad se Vishwas*?

Answer: The amount payable by the declarant under *Vivad se Vishwas* shall be determined by the DA under clause 5. Credit for taxes paid against the disputed tax before filing declaration shall be available to the declarant. Please refer to example at question no. 26 above. If in that example against disputed tax of Rs. 10,000 an amount of Rs. 8,000/- has already been paid, the appellant would be required to pay only the remaining Rs. 2,0001- by 31”’ March 2020.

Question No. 30. Where assessee settles TDS appeal or withdraws arbitration (against order U/S 201) as deductor of TDS, will credit of such tax be allowed to deductee?

Answer: In such cases, the deductee shall be allowed to claim credit of taxes in respect of which the deductor has availed of dispute resolution under *Vivad se Vishwas*. However, the credit will be allowed as on the date of settlement of dispute by the deductor and hence the interest as applicable to deductee shall apply.

Question No. 31. Where assessee settles TDS liability as deductor of TDS under *Vivad se Vishwas* (i.e against order u/s 201), when will he get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia)?

Answer: In such cases, the deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)/(ia) in the year in which the tax was required to be deducted.

To illustrate, let us assume that there are two appeals pending; one against the order under section 201 of the Act for non-deduction of TDS and another one against the order under section 143 (3) of the Act for disallowance under section 40(a)(i)/(ia) of the Act. The disallowance under section 40 is with respect to same issue on which order under section 20 I has been issued. If the dispute is settled with respect to order under section 20 I, assessee will not be required to pay any tax on the issue relating to disallowance under section 40(a)(i)/(ia) of the Act, in accordance with the provision of section 40(a)(i)/(ia) of the Act.

In case, in the order under section 143(3) there are other issues as well, and the appellant wants to settle the dispute with respect to order under section 143(3) as well, then the disallowance under section 40(a)(i)/(ia) of the Act relating to the issue on which he has already settled liability under section 201 would be ignored for calculating disputed tax.

If the assessee has challenged the order under section 20 I on merits and has won in the Supreme Court or the order of any appellate authority below Supreme Court on this issue in favour of the assessee has not been challenged by the Department on merit (not because appeal was not filed on account of monetary limit for filing of appeal as per applicable CEDT circular), then in a case where disallowance under section 40(a)(i)/(ia) of the Act is in consequence of such order under section 20 I and is part of disputed income as per order under section 143(3) in his case, such

disallowance would be ignored for calculating disputed tax, in accordance with the proviso to section 40(a)(i)/(ia) of the Act.

It is clarified that if the assessee has made payment against the addition representing section 40(a)(i)/(ia) disallowance, the assessee shall not be entitled to interest under section 244A of the Act on amount refundable, if any, under Vivad se Vis/lWas,

It is further clarified that if the assessee wish to settle disallowance under section 40(a)(i)/(ia) in a search case on the basis of settlement of the dispute under section 201, he shall be required to pay higher amount as applicable for search cases for settling dispute in respect of that TDS default under section 201.

Question No. 32. When assessee settles his own appeal or arbitration under *Vivad se Vishwas*, will consequential reli~f be available to the deductor in default from liability determined under TDS order U/S 201?

Answer: When an assessee (being a person receiving an income) settles his own appeal or arbitration under *Vivad se Vishwas* and such appeal or arbitration is with reference to assessment of an income which was not subjected to TDS by the payer of such income (deductor in default) and an order under section 201 of the Act has been passed against such deductor in default, then such deductor in default would not be required to pay the corresponding TDS amount. However, he would be required to pay the interest under sub-section (IA) of section 201 of the Act. If such levy of interest under sub-section (IA) of section 201 qualifies forVivad se Vishwas, the deductor in default can settle this dispute at 25% or 30% of the disputed interest, as the case may be, by filing up the relevant schedule of disputed interest.

Question No. 33. Where DRP order passed on or after 1st July, 2012 and before lst June, 2016 have given relief to assessee and Department has filed appeal, how assessed tax to be calculated?

Answer: If department appeal is required to be settled, then against that appeal the appellant is required to pay only 50% of the amount that is otherwise payable if it was his appeal.

Question No. 34. Appeals against assessment order and against penalty order are filed separately on same issue. Hence there are separate appeals for both. In such a case how disputed tax to be calculated?

Answer: Please see question no. 8. Further, it is clarified that if the appellant has both appeal against assessment order and appeal against penalty relating to same assessment pending for the same assessment year, and he wishes to settle the appeal against assessment order (with penalty appeal automatically covered), he is required to give details of both appeals in one declaration form for that year. However, in the annexure he is required to fill only the schedule relating to disputed tax.

Question No. 35. If there is substantive addition as well as protective addition in the case of same assessee for different assessment year, how will that be covered? Similarly if there is substantive addition in case of one assessee and protective addition on same issue in the case of another assessee, how will that be covered under *Vivad se Vishwas*?

Answer: If the substantive addition is eligible to be covered under *Vivad se Vishwas*, then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another assessee.

Question No. 36. In a case ITAT has passed order giving relief on two issues and confirming three issues. Time to file appeal has not expired as on specified date. The taxpayer wishes to file declaration for the three issues which have gone against him. What about the other two issues as the taxpayer is not sure if the department willfile appeal or not?

Answer: The *Vivad se Vishwas* allow declaration to be filed even when time to file appeal has not expired considering them to be a deemed appeal. *Vivad se Vishwas* also envisages option to assessee to file declaration for only his appeal or declaration for department appeal or declaration for both. Thus, in a given situation the appellant has a choice, he can only settle his deemed appeal on three issues, or he can settle department deemed appeal on two issues or he can settle both. If he decides to settle only his deemed appeal, then department would be free to file appeal on the two issues (where the assessee has got relief) as per the extant procedure laid down and directions issued by the CBDT.

Question No 37. There is no provision for 50% concession in appeal pending in HC on an issue where the assessee has got relief on that issue from the SC?

Answer: If the appellant has got decision in his favour from SC on an issue, there is no dispute now with regard to that issue and he need not

settle that issue. If that issue is part of the multiple issues, the disputed tax may be calculated on other issues considering nil tax on this issue.

Question No. 38. Addition was made u/s 143(3) on two issues whereas appeal filed only for one addition. Whether interest and penalty be waived for both additions.

Answer: Under *Vivad se Vishwas*, interest and penalty will be waived only in respect of the issue which is disputed in appeal and for which declaration is filed. Hence, for the undisputed issue, the tax, interest and penalty shall be payable,

Question no 39. DRP has issued directions confirming all the proposed additions in the draft order and the A 0 has passed the order accordingly. The issues confirmed by DRP include an issue on which the taxpayer has got favourable order from ITAT (not reversed by HC or SC) in an earlier year. The time limit to, file appeal in ITAT is still available. The taxpayer is eligible for *Vivad se Vishwas* treating the situation as taxpayer's deemed appeal in ITAT. In this case how will disputed tax be calculated? Will it be 100% on the issue allowed by ITAT in earlier years or 50%?

Answer: In this case, on the issue where the taxpayer has got relief from ITAT in an earlier year (not reversed by He or SC) the disputed tax shall be computed at half of normal rate of 100%, 110%, 125% or 135%, as the case maybe.

Question No. 40. Where there are two appeals filed for an assessment year— one by the appellant and one by the tax department, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed?

Answer: The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both. Declaration fonn is to be filed assessment year wise i.e. only one declaration for one assessment year. For different assessment years separate declarations have to be filed. So the appellant needs to specify in the declaration form whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year. The computation of tax payable would be carried out accordingly.

Questions Related to Procedure (Q. No. 41-50)

Question No. 41. How much time shall be available for paying the taxes after filing a declaration under the *Vivad se Vishwas*?

Answer: As per clause 5 of *Vivad se Vishwas*, the DA shall determine the amount payable by the declarant within fifteen days from the date of receipt of the declaration and grant a certificate to the declarant containing particulars of the tax-arrear and the amount payable after such determination. The declarant shall pay the amount so determined within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form. Thereafter, the DA shall pass an order stating that the declarant has paid the amount. It may be clarified that 15 days is outer limit. The DAs shall be instructed to grant a certificate at an early date enabling the appellant to pay the amount on or before 31 st March, 2020 so that he can take benefit of reduced payment to settle the dispute.

Question No. 42. If taxes are paid after availing the benefits of the *Vivad se Vishwas* and later the taxpayer decides to take refund of these taxes paid, would it be possible?

Answer: No. Any amount paid in pursuance of a declaration made under the *Vivad se Vishwas* shall not be refundable under any circumstances.

Question No. 43. Where appeals are withdrawn from the appellate forum, and the declarant is declared to be ineligible under the *Vivad se Vishwas* by DA at the stage of determination of amount payable under section 5(1) or, amount determined by])A is at variance of amount declared by declarant and declarant is not agreeable to DA's determination of amount payable, then whether the appeals are automatically reinstated or a separate application needs to be filed for reinstating the appeal before the appellate authorities.

Answer: Under the amended procedure no appeal is required to be withdrawn before the grant of certificate by DA. After the grant of certificate by DA under clause 5, the appellant is required to withdraw appeal or writ or special leave petition pending before the appellant forum and submit proof of withdrawal with intimation of payment to the DA as per the same clause. Where assessee has made request for withdrawal and such request is under process, proof of request made shall be enclosed.

Similarly in case of arbitration, conciliation or mediation, proof of withdrawal of arbitration/conciliation/mediation is to be enclosed along with intimation of payment to the DA.

Question No. 44. Clause 5(2) requires declarant to pay amount determined by DA within 15 days of receipt of cenificate from DA.

Clarification is required on whether declarant is to also intimate DA about fact of having made payment pursuant to declaration within the period of 15 days?

Answer: As per clause 5(2), the declarant shall pay the amount determined under clause 5(1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form and thereupon the DA shall pass an order stating that the declarant has paid the amount.

Question No. 45. Will DA also pass order granting expressly, immunity from levy of interest and penalty by the A () as well as immunity from prosecution?

Answer: As per clause 6, subject to the provisions of clause 5, the DA shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrears. This shall be reiterated in the order under section 5(2) passed by DA.

Question No. 46. Whether])A can amend his order to rectify any patent errors?

Answer: Yes, the DA shall be able to amend his order under clause 5 to rectify any apparent errors.

Question No. 47. Where tax determined by DA is not acceptable can appeal be filed against the order of designated authority before ITAT, High Court or Supreme Court?

Answer: No. As per clause 4(7), no appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrears mentioned in the declaration in respect of which order is passed by the DA or the payment of sum determined by the DA.

Question No 48. There is no provision for withdrawal of appeal/writ/SLP by the department on settlement of dispute

Answer: On intimation of payment to the DA by the appellant pertaining to department appeal/writ/SLP, the department shall withdraw such appeal/writ/SLP.

Question No 49. Once declaration is filed under *Vivad se Vishwas*, and for financial difficulties, payment is not made accordingly, will the declaration be null and void?

Answer: Yes it would be void.

Question no 50. Where the demand in case of an assessee has been reduced partly or fully by giving appeal effect to the order of appellate forum, how would the amount payable under *Vivad se Vishwas* be adjusted?

Answer: In such cases, after getting the proof of payment of the amount payable under *Vivad se Vishwas*, the AO shall pass order under the relevant provisions of *Vivad se Vishwas* to create demand in case of assessee against which the amount payable shall be adjusted.

Questions Related to Consequences (Q. No. 51-55)

Question No. 51. Will/here be immunity from prosecution?

Answer: Yes, clause 6 provides for immunity from prosecution to a declarant in relation to a tax arrears for which declaration is filed under *Vivad se Vishwas* and in whose case an order is passed by the DA that the amount payable under *Vivad se Vishwas* has been paid by the declarant.

Question No. 52. Will the result of this *Vivad se Vishwas* be applied same issues pending before AO?

Answer: No, only the issues covered in the declaration are settled in the dispute without any prejudice to same issues pending in other cases. It has been clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

Question No. 53. If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to be carried forward?

Answer: As per the amendment proposed in *Vivad se Vishwas*, in a case where the dispute in relation to an assessment year relates to reduction of Minimum Alternate Tax (MAT) credit or reduction of loss or depreciation, the appellant shall have an option either to (i) include the amount of tax related to such MAT credit or loss or depreciation in the amount of disputed tax and carry forward the MAT credit or loss or deprecation or (ii) to carry forward the reduced tax credit or loss or depreciation. CBDT will prescribe the manner of calculation in such cases.

Question No. 54. If the taxpayer avails *Vivad se Vishwas* for Transfer Pricing adjustment, will provisions of section 92CE of the Act apply separately?

Answer: Yes, secondary adjustment under section 92CE will be applicable. However, it may bc noted that the provision of secondary adjustment as contained in section 92CE of the Act is not applicable for primary adjustment made in respect of an assessment year commencing on or before the 1st day of April 2016. That means, if there is any primary adjustment for assessment year 2016-17 or earlier assessment year, it is not subjected to secondary adjustment under section 92CE of the Act.

Question No. 55. The appellant has settled the dispute under *Vivad se Vishwas* in an assessment year. Whether it is open for Revenue to take a stand that the additions have been accepted by the appellant and hence he cannot dispute it in future assessment years?

Answer. Please refer answer to question no 52. It has been clarified in Explanation to clause 5 that making a declaration under *Vivad se Vishwas* shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income- tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

(Ankur Goyal)
Under Secretary to the Govt. of India

Notification extending due date for filing Form GSTR-4 till 31.08.2020

[F. No. CBEC-20/01/09/2019-GST] New Delhi, the 13th July, 2020

No. 59/2020 – Central Tax

G.S.R. 443(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 amendment 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, in the first proviso, for the figures, letters and words —15th day of July, 2020‖, the figures, letters and words —31st day of August, 2020‖ shall be substituted.

GAURAV SINGH, Dy. Secy

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, vide number G.S.R. 322(E), dated the 23rd April, 2019 and last amended by notification No. 34/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 234(E), dated the 3rd April, 2020.

Circular clarifying GST on license fee charged by States for grant of Liquour licenses and other licenses

CIRCULAR NO. 08/2020-GST
(Ref. Circular No. 121/40/2019-GST of Central Tax)

No. F.3(294)/Policy-GST/2019/20-26 Dated: 13.07.2020

Subject – GST on license fee charged by the States for grant of Liqour licences to vendors-reg.

Services provided by the Government to business entties including by way of grant of privileges, licences, mining rights, natural resources

such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Same was the position under Service Tax regime also with effect from 1st April, 2016. Tax is required to be paid by the business entities on such services under reverse charge.

2. GST Council in its 26th meeting held on 10.03.2018, recommended that GST was not leviable on licence fee, application fee, by whatever name is called, payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by Services Tax/Exicse authorities on license fee for alcoholic liquor for human consumption in the pre-GST eta, i.e. for the period from 01-04-2016 to 30.06.2017.

3. Grant of liquor licences by State Government against payment of consideration in the form of licence fee etc. application lee etc. was a taxable service under Service Tax, therefore to implement GST Council's recommendation, Central Government decided to exempt service provided or agreed to be provided by way of grant of liquor licence by the State Government against consideration in the form of licence fee or application fee, by whatever name called during the period from 01.04.2016 to 30.06.2017. Clause No. 117 of Finance (No. 2) Act, 2010 may he referred in this regard.

4. GST Council in its 37th meeting held on 20.09.2019 further recommended that the decision of the 26th GST Council meeting be implemented by notifying sevice by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called, by State Government as neither a supply of goods nor a supply of service. Therefore, in exercise of powers conferred under sub-section 2(b) of section 7 of DGST Act. 2017, Notification No. 25/2019-State Tax (Rate) dated 12th December, 2019 has been issued.

5. GST Council further decided in the 37th meeting held on 20.09.2019, to clarify that this special dispensation applies only to supply of services by way of grant of liqour licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedance value in relation to grant of other licenses and privileges for a fee in other situation, where GST is payable.

6. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Commissioner.

Sd/-
Vivek Pandey
Commissioner (State Tax)

Circular relaxing verification of ITR for the assessment years 2015-16 to 2019-20

Circular No. / 3 / 2020

F.No.225/59/2020/ITA-II New Delhi, dated the 13th of July, 2020

Subject: - One-time relaxation for Verification of tax-returns for the Assessment years 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 which are pending due to non-filing of ITR-V form and processing of such returns - reg.

In respect of an Income-tax Return (ITR) which is filed electronically without a digital signature, the taxpayer is required to verify it using any one of the following modes within the time limit of 120 days from date of uploading the ITR: -

i. Through Aadhaar OTP

ii. By logging into e-filing account through net banking

iii. EVC through Bank Account Number

iv. EVC through Demat Account Number

v. EVC through Bank ATM

vi. By sending a duly signed physical copy of ITR-V through post to the CPC, Bengaluru

2. In this regard, it has been brought to the notice of Central Board of Direct Taxes ('CBDT') that a large number of electronically filed ITRs still remain pending with the Income-tax Department **for want of receipt of a valid ITR-V Form at CPC, Bengaluru** from the taxpayers concerned. In law, consequences of non-filing the ITR-V within the time allowed is significant as such a return is/can be declared Non-est in law, thereafter, all the consequences for non-filing a tax return, as specified in the Income-tax Act,1961 (Act) follow.

3. In this context, as a one-time measure for resolving the grievances of the taxpayers associated with non-filing of ITR-V for earlier Assessment Years and to regularize such returns which have either become Non-est

or have remained pending due to non-filing/non-receipt of respective ITR-V Form, the CBDT, in exercise of powers under section 119 of the Act, **in case of returns for Assessment Years 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 which were uploaded electronically by the taxpayer within the time allowed under section 139 of the Act and which have remained incomplete due to non-submission of ITR-V Form for verification**, hereby permits verification of such returns either by sending a duly signed physical copy of ITR-V to CPC, Bengaluru through speed post or through EVC/OTP modes as listed in para 1 above. Such verification process must be completed by **30.09.2020.**

4. However, this relaxation shall not apply in those cases, where during the intervening period, Income-tax Department has already taken recourse to any other measure as specified in the Act for ensuring filing of tax return by the taxpayer concerned after declaring the return as Non-est.

5. Further, CBDT, also relaxes the time-frame for issuing the intimation as provided in second proviso to sub-section (1) of Section 143 of the Act and directs that such returns shall be processed by **31.12.2020** and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provision of section 244A (2) of the Act would apply.

6. In case the taxpayer concerned does not get his return regularized by furnishing a valid verification (either ITR-V or EVC/OTP) by 30.09.2020, necessary consequences as provided in law for non-filing the return may follow.

7. Hindi Version follows.

Sd/-
(Rajarajeshwari R.)
Under Secretary (ITA.II), CBDT

EXTENSION OF DUE DATES

Compiled by
Neetika Khanna, Advocate

GST CMP – 02

Notification No. 30/2020-CT dated 03.04.2020 extended due date for filing GST CMP – 02 for the financial year 2020-21 upto 30.06.2020

GST CMP – 08

Notification No. 12/2020-CT dated 21.03.2020 waived off the requirement of filing FORM GST CMP-08 for all tax periods of the financial year 2019-20 where the persons have filed GSTR-3B instead of CMP – 08.

Notification No. 34/2020-CT dated 30.04.2020 extended due date for filing GST CMP – 08 for the Q.E. 31.03.2020 upto 07.07.2020 – For clarifications see Circular No. 136/06/2020-GST dt. 03.04.2020.

GST GSTR – 1

1. Notification No. 04/2020-CT dated 10.01.2020 extended the due date for filing of FORM GSTR – 1 for the tax periods from July, 2017 to November, 2018 upto 17.01.2020.

2. Notification No. 12/2020-CT dated 21.03.2020 waived off the requirement of filing FORM GSTR – 1 for all tax periods of Financial Year 2019-20 for the persons who filed Form GSTR-3B instead of requirement of Form GST CMP – 08. For details see the notification.

3. Notification No. 27/2020-CT dated 23.03.2020 extended due date for filing Form GSTR-1 for quarter April 2020 to June, 2020 upto 31.07.2020 and for the quarter July, 2020 to September, 2020 upto 31.10.2020 for the registered persons having turnover upto Rs. 1.5 crore. The registered persons are required to follow special procedure. See notification.

4. Notification No. 28/2020-CT dated 23.03.2020 provides that registered persons having turnover of more than Rs. 1.5 Cr. shall furnish Form GSTR – 1 for the months of April, 2020 to September, 2020, till the 11th day of the month succeeding such month.

   [See notifications in respect to conditional waiver of interest and Late Fee also]

GST GSTR – 3B

1. Notification No. 07/2020-CT dated 03.02.2020 prescribed the due date for filing FORM GSTR - 3B for taxpayers of specified States having turnover upto Rs. 5 Crores for the month of January, 2020, February, 2020 and March, 2020, upto 22.02.2020, 22.03.2020 and 22.04.2020 and for other States for the month of January, 2020, February, 2020 and March, 2020, upto 24.02.2020, 24.03.2020 and 24.04.2020. The filing dates are staggered State wise. For details of the States, see the Notification.

2. Notification No. 29/2020-CT dated 23.03.2020 extended the due date for filing FORM GSTR-3B for the months of April, 2020 to September, 2020 by 20th/22nd/24th (State specific and turnover specific) day of the month succeeding such month. For payment of taxes, refer to the Notification.

3. Notification No. 36/2020-CT dated 03.04.2020 extended the due date for filing of Form GSTR-3B for the month of May, 2020 for dealers having turnover of more than Rs. 5 Crores, upto 27.06.2020 and for persons having turnover of less than Rs. 5 Crore, upto 12.07.2020/14.07.2020. The due date is State-specific. Please see the notification.

   [See notifications in respect to conditional waiver of interest and Late Fee also]

GST GSTR – 4

Notification No. 34/2020-CT dated 03.04.2020 has extended the due date for filing FORM GSTR-4 for the financial year ending 31.03.2020 upto 15.07.2020. See Circular No. 136/06/2020-GST dated 03.04.2020 also.

GST GSTR-9/9C

1. Notification No. 06/2020-CT dated 03.02.2020 has extended the due date for filing (annual return) Form GSTR-9/9C for the period 01.07.2017 to 31.03.2018 upto 05.02.2020/07.02.2020. A corrigendum dated 04.02.2020 has been issued. Please see the corrigendum also. The due date is State specific. See the notification and corrigendum carefully.

2. Notification No. 09/2020-CT dated 16.03.2020 has granted exemption to foreign airlines from furnishing reconciliation statement in Form GSTR-9C subject to certain conditions. See the Notification.

3. Notification No. 15/2020-CT dated 23.03.2020 has extended the due date for filing (annual return) Form GSTR-9/9C for the financial year 2018-19 upto 30.06.2020.

4. Notification No. 41/2020-CT dated 05.05.2020 has extended the time for filing GSTR-9/9C upto 30.09.2020 for the financial year 2018-19.

GST ITC – 03

Notification No. 30/2020-CT dated 03.04.2020 extended due date for filing GST ITC – 03 for the financial year 2020-21 upto 31.07.2020. See Circular No. 136/06/2020-GST dated 03.04.2020.

GST TRAN – 1

Order No. 01/2020 dated 07.02.2020 has extended the time for filing Form GST TRAN – 1 upto 31.03.2020 for specified persons. See the notification.

General compliances in view of COVID – 19

Notification No. 35/2020-CT dated 03.02.2020 has extended the due date for various compliances/actions to be taken by the Department or by the tax payers upto 30.06.2020 if the due date for compliance falls between 20.03.2020 to 29.06.2020. This extension is subject to certain conditions. See the notification and Circular Nos. 136/06/2020-GST dated 03.04.2020 and 137/07/2020-GST dated 13.04.2020 also. Validity of E-way bills expiring during the period 20.03.2020 to 15.04.2020 has also been extended upto 30.04.2020.

E-way Bill

Notification No. 40/2020-CT dated 05.05.2020 has extended the due date for E-way bill generated upto 24.03.2020 and expiring during the period 20.03.2020 to 15.04.2020 upto 31.05.2020.

DISCLAIMER

ITEM NO. 12 COURT NO. 1 SECTION PIL-W

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Suo Motu Writ Petition (Civil) No(s). 3/2020

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

Date: 23.03.2020 This petition was taken up suo motu for hearing today.

CORAM: Hon'ble the Chief Justice
Hon'ble Mr. Justice L. Nageswara Rao
Hon'ble Mr. Justice Surya Kant

By Courts Motion

Counsel Present Mr. Tushar Mehta, SG
Ms. Swati Ghildiyal, Adv.
Mr. Ankur Talwar, Adv.
Mr. G.S.Makkar, Adv.
Mr. Raj Bahadur, Adv.
Mr. B.V.Balaram Das, AOR
Mr. Dushyant Dave, Sr. Adv.

UPON hearing the counsel the Court made the following

O R D E R

This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.

(Sanjay Kumar – II)	(Mukesh Nasa)	(Indu Kumari Pokhriyal)
Astt.Registrar-cum-PS	Court Master	Assistant Registrar

ITEM NO. 6 Virtual Court 1 SECTION PIL-W

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Suo Motu Writ Petition (Civil) No (S). 3/2020

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

WITH

I.A. No. 48411/2020 – APPROPRIATE ORDERS/DIRECTIONS
I.A. No. 48375/2020 – CLARIFICATION/DIRECTION
I.A. No. 48511/2020 – CLARIFICATION/DIRECTION
I.A. No. 48461/2020 – CLARIFICATION/DIRECTION
I.A. No. 48374/2020 – INTERVENTION APPLICATION
I.A. No. 48416/2020 – INTERVENTION APPLICATION
I.A. No. 48408/2020 – INTERVENTION APPLICATION
I.A. No. ……. OF 2020 – FILED BY MR. NARAYAN VASUDEO MARATHE, APPLICANT – IN - PERSON

Date: 06.05.2020 This matter (s) was called on for hearing today.

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE HRISHIKESH ROY

By Courts Motion

Counsel for the parties
Mr. K.K.Venugopal, Ld. AG
Mr. Tushar Mehta, Ld. SG
Mr. B.V.Balram Das, AOR
Mr. Dushyant Dave, Sr. Adv.
Mr. Sameer Pandit, Adv.
Mr. Nikhil Ranjan, Adv.
Mr. Utkarsh Kulvi, Adv.
Mr. Pranaya Goyal, AOR
Ms. Meenakshi Arora, Sr. Adv.
Mr. Ankur Mahindro, Adv.
Ms. Anannya Ghosh, AOR
Mr. Arjun Garg, AOR
Mr. Divyakant Lahoti, AOR
Mr. Parikshit Ahuja, Adv.
Ms. Praveena Bisht, Adv.
Mr. Kartik Lahoti, Adv.
Ms. Madhur Jhavar, Adv.
Ms. Vindya Mehra, Adv.
Mr. Mayank Kshirsagar, AOR
Mr. Sahil Mongi, Adv.
Mr. Aniruddha P. Mayee, AOR
Mr. Narayan Marathe, Applicant-in-person

UPON hearing the counsel the Court made the following

O R D E R

I.A. No. 48411/2020 – FOR DIRECTIONS

By way of filing this application for directions, the applicant has made the following prayer:

> "To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881;"

In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to

ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of.

IA No.48375/2020 – CLARIFICATION/DIRECTION AND IA
No.48511/2020 – CLARIFICATION/DIRECTION AND IA
No.48461/2020 – CLARIFICATION/DIRECTION AND IA
No.48374/2020 – INTERVENTION APPLICATION AND IA
No.48416/2020 – INTERVENTION APPLICATION AND IA
No.48408/2020 – INTERVENTION APPLICATION

Issue notice.

Waive service on behalf of the respondent – Union of India since Mr. K. K. Venugopal, learned Attorney General for India and Mr. Tushar Mehta, learned Solicitor General, appear on its behalf.

Let notice be issued to other respondents.

(Charanjeet Kaur) (Sanjay Kumar - II) (Indu Kumari Pokhriyal)
AR-cum-PS AR-cum-PS Assistant Registrar

Circulars Clarifying the Legal Position in Respect to Framing of Central Assessments on the Basis of Form 9

CIRCULAR NO. 5 OF 2014-15

The reconciliation return in CST Form 9 relating to receipt of declarations/ certificates for a year has been notified vide Notification No.F.3(27)/Fin(Rev-I)/2013-14/dsVI/292 dated 05/03/2014. Therefore, all eligible dealers are required to furnish relevant information for the year 2013-14 latest by 30/09/2014. In the Form 9, dealer can also furnish the details of pendency of forms for preceding three years, viz. 2010-11, 2011-12, 2012-13, if no assessment has been framed for the relevant year.

2. Accordingly, no Assessing Authorities shall frame any central assessment related to Central declaration forms and where no refund is involved, as the same shall be generated by the Systems & Operation Branch on the basis of the information furnished by the dealer in Form 9.

3. However, Assessing Authorities are allowed to frame the central assessment order of the dealer, only in such cases where it is required for processing the refund claims.

4. All Zonal Authorities may ensure strict compliance of the circular.

5. This issues with the prior approval of Commissioner, VAT conveyed vide Dy.No. 903 dated 31/07/2014.

Sd/-
(Sanjeev Ahuja)
Spl.Commissioner(Policy)

No.F.3(444)/Policy/VAT/2014/231-237 Dated 04/08/2014

CIRCULAR NO. 38 OF 2015-16

Sub - Framing of central assessments

All Assessing Authorities were advised from framing any assessment u/s 9(2) of Central Sales Tax Act, 1956 read with section 32 of Delhi Value Added Tax Act, 2004 necessitated for deficiency of central statutory forms as per instruction contained in circular No. 5 of 2014-15 issued vide No. F.3(444)/Policy/ VAT/2014/231-237 dated 04-08-2015, as filing of hard copy of said forms has since been dispensed with by

prescribing return in Form 9 by suitably amending the Central Sales Tax (Delhi) Rules, 2005, however assessing authorities were also advised to frame such assessments if it is required to process refund cases only.

2. Registered dealers who have made inter-state sales at concessional rates against 'C' forms or made stock transfers against 'F' Forms or made penultimate sale made against 'H' forms are required to file details of such forms in a reconciliation return (Form 9). The dealers, who have not filed return (Form 9) despite of the fact that they were required to do so or the dealers who have filed the returns but stated deficiency of statutory forms therein and not paid the due tax for the deficiency and interest due thereon, are required to be assessed for tax due to the government within the given time frame.

3. The details of information furnished in Form 9 is available in database of the departmental server. System/EDP branch shall provide the information so received and the amount of tax to be levied for deficiency of the forms by comparing it with information filed by the dealer in periodical returns filed in Form 1. A specimen of the editable assessment order will also be made available by system branch and Assessing Authorities are required to frame the orders accordingly. If an assessment has already been framed for any tax period, no fresh assessment order is required to be framed for same tax period again. The original order may be re-assessed if so needed provided no objection/appeal has been filed against the original order.

4. In no case, hard copy of the statutory forms for which information has been filed in Form 9 or not may be accepted while framing the assessment. Authenticity of the forms for which information has been filed in Form 9 can be verified from TINXSYS site if so required. For deficiency of 'H' forms for sale made to Delhi dealers and reported in local Return Form DVAT – 16, assessment may be framed under the local DVAT Act. To begin with, the exercise may be completed for the year 2011-12 by the end of February, 2016. Thereafter, cases for next assessment years 2012-13 and 2013-14 respectively may be taken up after receiving the details from the systems branch.

OHAs/SOHAs shall allow the objection/appeal to be filed for the assessment orders framed for deficiency of forms only after ensuring that the information of the forms, received after framing assessment orders whether attached with the objection/appeal or produced during the proceedings, have been filed online.

This issues with the approval Commissioner, Value Added Tax.

Sd/-
(R.K.Mishra)
Spl. Commissioner (Policy)

No. F.3(636)/Policy/VAT/2016/1463-69 Dated: 18.02.2016

CIRCULAR NO 6 of 2017-18

Subject: Multiple Assessment Orders

It has been brought to the notice that in few cases multiple Assessment Orders overlapping the same tax period under the same Act have been issued on one pretext or the other either under DVAT Act or CST Act.

The competent authority has desired that wherever such cases are brought to the knowledge of concerned Assessing Authority and if the concerned dealer approaches the Assessing Authority with details of such orders which are multiple Assessment Orders of the category mentioned above, then necessary remedies/measures as prescribed under Section 74B of DVAT Act, 2004 read with Rule 36B of DVAT Rule, 2005 relating to the review/rectification should be exercised as per the provisions of law.

The Assessing Authorities are further advised that before exercising the powers under Section 74B of DVAT Act for review/rectification, the provisions contained in Rule 36B and in particular Rule 36B(7) should be kept in mind while considering and deciding the request of the dealer.

The Assessing Authorities are further directed to ensure that hereinafter, whenever any Assessment Order is issued, it should not result in issuing the multiple orders overlapping the same tax period under the same Act i.e. DVAT Act or CST Act as the case may be.

This issues with the approval of the Commissioner, VAT.

Sd/-
(Ranjeet Singh)
Joint Commissioner (Policy)

No. F.3(767)/Policy/VAT/2017/285-92 Dated: 24.05.2017

CIRCULAR NO. 3 OF 2018-19

Subject: Regarding Assessment orders under the CST Act, 1956 for the year 2013-14

This is in continuation to this department's previous circular dated 17.04.2018 on the above captioned subject. It has been reported that in some assessment cases pertaining to the year 2013-14, FORM 9 has not been considered or has been partly considered and in some other cases more than one assessment order for the particular period. In this regard it is clarified that in assessment cases pertaining to the year 2013-14, where FORM 9 has not been considered or partly considered and more than one assessments have been made, the assessing authorities are advised to consider all such cases, under Section 74B of the DVAT Act, 2004 or under any other relevant provisions of law.

The Assessing Authorities are further advised that before exercising the powers under Section 74B of the DVAT Act, 2004, the provisions contained in Rule 36B and in particular Rule 36B(7) should be kept in mind while considering and deciding the request of the dealer, subject to the satisfaction of the Assessing Authority, who may, if needed, also call for the documents as are considered necessary by him.

The issue of Multiple Assessment has also been dealt with in detail vide Circular dated 17.04.18 and 24.05.17.

This issues with the prior approval of the Commissioner, VAT.

Sd/-
(Kuldeep Singh)
Joint Commissioner (Policy)

No. F.3(767)/Policy/VAT/2017/Pt. File/146-51 Dated: 28.03.2019

CIRCULAR NO. 10 OF 2018-19

Subject: Regarding Assessment orders under the CST Act, 1956 for the year 2014-15

This is in continuation to this department's previous circular No. 03 of 2018-19 issued on dated 15.05.18.

It has been reported that in some Assessment cases pertaining to the year 2014-15, FORM 9 has not been considered or has been partly considered (Even though filed by the dealer) and in some other cases more than one Assessment order issued for the particular period.

In this regard it is clarified that in Assessment cases pertaining to the year 2014-15, where FORM 9 has not been considered or partly considered (Even though filed by the dealer) and more than one Assessments have been made, the Assessing Authorities are advised to consider all such cases, under Section 74B of the DVAT Act, 2004 or under any other relevant provisions of law.

The Assessing Authorities are further advised that before exercising the powers under Section 74B of the DVAT Act, 2004, the provisions contained in Rule 36B and in particular Rule 36B(7) should be kept in mind while considering and deciding the request of the dealer, subject to the satisfaction of the Assessing Authority, who may if needed, also call for the documents as are considered necessary by him/her.

The issue of Multiple Assessment has already been dealt with in detail vide Circular No. 6 of 2017-18 issued on dated 24.05.17.

This issues with the prior approval of the Commissioner, (T&T).

Sd/-
(Rajesh Goyal)
Addl. Commissioner (Policy)

No. F.3(767)/Policy/VAT/2017/Pt. File/1228-33 Dated: 28.03.2019

CIRCULAR NO. 01 OF 2019-20

Sub: Regarding Assessment Orders under CST Act, 1956 for the year 2014-15.

A representation dated 02.05.2019 has been received from Sales Tax Bar Association, New Delhi, wherein it has been highlighted that the Assessment Orders passed by the Assessing Officers for the assessment year 2014-15 under the DVAT Act suffer from some deficiencies/infirmities. It has been stated that the demands created in the assessment orders are different and vary from the actual demand to be recovered. Further, in many cases, there is no tax period mentioned in the assessment orders and the tax period column is shown “BLANK”.

The matter has been examined after obtaining feedback few Assessing Officers as well as technical team of System Branch of the Department. The technical team has informed that there was some bug in the system, due to which such type of deficient orders have occurred/generated. The System Branch has already taken corrective measures in this regard and bug has been removed from the system. Therefore, in future, such kind of deficiencies/infirmities would not arise while passing the assessment orders by the Assessing officers.

However, in order to address the deficiencies/infirmities occurred in the assessment orders already passed by the Assessing Officers for the assessment year 2014-15, it is clarified that the Assessing Authorities are advised to consider all such cases under Section 74(B) of the DVAT Act read with Rule 36(B) of DDVAT Rules, 2005 and other relevant provisions of law.

This issues with the prior approval of Commissioner (T&T).

Sd/-
(Rajesh Goyal)
Addl. Commissioner (Policy)

No. F.3(767)/Policy/VAT/2017/Pt. File/159-164 Dated: 12.06.2019

CIRCULAR

All Ward Incharges/GSTOs undertaking the Assessment under DVAT Act are hereby directed to ensure that the notices for Assessment and other relevant notices are duly served upon the Assessee with proper service copy. They should also ensure that other due procedure is observed for any Assessment being undertaken in the Act. No assessment should be done ex-parte if the notice has not been duly served upon the assessee.

This issues with the prior approval of Commissioner (VAT).

Sd/-
(Balvinder Kaur)
GSTO (Policy)

No. F.3(288)/Policy/VAT/2017/PF/697-701 Dated: 16.01.2020

CIRCULAR NO. 03 OF 2019-20

Sub: Assessment Order issued by the Assessing Officer under CST (Delhi) Rules, 1957

It has been brought to the notice of Competent Authority that while processing the default assessment (Assessment Orders) on the basis of the return through Form – 9, filed by the dealer, the Assessing Officer are not following the laid down procedure.

In this regard, it is informed that the procedure to be followed in such cases have been issued on various occasions. Some of these circulars, namely, (i) F.3(767)/Policy/VAT/2017/Pt.file/1228-33 dated 28.03.2019, (ii) F.3(636)/Policy/VAT/2016/1463-69 dated 18.02.2016 and (iii) No. 2986-92 dated 01.05.2015 are enclosed for reference.

All the Assessing Authorities are hereby directed to follow the instructions laid down in this regard. Further, all Zonal Authorities are also requested to ensure compliance of these instructions.

This issues with the approval of the Commissioner, Trade & Taxes.

Encl: As above.

Sd/-
(Anand Kumar Tiwari)
Additional Commissioner (Policy)

No. F.3(636)/Policy/VAT/2016/770-73 Dated: 19.03.2020

CIRCULAR NO. 09 OF 2019-20

Subject: Regarding Assessment of pending cases of mismatch of Annexure 2A-2B under DVAT Act/Rules and pending Assessment of Central Forms (Form – 9) under CST Act/ Rules in respect of Financial Year 2015-16.

1. As per Section 34 DVAT, 2004, limitation period for all kind of Assessments is 4 years. Therefore, the limitation period of FY 2015-16 would expire on 31.03.2020. That means all pending cases are required to be assessed by 31.03.2020, otherwise, they will become time barred and it will cause loss of revenue to the Government.

2. The latest status of pending assessments in both categories are as follows (ward wise sheet as provided by EDP branch is enclosed for ready reference):-

S.No.	Assessment Type	Total cases in FY 15-16	Assessments completed	Pending Assessments on date
1.	Form 9 Assessments	3,18,552.00	83,200.00	2,35,352.00
2.	2A-2B mismatch	84,801	67,019	17,782

3. In view of the above, all Assessing Authorities/Ward Incharges (ACs/AVATOs) are directed to take the matter of pending Assessments very seriously and on top priority and to complete the pending Assessments under both categories in accordance with the provisions of relevant Act/ Rules well before 31.03.2020. They must ensure that due proceedings are undertaken within the limitation period. In case of failure to do so, concerned Assessing Authority/Ward Incharges shall be personally responsible for the loss of revenue if any to the Government Exchequer.

4. All Zonal Incharges are also requested to monitor the progress of all the Assessing Authorities/Ward Incharges under their jurisdiction.

This issues with the prior approval of the Commissioner (T&T).

Sd/-
(Anand Kumar Tiwari)
Addl. Commissioner (Policy)

No. F.3(480)/Policy-VAT/2014/748-52 Dated: 03.03.2020

CIRCULAR NO. 01 OF 2020-21

Subject: Regarding Assessment orders under the CST Act, 1956 for the year 2015-16.

It has been brought to notice that in some assessment cases pertaining to the year 2015-16, FORM 9 containing the details of the Central Statutory Forms stood filed by the dealers, however, the same has not been considered by the assessing authority. This issue was also discussed with the office bearers of STBA on 16/04/2020 wherein STBA representatives

pointed to similar instances for example i) incorrect rate of tax was applied while framing assessment, ii) in cases where Form 9 was partially filled the assessing officer while framing the assessment did not take cognizance of the central sale details that was already filed, iii) The assessing officer did not allow the ITC claim and assessed the case on full GTO iv) Multiple assessment orders were issued for the same period.

In this regard, the matter has been examined and in continuation to this department's previous circulars dated 19.03.2020 and 27.03.2020 and instructions on the above captioned subjected it is clarified that in assessment cases pertaining to the year 2015-16, where FORM 9 has not been considered or partly considered or more than one assessment have been made, the Assessing Authorities are advised to exercise the powers given to them under sub-section 5 of Section 74B i.e. either *suo motu* or upon an application made in that behalf, review the assessment or re-assessment made or order passed by such Assessing Authorities under the DVAT Act, 2004 or exercise the power under other sub-sections of section 74B to rectify the order as deemed fit.

It is further advised that all review applications of assessments pertaining to 2015-16 and which have been issued during the period of lockdown will be taken cognizance of and examined on merits. If any additional document is required by the assessing authority to carry out the review the same may be obtained by him through electronic means from the dealer during the lockdown period.

The action to be taken with regard to multiple assessment orders for the same period has already been clarified in detail vide circular dated 17.04.18 and 24.05.17.

The issues with the prior approval of Commissioner, VAT.

Sd/-
(Anand Kumar Tiwari)
Additional Commissioner (Policy)

No. F.3(636)/Policy/VAT/2016/777-82 Dated: 16.04.2020

CIRCULAR NO. 02 OF 2020-21

Assessment for tax period of 2015-16 under DVAT Act was completed by all the officers by 31.03.2020.

The Sale Tax Bar Associations & other individuals have made representations regarding some discrepancies in the assessment orders made by AA for the year 2015-16. It has been requested that such orders may be reviewed.

Section 74(B) read with rules 36(b) provides that the AA can review the assessment or re-assessment made or order passed under DVAT, 2004, *suo-moto* or an application made by the dealer in this behalf. The period of submitting such application under sub rule 3 of rule 36(B) is prescribed 30 days.

After considering the various representations of Sales Tax Bar Association and other individuals circular No. 01 of 2020 dated 16.04.2020, after obtaining prior approval of Competent Authority, was issued by the Additional Commissioner (Policy) of this officer in this regard.

However, Ministry of Home Affairs, Govt. of India vide order No. 3/2020 titled dated 23.03.2020 has issued guidelines for strict implementation of lockdown for 21 days w.e.f 25.03.2020, the period of lockdown has been further extended up 03.05.2020. The movement of public has also been restricted during the period of lockdown. As a result of this lockdown, the dealers may not be able to file review application within the time limit prescribed.

Further attention is also drawn towards the order of Hon'ble Supreme Court dated 23.03.2020 in Suo Moto petition (Civil) No. 3/2020 titled In RE: Cognizance for Extension of Limitation wherein Hon'ble Supreme Court has directed that period of limitation, whether condonable or not, prescribed under the general law or special law, shall stand extended w.e.f. 15.03.2020 till further orders to be passed by the Court in the matter and this order is binding within the meaning of Article 141 on all Courts/ Tribunals and authorities.

In light of the above, all Assessing Authorities are advised to adhere to the orders of Hon'ble Supreme Court while dealing with date of filing of review applications.

Sd/-
(Vivek Mittal)
Asst. Commissioner (Policy)

No. F.3(636)/Public Policy/VAT/2016/791-97 Dated: 27.04.2020

CIRCULAR NO. 03 OF 2020-21

1. World Health Organization (WHO) has declared the outbreak of noval corona virus (COVID-19) as a Pandemic on 11.03.2020. In order to combat COVID 19, Ministry of Home Affairs, Government of India Vide order number 40-3-2020-DM-I(A) had issued a guidelines for strict implementation for 21 days w.e.f. 25.03.2020. Ministry of Home Affairs, Government of India vide order number 40-3-2020-DM-I(A) dated 14.04.2020 has extended the lockdown measures upto 03.05.2020, further extended upto 17/5/2020. Delhi Disaster Management Authority also issued orders and guidelines for effective implementation of the lockdown measures from time to time.

2. Representations have been received for the exclusion of the period of lockdown period for the purpose of computation of limitation under various provisions of DVAT Act, 2004.

3. The matter has been examined and attention is drawn towards the order of Hon'ble Supreme Court dated 23.03.2020 in Suo Moto Petition (Civil) No. 3/2020 tilted in RE: Cognizance for Extension of Limitation wherein Hon'ble Supreme Court, has directed that the period of limitation, whether condonable or not, prescribed under the general law or special laws, shall stand extended w.e.f. 15.03.2020 till further orders to be passed by the Court in the matter and this order is binding within the meaning of Article 141 on all Courts/Tribunals and authorities.

4. In light of the above, all assessing authority and objection hearing authorities, designated under DVAT Act, 2004 are advised to adhere to the orders of the Hon'ble Supreme Court while dealing with the limitation period mentioned in the various provisions of the Delhi Value Added Tax Act, 2004.

This issues with the approval of the Commissioner, VAT.

Sd/-
(Anand Kumar Tiwari)
Additional Commissioner (Policy)

No. F.3(636)/Policy/VAT/2016/798-805 Dated: 15.05.2020

Order Extending Lockdown upto 30.06.2020

Government of NCT of Delhi
Delhi Disaster Management Authority

No. F.2/07/2020/S.I/part file/212 Dated: dt 01.06.2020

ORDER

Whereas, the Delhi Disaster Management Authority (DDMA) is satisfied that the NCT of Delhi is threatened with the spread of COVID-19 epidemic, which has already been declared as a pandemic by the World Health Organization, and has considered it necessary to take effective measures to prevent its spread in NCT of Delhi;

And whereas, Delhi Disaster Management Authority has issued various orders/instructions from time to time to all authorities concerned to take all required measures to appropriately deal with the situation;

And whereas, Delhi Disaster Management Authority has issued Order No. 176 dated 18.05.2020 with regard to extension of lockdown till the midnight of 31.05.2020, in pursuance of Ministry of Home Affairs, Govt. of India Order No.40-3/2020-DM-I(A) dated 17th May 2020.

And whereas, Ministry of Home Affairs, Govt. of India, vide Order No. 40-3/2020-DM-I(A) dated 30.05.2020 annexed with guidelines for Phased Re-opening (Unlock-I) as well as further DO letter No. 40-3/2020-DM-I(A) dated 30.05.2020 (copy enclosed), has ordered to extend the lockdown in Containment Zones upto 30.06.2020 and to re-open prohibited activities in a phased manner in areas outside the Containment Zones.

Now, therefore, in exercise of powers conferred under section 22 of the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, State Executive Committee, DDMA, GNCTD, hereby directs as under:

a) The lockdown period in the Containment Zones in the territory of NCT of Delhi is extended upto 30.06.2020. In the Containment Zones, all actions should be taken strictly as per Clause-3&4 of Annexed guidelines in letter and spirit by all authorities concerned. The guidelines issued in this regard by Ministry of Health & Family Welfare, Govt. of India as well as Department of H&FW, GNCTD will be strictly implemented.

b) In the areas of NCT of Delhi outside Containment Zones, the permissible and prohibited activities w.e.f. 01.06.2020 shall be as specified in the Annexure-A enclosed with this order.

c) All District Magistrates of Delhi and their counterpart District Deputy Commissioners of Police shall ensure the strict enforcement of these instructions and shall also adequately inform and sensitize the field functionaries about these instructions for strict compliance, in letter and spirit.

d) Pr. Secretary (I&P) shall ensure vide publicity and dissemination of the instructions issued in this order and annexed guidelines to the public for their knowledge and convenience.

All the Departments of GNCT of Delhi / Autonomous bodies/ PSUs / Corporations / Local Bodies / Delhi Police shall ensure strict compliance of this order as well as MHA Order dated 30.05.2020 along with annexed guidelines and Annexures I & II.

(Vijay Dev)
Chief Secretary, Delhi

Annexure-A

1. The following activities will continue to remain prohibited throughout the NCT of Delhi:

(i) Metro Rail Services

(ii) All schools, colleges, educational / training / coaching institutions etc. will remain closed. **Online / distance learning shall continue to be permitted and shall be encouraged.**

(iii) Hotels and other Hospitality services, **except** those meant for housing health / police / Government officials / healthcare workers / stranded persons including tourists and those used for quarantine facilities; and running of canteens at bus depots, railway stations and airports.

(iv) All cinema halls, **shopping malls**, gymnasiums, swimming pools, entertainment parks, theatres, bars and auditoriums, assembly halls and similar places.

(v) All social / political / sports / entertainment / academic / cultural /religious functions / other gatherings and large congregations.

(vi) All religious places/places of worship shall be closed for public. Religious congregations are strictly prohibited.

(vii) Spas

2. **The following activities are permitted with restrictions as specified. No permission is required from any authority for undertaking the following permitted activities:**

(i) Restaurants shall be permitted to operate kitchens for home delivery & takeaway of food items.

(ii) Transportation by buses: Intra-State (within NCT of Delhi) movement of buses (DTC as well as Cluster) shall be permitted with the condition that not more than 20 passengers shall be allowed at one time inside the bus. In the case of buses, boarding shall be allowed only from the rear door while de-boarding shall be allowed only from the front door. Before entering into the bus, each passenger shall be screened through thermal gun on 'best effort' basis. The Transport Department shall deploy adequate number of bus marshals inside each bus at all times for maintaining social distancing inside the bus and restricting the number of passengers to 20.

Social distancing shall be ensured by Transport Department at all bus stands / depots by deploying adequate number of marshals.

(iii) The transportation of passengers, other than by buses, shall also be allowed. After disembarkment of every passenger the driver shall disinfect the passenger sitting area.

(iv) All Private Offices as well as Government Offices shall be permitted to function in full strength. However, for private offices, as far as possible the practice o work from home should be followed.

(v) SHOPS AND MARKETS:

(a) All markets and market complexes shall remain open.

(b) Social distancing (2 Gaz ki doori) will be maintained in all cases. If social distancing is not maintained by any shop,

then the said shop shall be liable to be closed in view of public health hazard involved in containing the spread of COVID-19 pandemic and the shopkeeper shall also be liable for prosecution under the relevant laws.

(vi) Industrial establishments shall be permitted to function.

(vii) Construction activities shall be permitted wherever the workers are available on-site or could be transported to the site from within the NCT of Delhi.

(viii) Marriage related gathering subject to social distancing (maximum 50 guests allowed)

(ix) Funeral / last rites related gathering subject to social distancing (maximum 20 persons allowed.

(x) RWAs shall not prevent any person from performing their services and duties which has been permitted under these guidelines.

3. Containment Zones

(i) Lockdown shall continue to remain in force in the Containment Zones till 30 June, 2020.

(ii) Containment Zones will be demarcated by the District authorities after taking into consideration the guidelines of MoHFW.

(iii) In the Containment Zones, only essential activities shall be allowed. There shall be strict perimeter control to ensure that there is no movement of people in or out of these zones, except for medical emergencies and for maintaining supply of essential goods and services. In the Containment Zones, there shall be intensive contact tracing, house-to-house surveillance, and other clinical interventions, as required. Guidelines of MoHFW shall be taken into consideration for the above purpose.

4. All other activities will be permitted, except those which are specifically prohibited. However, in Containment Zones, only essential activities shall be allowed.

5. Measures for well-being and safety of persons:

(i) The movement of individuals shall remain strictly prohibited between **9.00 p.m. to 5.00 a.m., except for essential activities.**

District authorities shall issue orders, in the entire area of their jurisdiction, under appropriate provisions of law, such as under Section 144 of CrPC, and ensure strict compliance.

(ii) **Protection of vulnerable persons**

Persons above 65 years of age, persons with co-morbidities, pregnant women, and children below the age of 10 years are advised to stay at home, except for essential and health purposes.

6. Unrestricted movement of persons and goods

(i) Movement of individuals and vehicles is allowed within the NCT of Delhi. No separate permission/ approval/ e-permit will be required for these movements.

(ii) In view of current public health situation in the NCT of Delhi, inter-state movement of non-residents of Delhi, into the territory of Delhi shall be allowed only on the production of e-passes issued for essential services or in case of emergent circumstances, by authorities of respective State/UT and / or District Magistrates of NCT of Delhi. However, Government employees shall be allowed on the production of Government ID card.

(iii) Movement by passenger trains and *Shramik* special trains; domestic passenger air travel; movement of Indian Nationals stranded outside the country and of specified persons to travel abroad; evacuation of foreign nationals; and sign-on and sign-off of Indian seafarers will continue to be regulated as per SOPs issued.

(iv) No authorities of GNCT of Delhi and Delhi Police shall stop the movement of any type of goods/ cargo for cross land-border trade under Treaties with neighbouring countries.

7. **National Directives for COVID-19 Management**

National Directives for COVID-19 Management, as specified in Annexure I, shall continue to be followed throughout the NCT of Delhi.

8. **Use of *Aarogya Setu***

(i) *Aarogya Setu* enables early identification of potential risk of infection, and thus acts as a shield for individuals and the community.

(ii) With a view to ensuring safety in offices and work places, employers on best effort basis should ensure that *Aarogya Setu* is installed by all employees having compatible mobile phones.

(iii) District authorities may advise individuals to install the *Aarogya Setu* application on compatible mobile phones and regularly update their health status on the app. This will facilitate timely provision of medical attention to those individuals who are at risk.

9. **Penal provisions**

Any person violating these measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides legal action under Section 188 of the 1PC, and other legal provisions as applicable. Extracts of these penal provisions are at **Annexure II** enclosed.

Order Directing that Guidelines for Phased Reopening (Unlock 1)

No. 40-3/2020-DM-I(A)
Government of India
Ministry of Home Affairs

North Block, New Delhi-110001
Dated 30th May, 2020

ORDER

Whereas, an Order of even number dated 17.05.2020 was issued for containment of COVID-19 in the country, for a period upto 31.05.2020;

Whereas, in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order to extend the lockdown in Containment Zones upto 30.06.2020, and to re¬open prohibited activities in a phased manner in areas outside Containment Zones;

Now therefore, in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act 2005, the undersigned hereby directs that guidelines, as Annexed, will remain in force upto 30.06.2020.

Union Home Secretary
and, Chairman, National Executive Committee (NEC)

Guidelines for Phased Re-opening (Unlock 1)
lAs per Ministry of Home Affairs (MHA) Order No. 40-3/2020-DM-I (A) dated 30'' May, 2020]

1. **Phased re-opening of areas outside the Containment Zones**

In areas outside Containment Zones, all activities will be permitted, except the following, which will be allowed, with the stipulation of following Standard Operating Procedures (SOPs) to be prescribed by the Ministry of Health and Family Welfare (MoHFW), in a phased manner:

Phase 1

The following activities will be allowed with effect from 8 June, 2020:

(i) Religious places/ places of worship for public.

(ii) Hotels, restaurants and other hospitality services.

(iii) Shopping malls.

Ministry of Health & Family Welfare (MoHFW) will issue Standard Operating Procedures (SOPs) for the above activities, in consultation with the Central Ministries/ Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

Phase II

Schools, colleges, educational/ training/ coaching institutions etc., will be opened after consultations with States and UTs. State Governments/ UT administrations may hold consultations at the institution level with parents and other stakeholders. Based on the feedback, a decision on the re-opening of these institutions will be taken in the month of July, 2020.

MoHFW will prepare SOP in this regard, in consultation with the Central Ministries/Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

Phase III

Based on the assessment of the situation, dates for re-starting the following activities will be decided:

(i) International air travel of passengers, except as permitted by MHA.

(ii) Metro Rail.

(iii) Cinema halls, gymnasiums, swimming pools, entertainment parks, theatres, bars and auditoriums, assembly halls and similar places.

(iv) Social/ political/ sports/ entertainment/ academic/ cultural/ religious functions and other large congregations.

2. National Directives for COVID-19 Management

National Directives for COVID-19 Management, as specified in Annexure I, shall continue to be followed throughout the country.

3. Night curfew

Movement of individuals shall remain strictly prohibited between 9.00 pm to 5.00 am throughout the country, except for essential activities. Local authorities shall issue orders, in the entire area of their jurisdiction, under appropriate provisions of law, such as under Section 144 of CrPC, and ensure strict complianCe.

4. Lockdown limited to Containment Zones

(i) Lockdown shall continue to remain in force in the Containment Zones till 30 June, 2020.

(ii) Containment Zones will be demarcated by the District authorities after taking into consideration the guidelines of MoHFW.

(iii) In the Containment Zones, only essential activities shall be allowed. There shall be strict perimeter control to ensure that there is no movement of people in or out of these zones, except for medical emergencies and for maintaining supply of essential goods and services. In the Containment Zones, there shall be intensive contact tracing, house-to-house surveillance, and other clinical interventions, as required. Guidelines of MoHFW shall be taken into consideration for the above purpose.

(iv) States/ UTs may also identify Buffer Zones outside the Containment Zones, where new cases are more likely to occur.

Within the buffer zones, restrictions as considered necessary may be put in place by the District authorities.

5. States/ UTs, based on their assessment of the situation, may prohibit certain activities outside the Containment zones, or impose such restrictions as deemed necessary.

6. Unrestricted movement of persons and goods

(i) There shall be no restriction on inter-State and intra-State movement of persons and goods. No separate permission/ approval/ e-permit will be required for such movements.

(ii) However, if a State/ UT, based on reasons of public health and its assessment of the situation, proposes to regulate movement of persons, it will give wide publicity in advance regarding the restrictions to be placed on such movement, and the related procedures to be followed.

(iii) Movement by passenger trains and Shramik special trains; domestic passenger air travel; movement of Indian Nationals stranded outside the country and of specified persons to travel abroad; evacuation of foreign nationals; and sign-on and sign-off of Indian seafarers will continue to be regulated as per SOPs issued.

(iv) No State/ UT shall stop the movement of any type of goods/ cargo for cross land-border trade under Treaties with neighbouring countries.

7. Protection of vulnerable persons

Persons above 65 years of age, persons with co-morbidities, pregnant women, and children below the age of 10 years are advised to stay at home, except for essential and health purposes.

8. Use of Aarogya Setu

(i) Aarogya Setu enables early identification of potential risk of infection, and thus acts as a shield for individuals and the community.

(ii) With a view to ensuring safety in offices and work places, employers on best effort basis should ensure that Aarol,Tya Setu is installed by all employees having compatible mobile phones.

(iii) District authorities may advise individuals to install the Aarogya Setu application on compatible mobile phones and regularly update their health status on the app. This will facilitate timely provision of medical attention to those individuals who are at risk.

9. Strict enforcement of the guidelines

(i) State/ UT Governments shall not dilute these guidelines issued under the Disaster Management Act, 2005, in any manner.

(ii) All the District Magistrates shall strictly enforce the above measures.

10. Penal provisions

Any person violating these measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides legal action under Section188 of the IPC, and other legal provisions as applicable. Extracts of these penal provisions are at Annexure II.

Union Home Secretary
and, Chairman, National Executive Committee

Annexure I

National Directives for COVID-19 Management

1. **Face coverings:** Wearing of face cover is compulsory in public places; in workplaces; and during transport.
2. **Social distancing:** Individuals must maintain a minimum distance of 6 feet (2 gaz ki doori) in public places. Shops will ensure physical distancing among customers and will not allow more than 5 persons at one time.
3. **Gatherings:** Large public gatherings/ congregations continue to remain prohibited.

Marriage related gatherings	:	Number of guests not to exceed 50.
Funeral/ last rites related gatherings	:	Number of persons not to exceed 20.

4. **Spitting in public places** will be punishable with fine, as may be prescribed by the State/UT local authority in accordance with its laws, rules or regulations.

5. **Consumption of liquor, *paan, gutka,* tobacco** etc.in public places is prohibited.

Additional directives for Work Places

6. **Work from home(WfH):** As far as possible the practice of WfH should be followed.

7. **Staggering of work/ business hours** will be followed in offices, work places, shops, markets and industrial & commercial establishments.

8. **Screening & hygiene:** Provision for thermal scanning, hand wash and sanitizer will be made at all entry and exit points and common areas.

9. **Frequent sanitization** of entire workplace, common facilities and all points which come into human contact e.g. door handles etc., will be ensured, including between shifts.

10. **Social distancing:** All persons in charge of work places will ensure adequate distance between workers, adequate gaps between shifts, staggering the lunch breaks of staff, etc.

Annexure II

Offences and Penalties for Violation of Lockdown Measures

Section 51 to 60 of the Disaster Management Act, 2005

51. Punishment for obstruction, etc.—Whoever, without reasonable cause —

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

52. Punishment for false claim.—Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

53. Punishment for misappropriation of money or materials, etc.—Whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or wilfully compels any other person so to do, shall on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

54. Punishment for false warning.—Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.

55. Offences by Departments of the Government.—(1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

56. Failure of officer in duty or his connivance at the contravention of the provisions of this Act.—Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.

57. Penalty for contravention of any order regarding requisitioning.—If any person contravenes any order made under section 65, he shall be punishable with imprisonment for a ten-n which may extend to one year or with fine or with both.

58. Offence by companies.—(1) Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in. sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed

to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

59. Previous sanction for prosecution.—No prosecution for offences punishable under sections 55 and 56 shall be instituted except with the previous sanction of the Central Government or the State Government, as the case may be, or of any officer authorised in this behalf, by general or special order, by such Government.

60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.

B. Section 188 in the Indian Penal Code, 1860

188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate stich order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger

to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Video Conferencing Rules

High Court of Delhi: New Delhi

NOTIFICATION

No. 325 /Rules/DHC Dated: 01.06.2020

VIDEO CONFERENCING RULES

Preface

Whereas it is expedient to consolidate, unify and streamline the procedure relating to the use of video conferencing for Courts; and

In exercise of its powers under Articles 225 and 227 of the Constitution of India, the High Court of Delhi makes the following Rules.

Chapter I – Preliminary

1. These Rules shall be called the “High Court of Delhi Rules for Video Conferencing for Courts 2020".

(i) These Rules shall apply to such courts or proceedings or classes of courts or proceedings and on and from such date as the High Court may notify in this behalf.

2. Definitions

In these Rules, unless the context otherwise requires:

(i) "Advocate" means and includes an advocate entered in any roll maintained under the provisions of the Advocates Act, 1961 and shall also include government pleaders/advocates and officers of the department of prosecution.

(ii) "Commissioner" means a person appointed as commissioner under the provisions of Code of Civil Procedure, 1908 (CPC), or the Code of Criminal Procedure, 1973 (CrPC), or any other law in force.

(iii) "Coordinator" means a person nominated as coordinator under Rule 5.

(iv) "Court" includes a physical Court and a virtual Court or tribunal.

(v) "Court Point" means the Courtroom or one or more places where the Court is physically convened, or the place where a Commissioner or an inquiring officer holds proceedings under the directions of the Court.

(vi) “Court User” means a user participating in Court proceedings through video conferencing at a Court Point.

(vii) “Designated Video Conferencing Software” means software provided by the High Court from time to time to conduct video conferencing.

(viii) “Exceptional circumstances” include illustratively a pandemic, natural calamities, circumstances implicating law and order and matters relating to the safety of the accused and witnesses.

(ix) “Live Link” means and includes a live television link, audio-video electronic means or other arrangements whereby a witness, a required person or any other person permitted to remain present, while physically absent from the Courtroom is nevertheless virtually present in the Courtroom by remote communication using technology to give evidence and be cross-examined.

(x) “Remote Point” is a place where any person or persons are required to be present or appear through a video link.

(xi) “Remote User” means a user participating in Court proceedings through video conferencing at a Remote Point.

(xii) “Required Person” includes:

a. the person who is to be examined; or

b. the person in whose presence certain proceedings are to be recorded or conducted; or

c. an Advocate or a party in person who intends to examine a witness; or

d. any person who is required to make submissions before the Court; or

e. any other person who is permitted by the Court to appear through video conferencing.

(xiii) "Rules" shall mean these Rules for Video Conferencing for Courts and any reference to a Rule, Sub-Rule or Schedule shall be a reference to a Rule, Sub-Rule or Schedule of these Rules.

Chapter II - General Principles

3. General Principles Governing Video Conferencing

(i) Video conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court.

(ii) All proceedings conducted by a Court via video conferencing shall be judicial proceedings and all the courtesies and protocols applicable to a physical Court shall apply to these virtual proceedings. The protocol provided in Schedule I shall be adhered to for proceedings conducted by way of video conferencing.

(iii) All relevant statutory provisions applicable to judicial proceedings including provisions of the CPC, CrPC, Contempt of Courts Act, 1971, Indian Evidence Act, 1872 (Evidence Act), and Information Technology Act, 2000 (IT Act), shall apply to proceedings conducted by video conferencing.

(iv) Subject to maintaining independence, impartiality and credibility of judicial proceedings, and subject to such directions as the High Court may issue, Courts may adopt such technological advances as may become available from time to time.

(v) The Rules as applicable to a Court shall mutatis mutandis apply to a Commissioner appointed by the Court to record evidence and to an inquiry officer conducting an inquiry.

(vi) There shall be no unauthorised recording of the proceedings by any person or entity.

(vii) The person defined in Rule 2(xii) shall provide identity proof as recognised by the Government of India/State Government/Union Territory to the Court point coordinator via personal email. In case of identity proof not being readily available the person concerned shall furnish the following personal details: name, parentage and permanent address, as also, temporary address if any.

4. Facilities recommended for Video Conferencing

The following equipment is recommended for conducting proceedings by video conferencing at the Court Point and the Remote Point:

(i) Desktop, Laptop, mobile devices with internet connectivity and printer;

(ii) Device ensuring uninterrupted power supply;

(iii) Camera;

(iv) Microphones and speakers;

(v) Display unit;

(vi) Document visualizer;

(vii) Provision of a firewall;

(viii) Adequate seating arrangements ensuring privacy;

(ix) Adequate lighting; and

(x) Availability of a quiet and secure space

5. Preparatory Arrangements

5.1 There shall be a Coordinator both at the Court Point and at the Remote Point from which any Required Person is to be examined or heard. However, Coordinator may be required at the Remote Point only when a witness or a person accused of an offence is to be examined.

5.2 In the civil and criminal Courts falling within the purview of the district judiciary, persons nominated by the High Court or the concerned District Judge, shall perform the functions of Coordinators at the Court Point as well as the Remote Point as provided in Rule 5.3.

5.3 The Coordinator at the Remote Point may be any of the following:

Sub Rule	Where the Advocate or Required Person is at the following Remote Point:-	The Remote Point Coordinator shall be:-
5.3.1	Overseas	An official of an Indian Consulate / the relevant Indian Embassy / the relevant High Commission of India
5.3.2	Court of another state or union territory of India	Any authorized official nominated by the concerned District Judge
5.3.3	Mediation Centre or office of District Legal Services Authority	Any authorized person / official nominated by the Chairperson or Secretary of the concerned District Legal Services Authority.

5.3.4	Jail or prison	The concerned Jail Superintendent or Officer- in-charge of the prison.
5.3.5	Hospitals administered by the Central Government, the State Government or local bodies	Medical Superintendent or an official authorized by them or the person in charge of the said hospital
5.3.6	Observation Home, Special Home, Children's Home, Shelter Home, or any institution referred to as a child facility (collectively referred to as child facilities) and where the Required Person is a juvenile or a child or a person who is an inmate of such child facility.	The Superintendent or Officer in charge of that child facility or an official authorized by them.
5.3.7	Women's Rescue Homes, Protection Homes, Shelter Homes, Nari Niketans or any institution referred to as a women's facility (collectively referred to as women's facilities).	The Superintendent or Officer-in-charge of the women's facility or an official authorized by them.
5.3.8	In custody, care or employment of any other government office, organization or institution (collectively referred to as institutional facilities).	The Superintendent or Officer-in-charge of the institutional facility or an official authorized by them.
5.3.9	Forensic Science Lab	The Administrative officer-in-charge or their nominee.
5.3.10	In case of any other location	The concerned Court may appoint any person deemed fit and proper who is ready and willing to render services as a Coordinator to ensure that the proceedings are conducted in a fair, impartial and independent manner and according to the directions issued by the Court in that behalf.

5.3.11 Notwithstanding the provisions of Clause 5.3.1, where witness examination is to take place in a criminal case of a person located outside the country, the provisions of the "Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory (LRs) / Mutual Legal Assistance (MLA) Request and Service of Summons / Notices/ Judicial documents in respect of Criminal Matters" (available at

http://164.100.117.97/WriteReadData/userfiles/ISII_ComprehensiveGuidelinesMutualLegalAssistance_17122019.pdf) will be followed to the extent they comport with the provisions of the CrPC and the Evidence Act. Furthermore, before the Court employs its discretion to carry out witness examination via video conference, it will obtain the consent of the accused.

5.4 When a Required Person is at any of the Remote Points mentioned in Sub Rule 5.3 and video conferencing facilities are not available at any of these places the concerned Court will formally request the District Judge, in whose jurisdiction the Remote Point is situated to appoint a Coordinator for and to provide a video conferencing facility from proximate and suitable Court premises.

5.5 The Coordinators at both the Court Point and Remote Point shall ensure that the recommended requirements set out in Rule 4 are complied with so that the proceedings are conducted seamlessly.

5.6 The Coordinator at the Remote Point shall ensure that:

5.6.1 All Advocates and/or Required Persons scheduled to appear in a particular proceeding are ready at the Remote Point designated for video conferencing at least 30 minutes before the scheduled time.

5.6.2 No unauthorised recording device is used.

5.6.3 No unauthorised person enters the video conference room when the video conference is in progress.

5.6.4 The person being examined is not prompted, tutored, coaxed, induced or coerced in any manner by any person and that the person being examined does not refer to any document, script or device without the permission of the concerned Court during the examination.

5.7 Where the witness to be examined through video conferencing requires or if it is otherwise expedient to do so, the Court shall give sufficient notice in advance, setting out the schedule of video conferencing and, in appropriate cases may transmit non-editable digital scanned copies of all or any part of the record of the proceedings to the official email account of the Coordinator of the concerned Remote Point designated under Rule 5.3.

5.8 Before the scheduled video conferencing date, the Coordinator at the Court Point shall ensure that the Coordinator at the Remote Point receives certified copies, printouts or a soft copy of the non-editable scanned copies of all or any part of the record of proceedings which may be required for recording statements or evidence, or for reference. However, these shall be permitted to be used by the Required Person only with the permission of the Court.

5.9 Whenever required the Court shall order the Coordinator at the Remote Point or at the Court Point to provide -

5.9.1 A translator in case the person to be examined is not conversant with the official language of the Court.

5.9.2 An expert in sign languages in case the person to be examined is impaired in speech and/or hearing.

5.9.3 An interpreter or a special educator, as the case may be, in case a person to be examined is differently-abled, either temporarily or permanently.

Chapter III - Procedure for Video Conferencing

6. Application for Appearance, Evidence and Submission by Video Conferencing:

6.1 Any party to the proceeding or witness, save and except where proceedings are initiated at the instance of the Court, may move a request for video conferencing. A party or witness seeking a video conferencing proceeding shall do so by making a request via the form prescribed in Schedule II.

6.2 Any proposal to move a request for video conferencing should first be discussed with the other party or parties to the proceeding, except where it is not possible or inappropriate, for example in cases such as urgent applications.

6.3 On receipt of such a request and upon hearing all concerned persons, the Court will pass an appropriate order after ascertaining that the application is not filed to impede a fair trial or to delay the proceedings.

6.4 While allowing a request for video conferencing, the Court may also fix the schedule for convening the video conferencing.

6.5 In case the video conferencing event is convened for making oral submissions, the order may require the Advocate or party in person to submit written arguments and precedents, if any, in advance on the official email ID of the concerned Court.

6.6 Costs, if directed to be paid, shall be deposited within the prescribed time, commencing from the date on which the order convening proceedings through video conferencing is received.

7. Service of Summons

7.1 Summons issued to a witness who is to be examined through video conferencing, shall mention the date, time and venue of the concerned Remote Point and shall direct the witness to attend in person along with proof of identity or an affidavit to that effect. The existing rules regarding service of the summons and the consequences for non-attendance, as provided in the CPC and CrPC shall apply to service of summons for proceedings conducted by video conferencing.

7.2 Furthermore in respect of service of summons on witnesses residing outside the country, concerning criminal matters, the provisions of "Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory (LRs) / Mutual Legal Assistance (MLA) Request and Service of Summons / Notices/ Judicial documents in respect of Criminal Matters" (available at http://164.100.117.97/WriteReadData/userfiles/ISII_ComprehensiveGuidelinesMutualLegalAssistance_17122019.pdf) will be followed to the extent they comport with the provisions of the CrPC and the extant laws.

8. Examination of persons

8.1 Any person being examined, including a witness shall, before being examined through video conferencing, produce and file proof of identity by submitting an identity document issued or duly recognized by the Government of India, State Government, Union Territory, or in the absence of such a document, an affidavit attested by any of the authorities referred to in Section 139 of the CPC or Section 297 of the CrPC, as the case may be. The affidavit will inter alia state that the person, who is shown to be the party to the proceedings or as a witness, is the same person, who is to depose at the virtual hearing. A copy of the proof of identity or affidavit, as the case may be, will be made available to the opposite party.

8.2 The person being examined will ordinarily be examined during the working hours of the concerned Court or at such time as the Court may deem fit. The oath will be administered to the person being examined by the Coordinator at the Court Point.

8.3 Where the person being examined, or the accused to be tried, is in custody, the statement or, as the case may be, the testimony, may be recorded through video conferencing. The Court shall provide adequate opportunity to the under-trial prisoner to consult in privacy with their counsel before, during and after the video conferencing.

8.4 Subject to the provisions for the examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgement with the Court in this behalf.

8.5 If a person is examined concerning a particular document then the summons to witness must be accompanied by a duly certified photocopy of the document. The original document should be exhibited at the Court Point as per the deposition of the concerned person being examined.

8.6 The Court would be at liberty to record the demeanour of the person being examined.

8.7 The Court will note the objections raised during the deposition of the person being examined and rule on them.

8.8 The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will form part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained in either of the following ways:

8.8.1 If digital signatures are available at both the concerned Court Point and Remote Point, the soft copy of the transcript digitally signed by the presiding Judge at the Court Point shall be sent by the official e-mail to the Remote Point where a print out of the same will be taken and signed by the person being examined. A scanned copy

of the transcript digitally signed by the Coordinator at the Remote Point would be transmitted by official email to the Court Point. The hard copy of the signed transcript will be dispatched after the testimony is over, preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.

8.8.2 If digital signatures are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-editable scanned format to the official email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/ registered speed post.

8.9 An audio-visual recording of the examination of the person examined shall be preserved. An encrypted master copy with hash value shall be retained as a part of the record.

8.10 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect the privacy of the person examined bearing in mind aspects such as age, gender, physical condition and recognized customs and practices.

8.11 The Coordinator at the Remote Point shall ensure that no person is present at the Remote Point, save and except the person being examined and those whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue.

8.12 The Court may also impose such other conditions as are necessary for a given set of facts for effective recording of the examination (especially to ensure compliance with Rule 5.6.4).

8.13 The examination shall, as far as practicable, proceed without interruption or the grant of unnecessary adjournments. However, the Court or the Commissioner as the case may be will be at liberty to determine whether an adjournment should be granted, and if so, on what terms.

8.14 The Court shall be guided by the provisions of the CPC and Chapter XXIII, Part B of the CrPC, the Evidence Act and the IT Act while examining a person through video conferencing.

8.15 Where a Required Person is not capable of reaching the Court Point or the Remote Point due to sickness or physical infirmity, or presence of the required person cannot be secured without undue delay or expense, the Court may authorize the conduct of video conferencing from the place at which such person is located. In such circumstances, the Court may direct the use of portable video conferencing systems. Authority in this behalf may be given to the concerned Coordinator and/or any person deemed fit by the Court.

8.16 Subject to such orders as the Court may pass, in case any party or person authorized by the party is desirous of being physically present at the Remote Point at the time of recording of the testimony, such a party shall make its arrangement for appearance /representation at the Remote Point.

9. Exhibiting or Showing Documents to Witness or Accused at a Remote Point

If in the course of examination of a person at a Remote Point by video conferencing, it is necessary to show a document to the person, the Court may permit the document to be shown in the following manner:

9.1 If the document is at the Court Point, by transmitting a copy or image of the document to the Remote Point electronically, including through a document visualizer; or

9.2 If the document is at the Remote Point, by putting it to the person and transmitting a copy/image of the same to the Court Point electronically including through a document visualizer. The hard copy of the document countersigned by the witness and the Coordinator at the Remote Point shall be dispatched thereafter to the Court Point via authorized courier/registered speed post.

10. Ensuring seamless video conferencing

10.1 The Advocate or Required Person, shall address the Court by video conferencing from a specified Remote Point on the date and time specified in the order issued by the Court. The presence of the coordinator will not be necessary at the Remote point where arguments are to be addressed by an advocate or party in person before the Court.

10.2 If the proceedings are carried out from any of the Remote Point(s) (in situations described in Rules 5.3.1 to 5.3.9) the Coordinator at such Remote Point shall ensure compliance of all technical requirements. However, if the proceedings are conducted from a Remote Point falling in the situation contemplated under Rule 5.3.10, such as an Advocate's office, the Coordinator at the Court Point shall ensure compliance of all technical requirements for conducting video conferencing at both the Court Point and the Remote Point.

10.3 The Coordinator at the Court Point shall be in contact with the concerned Advocate or the Required Person and guide them regarding the fulfilment of technical and other requirements for executing a successful hearing through video conferencing. Any problems faced by such Remote Users shall be resolved by the Court Point Coordinator. The Court Point Coordinator shall inter alia share the link of the video conferencing hearing with such Remote Users.

10.4 The Coordinator at the Court Point shall ensure that any document or audio-visual files, emailed by the Remote User, are duly received at the Court Point.

10.5 The Coordinator at the Court Point shall also conduct a trial video conferencing, preferably 30 minutes before scheduled video conferencing to ensure that all the technical systems are in working condition at both the Court Point and the Remote Point.

10.6 At the scheduled time, the Coordinator at the Court Point shall connect the Remote User to the Court.

10.7 On completion of the video conferencing proceeding, the Court shall mention in the order sheet the time and duration of the proceeding, the software used (in case the software used is not the Designated Video Conferencing Software), the issue(s) on which the Court was addressed and the documents if any that

were produced and transmitted online. In case a digital recording is tendered, the Court shall record its duration in the order sheet along with all other requisite details.

10.8 The Court shall also record its satisfaction as to clarity, sound and connectivity for both Court Users and Remote Users.

10.9 On the completion of video conferencing, if a Remote User believes that she/he were prejudiced due to poor video and/or audio quality, the Remote User shall immediately inform the Coordinator at the Court Point, who shall, in turn, communicate this information to the Court without any delay. The Court shall consider the grievance and if it finds substance in the grievance may declare the hearing to be incomplete and the parties may be asked to re-connect or make a physical appearance in Court.

11. Judicial remand, the framing of charge, the examination of accused and Proceedings under Section 164 of the CrPC

11.1 The Court may, at its discretion, authorize the detention of an accused, frame charges in a criminal trial under the CrPC by video conferencing. However, ordinarily judicial remand in the first instance or police remand shall not be granted through video conferencing save and except in exceptional circumstances for reasons to be recorded in writing.

11.2 The Court may, in exceptional circumstances, for reasons to be recorded in writing, examine a witness or an accused under Section 164 of the CrPC or record the statement of the accused under Section 313 CrPC through video conferencing, while observing all due precautions to ensure that the witness or the accused as the case may be is free of any form of coercion, threat or undue influence. The Court shall ensure compliance with Section 26 of the Evidence Act.

Chapter IV - General Procedure

12. General procedure

12.1 The procedure set out hereafter in this chapter is without prejudice to the procedure indicated elsewhere in these Rules qua specific instances in which proceedings are conducted via video conferencing.

12.2 The Coordinator at the Court Point shall ensure that video conferencing is conducted only through a Designated Video Conferencing Software. However, in the event of a technical glitch during a given proceeding, the concerned Court may for reasons to be recorded permit the use of software other than the Designated Video Conferencing Software for video conferencing in that particular proceeding.

12.3 The identity of the person to be examined shall be confirmed by the Court with the assistance of the Coordinator at the Remote Point as per Rule 8.1, at the time of recording of the evidence and the same must be reflected in the order sheet of the Court.

12.4 In civil cases, parties requesting for recording statements of the person to be examined by video conferencing shall confirm to the Court, the location of the person, the willingness of such person to be examined through video conferencing and the availability of technical facilities for video conferencing at the agreed-upon time and place.

12.5 In criminal cases, where the person to be examined is a prosecution witness or a Court witness, or where a person to be examined is a defence witness, the counsel for the prosecution or defence counsel, as the case may be, shall confirm to the Court the location of the person, willingness to be examined by video conferencing and the time, place and technical facility for such video conferencing.

12.6 In case the person to be examined is an accused, the prosecution will confirm the location of the accused at the Remote Point.

12.7 Video conferencing shall ordinarily take place during the Court hours. However, the Court may pass suitable directions concerning the timing and schedule of video conferencing as the circumstances may warrant.

12.8 If the accused is in custody and not present at the Court Point, the Court will order a multi-point video conference between itself, the witness and the accused in custody to facilitate the recording of the statement of the witness (including medical or other experts). The Court shall ensure that the defence of the accused is not prejudiced in any manner and that the safeguards contained in Rule 8.3 are observed.

12.9 The Coordinator at the Remote Point shall be paid such amount as honorarium as may be directed by the Court in consultation with the parties.

13. Costs of Video Conferencing

In the absence of rules prescribed by the concerned Court, the Court may take into consideration the following circumstances when determining and/or apportioning the costs of video conferencing:

13.1 In criminal cases, the expenses of the video conferencing facility including expenses involved in preparing soft copies / certified copies of the Court record and transmitting the same to the Coordinator at the Remote Point, and the fee payable to the translator / interpreter / special educator, as the case may be, as also the fee payable to the Coordinator at the Remote Point, shall be borne by such party as directed by the Court.

13.2 In civil cases, generally, the party requesting for recording evidence through video conferencing shall bear the expenses.

13.3 Besides the above, the Court may also make an order as to expenses as it considers appropriate, taking into account the rules / instructions regarding payment of expenses to the complainant and witnesses, as may be prevalent from time to time.

13.4 It shall be open to the Court to waive the costs as warranted in a given situation.

14. Conduct of Proceedings

14.1 All Advocates, Required Persons, the party in person and/or any other person permitted by the Court to remain physically or virtually present (hereinafter collectively referred to as participants) shall abide by the requirements set out in Schedule I.

14.2 Before the commencement of video conferencing all participants, shall have their presence recorded. However, in case a participant is desirous that their face or name be masked, information to that effect will be furnished to the Court Point Coordinator before the commencement of the proceeding.

14.3 The Court Point Coordinator shall send the link / Meeting ID / Room Details via the email Id / mobile number furnished by the

Advocate or Required Person or other participant permitted to be virtually present by the Court. Once the proceedings have commenced, no other persons will be permitted to participate in the virtual hearing, save and except with the permission of the Court.

14.4 The participants, after joining the hearing shall remain in the virtual lobby if available, until they are admitted to the virtual hearing by the Coordinator at the Court Point.

14.5 Participation in the proceedings shall constitute consent by the participants to the proceedings being recorded by video conferencing.

14.6 Establishment and disconnection of links between the Court Point and the Remote Point would be regulated by orders of the Court.

14.7 The Court shall satisfy itself that the Advocate, Required Person or any other participant that the Court deems necessary at the Remote Point or the Court Point can be seen and heard clearly and can see and hear the Court.

14.8 To ensure that video conferencing is conducted seamlessly, the difficulties, if any, experienced in connectivity must be brought to the notice of the Court at the earliest on the official email address and mobile number of the Court Point Coordinator which has been furnished to the participant before the commencement of the virtual hearing. No complaint shall subsequently be entertained.

14.9 Wherever any proceeding is carried out by the Court under these Rules by taking recourse to video conferencing, this shall specifically be mentioned in the order sheet.

15. Access to Legal Aid Clinics/Camps/Lok Adalats/Jail Adalats

15.1 In conformity with the provisions of the Legal Services Authorities Act, 1987 and the laws in force, in proceedings related to Legal Aid Clinics, Camps, Lok Adalats or Jail Adalats, any person who at the Remote Point is in Jail or Prison shall be examined by the Chairman / Secretary of the District Legal Service Authority or Members of Lok Adalats before passing any award or orders as per law.

15.2 Such award or order shall have the same force as if it was passed by the regular Lok Adalat or Jail Adalat.

15.3 Copy of the award or order and the record of proceedings shall be sent to the Remote Point.

16. Allowing persons who are not parties to the case to view the proceedings

16.1 To observe the requirement of an open Court proceeding, members of the public will be allowed to view Court hearings conducted through video conferencing, except proceedings ordered for reasons recorded in writing to be conducted in-camera. The Court shall endeavour to make available sufficient links (consistent with available bandwidth) for accessing the proceedings.

16.2 Where, for any reason, a person unconnected with the case is present at the Remote Point, that person shall be identified by the Coordinator at the Remote Point at the start of the proceedings and the purpose of the presence of that person shall be conveyed to the Court. Such a person shall continue to remain present only if ordered so by the Court.

Chapter V – Miscellaneous

17. Reference to Words and Expressions

Words and expressions used and not defined in these Rules shall have the same meaning as assigned to them in the CPC, the CrPC, Evidence Act, IT Act, and the General Clauses Act, 1897.

18. Power to Relax

The High Court may if satisfied that the operation of any Rule is causing undue hardship, by order dispense with or relax the requirements of that Rule to such extent and subject to such conditions, as may be stipulated to deal with the case in a just and equitable manner.

19. Residual Provisions

Matters concerning which no express provision has been made in these Rules shall be decided by the Court consistent with the principle of furthering the interests of justice.

SCHEDULE I

1. All participants shall wear sober attire consistent with the dignity of the proceedings. Advocates shall be appropriately dressed in professional attire prescribed under the Advocates Act, 1961. Police officials shall appear in the uniform prescribed for police officials under the relevant statute or orders. The attire for judicial officers and court staff will be as specified in the relevant rules prescribed in that behalf by the High Court. The decision of the Presiding Judge or officer as to the dress code will be final.

2. Proceedings shall be conducted at the appointed date and time. Punctuality shall be scrupulously observed.

3. The case will be called out and appearances shall be recorded on the direction of the Court.

4. Every participant shall adhere to the courtesies and protocol that are followed in a physical Court. Judges will be addressed as “Madam/ Sir” or “Your Honour”. Officers will be addressed by their designation such as “Bench Officer/Court Master”. Advocates will be addressed as “Learned Counsel/Senior Counsel”

5. Advocates, Required Persons, parties in person and other participants shall keep their microphones muted till they are called upon to make submissions.

6. Remote Users shall ensure that their devices are free from malware.

7. Remote Users and the Coordinator at the Remote Point shall ensure that the Remote Point is situated in a quiet location, is properly secured and has sufficient internet coverage. Any unwarranted disturbance caused during video conferencing may if the Presiding Judge so directs render the proceedings non-est.

8. All participants’ cell phones shall remain switched off or in aeroplane mode during the proceedings.

9. All participants should endeavour to look into the camera, remain attentive and not engage in any other activity during the proceedings.

SCHEDULE II

Request Form for Video Conference

1. Case Number / CNR Number (if any) .....
2. Cause Title .....
3. Proposed Date of conference (DD/MM/YYYY): .....
4. Location of the Court Point(s): .....
5. Location of the Remote Point(s): .....
6. Names & Designation of the Participants at the Remote Point:

   .....
7. Reasons for Video Conferencing:

   In the matter of:
8. Nature of Proceedings: Final Hearing ☐ Motion Hearing ☐
   Others ☐

I have read and understood the provisions of Rules for Video Conferencing for Courts (hyperlink). I undertake to remain bound by the same to the extent applicable to me. I agree to pay video conferencing charges if so, directed by the Court.

Signature of the applicant/authorised signatory:
Date:

For use of the Registry / Court Point Coordinator

A) Bench assigned:
B) Hearing:
Held on (DD/MM/YYYY): Commencement Time:
End time:
Number of hours:
C) Costs:
Overseas transmission charges if any:
To be Incurred by Applicant /Respondent:
To be shared equally:
Waived; as ordered by the Court:

Signature of the authorised officer:
Date:

BY ORDER
Sd/-
(MANOJ JAIN)
REGISTRAR GENERAL

NOTIFICATIONS ISSUED UNDER CGST

Notification bringing into force certain provisions of the Finance (No.2) Act, 2019 i.e. sections 92 to 112 except sections 92, 97, 100, 103 to 110 to amend the CGST Act, 2017 w.e.f. 01.01.2020

Notification No. 01/2020-Central Tax

F.No.20/06/09/2019-GST New Delhi, the 1st January, 2020

G.S.R. .....(E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of January, 2020, as the date on which the provisions of sections 92 to 112, except section 92, section 97, section 100 and sections 103 to 110 of the Finance (No. 2) Act, 2019 (23 of 2019), shall come into force.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification amending CGST Rules i.e. Rule 117, REG-01, GSTR-3A and Form Inv-01 w.e.f 01.01.2020

Notification No. 02/2020 – Central Tax

F. No. 20/06/07/2019 – GST (Pt. II) New Delhi, the 1st January, 2020

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 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 (Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, 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 (hereinafter referred to as the said rules), in rule 117,-

(a) in sub-rule (1A), with effect from the 31st December 2019, for the figures, letters and words “31st December, 2019”, the figures, letters and words “31st March, 2020” shall be substituted;

(b) in sub-rule (4), in clause (b), in sub-clause (iii), in the proviso, for the figures, letters and words "31st January, 2020", the figures, letters and words "30th April, 2020" shall be substituted.

3. In the said rules, in **FORM GST REG-01,** in Part-B, for serial numbers 12 and 13 and the entries relating thereto, the following shall be substituted, namely:-

"12.	Are you applying for registration as SEZ Unit?	Yes ☐		No ☐	
	(i) Select name of SEZ			▽	
	(ii) Approval order number and date of order				
	(iii) Period of validity	From	DD/MM/YYYY	To	DD/MM/YYYY
	(iv) Designation of approving authority				
13.	Are you applying for registration as a SEZ Developer?	Yes ☐		No ☐	
	(i) Select name of SEZ Developer			▽	
	(ii) Approval order number and date of order				
	(iii) Period of validity	From	DD/MM/YYYY	To	DD/MM/YYYY
	(iv) Designation of approving authority				

4. In the said rules, in **FORM GSTR-3A,**-

(a) in serial number 2 under the heading "Notice to Return Defaulter u/s 46 for not filing Return", for the words "tax liability will" , the words "tax liability may" shall be substituted;

(b) after serial number 4 under the heading "Notice to Return Defaulter u/s 46 for not filing Return" , the following serial number shall be inserted, namely:-

"5. This is a system generated notice and does not require signature.";

(c) in serial number 3 under the heading "Notice To Return Defaulter u/s 46 For Not Filing Final Return Upon Cancellation of Registration", for the words "tax period will", the words "tax period may" shall be substituted;

(d) after serial number 4 under the heading "Notice To Return Defaulter U/S 46 For Not Filing Final Return Upon Cancellation Of Registration" , the following serial number shall be inserted, namely:-

"5. This is a system generated notice and does not require signature.".

5. In the said rules, for **FORM GST INV-01,** the following form shall be substituted, namely:-

"Note: Cardinality Means occurance of field in the schema. Below are the meaning of various symbol used in this column:

0..1 : It means this item is optional and even if mentioned can not be repeated

1..1: It means that this item is mandatory and can be mentioned only once.

1..n: It means this item is mandatory and can be repeated more than once

0..n: It means this item is optional but can be repated many times. For example: Previous invoice reference is optional but if required one can mention many previous invoice reference.

FORM GST INV-1 (See rule 48)							
S No.	**Technical Field name**	**Cardinality**	**Small Description of the field**	**Is it Mandatory on invoice?**	**Technical Field Specifications**	**Sample Value of the field**	**Explanatory Notes of the Field**
0	Version	1..1	Version number	Mandatory	string (Max length: 10)	1.0	It is the version of schema. It will be used to keep track of version of Invoice specification.
1	IRN	0..1	Invoice Reference Number	Mandatory	string (Max length: 50)	649b01ft	This will be a unique reference number for this invoice. It can be generated by application based on the Algorithm provided by E-Invoice system or can be left blank. In case this field has been left blank E-Invoice system will generate it and respond back in response to registration request. In case application send this number then e-Invoice system will validate it and after validation registered same number against this invoice. Invoice will only be valid once it has this number and it is registered on E-invoice system.
2	Invoice_ type_ code	1..1	Code for Invoice type	Mandatory	string (Max length: 10)	B2B/ B2C/ SEZWP/ SEZ-WOP/	This will be the code to identify type of supply, some of the examples are mentioned. It will have also code for bill of entry, invoice and other type

						EXP WP/EX-PWOP/ DEXP/ ISD/ BOS/DC	of documents. B2C invoice can be mentioned as type and based on that some fields will become optional. Detail JSON schema will mention these details later.
3	Invoice_ Subtype_ code	1..1	Sub-Code for Invoice type	Manda-tory	Drop Down	Regular / Credit-Note / Debit-Note	Type of the Document Can be used as Regular for Bill of Supply and Delivery Challanetc.
4	Invoice-Number	1..1	Invoice number	Manda-tory	string (Max length: 16)	Sa/1/ 2019	It will be as per invoice number rule mentioned in CGST/SGST rule. Rule to be checked.
5	Invoice-Date	1..1	Invoice Date	Manda-tory	string (DD/MM/ YYYY)	21/7/ 2019	The date when the Invoice was issued. Format “DD/MM/ YYYY”
6	Invoice_ cur-rency_ code	1..1	Currency code	Optional	string (Max length: 16)	USD	It depicts an additional currency in which all Invoice amounts can be given along with INR. one additional currency shall be used in the Invoice.
7	Reverse charge	0..1	Reverse Charge	optional	Charac-ter	Y	Is the liability payable under reverse charge
8	Delivery_ or_ Invoice_ Period	0..1		Optional			
9	Invoice_ Period_ Start_ Date	1..1	Invoice period start date	Mandato-ry (if this section is selected or used)	string (DD/MM/ YYYY)	21-07-19	
10	Invoice_ Period_ End_ Date	1..1	Invoice Period End date	Mandato-ry (if this section is selected or used)	string (DD/MM/ YYYY)	21-07-19	
11	Order and Sales_ order ref-erence	0.1		Optional			
12	Preced-ing_ Invoice_ reference	0.n					
13	Preced-ing_In-voice_ Number	1..1	Detail of Base Invoice which is being	Mandato-ry (if this section is selected or used)	string (Max length: 16)	Sa/1/ 2019	This is the reference of original invoice to be provided in the case of debit and credit notes. In mere invoicing this is not required. It is required

			amended by sub-sequent docu-ment				to keep future expansion of e versions of Credit notes, Debit Notes and other documents required under GST
14	Invoice_ Docu-ment_ Refer-ence	1.1	Invoice reference	Optional	string (Max length: 20)	KOL01	This reference is kept for user to provide any additional fields for e.g., some branch, their user id, their employee id, sales centre reference etc.
15	Preced-ing_ Invoice_ Date	1..1	Date of Invoice	Mandato-ry (if this section is selected or used)	string (DD/MM/ YYYY)	21-07-19	
16	Other ref-erences	0.1					
17	Receipt_ Advice_ Refer-ence	0..1	Terms reference	Optional	string (Max length: 20)	CRED-IT30	This reference is kept for user to provide their receipt advice details to their customer.
18	Tender_ or_ Lot_ Refer-ence	0..1	Lot / Batch Refer-ence	Optional	string (Max length: 20)	TEN-DER-JAN2020	This reference is kept for mentioning number or detail of Lot or Tender if supplies are made under such Lot or tender
19	Con-tract_ Refer-ence	0..1	Contract Number	Optional	string (Max length: 20)	CONT 2307 2019	This reference is kept for mentioning contract number if supplies are made under any specific Contract
20	External_ Refer-ence	0..1	Any other reference	Optional	string (Max length: 20)	EXT 23222	An additional field for provision of any additional reference number for such supply.
21	Project_ Refer-ence	0..1	Project Refer-ence	Optional	string (Max length: 20)	PJT-CODE01	This reference is kept for mentioning Project number if supplies are made under any specific Project
22	RefNum	0..1	Vendor PO Ref-erence number	Optional	string (Max length: 16)	Vendor PO /1	0
23	RefDate	0..1	Vendor PO Ref-erence date	Optional	string (DD/MM/ YYYY)	21-07-19	00-01-00
24	Supplier Informa-tion	1.1		Manda-tory			A group of business terms providing information about the Supplier.
25	Supplier_ Legal_ Name	1.. 1	Supplier Legal Name	Manda-tory	string (Max length: 100)	The Institute of Char-tered Accoun-tants of India	Name as appearing in PAN of the Supplier

26	Supplier-trading _ name	0.. 1	Trade Name of Supplier	Optional	string (Max length: 100)	ICAI	A name by which the Supplier is known, other than Supplier name (also known as Business name).
27	Supplier_ GSTIN	1.. 1	GSTN of the Supplier	Mandatory	Alpha numeric with 15 characters	29AADFV 7589 C1ZO	GSTIN of the supplier
28	Supplier_ Address 1	1.. 1	Supplier address1	Mandatory	string (Max length: 100)	Vasanth Nagar	Address of the Supplier
29	Supplier_ Address 2	0.. 1	Supplier address 2	Optional	string (Max length: 100)	Bangalore	City of the Supplier
30	Supplier_ City	1.. 1	Supplier address 2	Optional	string (Max length: 50)	Bangalore	City of the Supplier
31	Supplier_ State	1.. 1	Place	Mandatory	string (Max length: 50)	Karnataka	State of the Supplier
32	Supplier_ Pin Code	1.. 1	Pin Code	Mandatory	string (Max length:6)	560087	Pin Code of the Supplier
33	Supplier_ Phone	0.. 1	Phone	Optional	string (Max length: 12)	99999 99999	Contact number of the Supplier
34	Supplier_ Email	0.. 1	eMail id	Optional	string (Max length: 50)	Supplier @icai. com	Email id of the Supplier.
35	Buyer Information	1..1		Mandatory			Header for Buyer information
36	Billing_ Name	1.. 1	Buyer Legal name	Mandatory	string (Max length: 100)	Adarsha	It will be legal name of buyer
37	Billing_ Trade_ Name	1.. 1	Buyer Legal name	Mandatory	string (Max length: 100)	Adarsha	It will be Trade Name of buyer
38	Billing_ GSTIN	1.. 1	GSTIN	Mandatory	string (Max length: 15)	29AACCR 7832 C1ZD	GSTIN of the Buyer
39	Billing_ POS	1.. 1	State code	Mandatory	String (Max length: 2	29	Place of supply code of Supply

40	Billing_ Address1	1.. 1	Address1	Manda-tory	string (Max length: 100)	Address	Address of the Buyer
41	Billing_ Address2	0.. 1	Address2	optional	string (Max length: 100)	Address	Address of the Buyer
42	Billing_ State	1.. 1	Place	Manda-tory	string (Max length: 50)	Banga-lore	State of the Buyer
43	Billing_ Pin Code	1.. 1	Pin code	Manda-tory	string (Max length: 6)	560002	Pin Code of the Buyer
44	Billing_ Phone	0.. 1	Phone number	Optional	string (Max length: 12)	080 2223323	contact number of the Buyer
45	Billing_ Email	0.. 1	eMail id	Optional	string (Max length: 50)	billing@ icai.com	Email id of the buyer. This should be provided to help E-Invoicing system to receive this invoice on mail.
46	Payee Infor-mation (Seller payment informa-tion)	0..1		optional			Header for Payee Information - person to whom amount is payable. Optional for cases where payment is to be made to a person other than Supplier
47	Payee_ Name	1.. 1	Payee name	Manda-tory	string (Max length: 100)		Name of the person to whom payment is to be made
48	Payee_ Finan-cial_ Account	1..1	Account Number	Manda-tory	string (Max length: 18)		Account number of Payee
49	Modeof_ Payment	1..1	Payment mode	Manda-tory	string (Max length: 6)	Cash/ Credit/ Direct Transfer	Cash/Credit/Direct Transfer
50	Finan-cial_ Institu-tion_ Branch	1..1	Financial Institution Branch (IFSC Code)	Manda-tory	string (Max length: 11)		A group of business terms to specify Branch of Payee
51	Pay-ment_ Terms	0..1	Payment Terms	Optional	string (Max length: 50)		Terms of Payment with the recipient if to be provided
52	Pay-ment_ Instruc-tion	0..1	Payment Instruc-tion	Optional	string (Max length: 50)		A group of business terms providing information about the payment.

53	Credit_ Transfer	0..1		Optional	string (Max length: 50)		A group of business terms to specify credit transfer payments.
54	Direct_ Debit	0..1		Optional	string (Max length: 50)		A group of business terms to specify a direct debit.
55	Credit_ Days	0..1	Due date of Credit	Optional	Numeric (Min length:1 Max length:3)	30-11-2019	The date when the payment is due. Format “DD-MM-YYYY”.
56	Delivery_ Informa-tion	1..1		Manda-tory			A group of business terms providing information about where and when the goods and services invoiced are delivered.
57	Dispatch From Details	1.. 1	DIS-PATCH from details	Manda-tory	Refer A 1.1		
58	ECOM_ GSTIN	0..1	eCom-merce GSTIN	Optional	string (Max length: 15)		Mentionog E commerce operator is supply is made through him (sic)
59	ECOM_ POS	0..1	State code	Optional	String (Max length: 2)	29	Mention og E commerce operator is supply is made through him
60	Invoice Item details	1..n		Manda-tory			
61	List {items}		Items	Manda-tory	Refer A 1.2		A group of business terms providing information about the goods and services invoiced.
62	Docu-ment Total	1.1		Manda-tory			
63	Total Details	1..1	Bill Total Details	Manda-tory	Refer A 1.3		0
64	TaxTotal	1..1	Total Tax Amount	Manda-tory	Decimal (10,2)		When tax currency code is provided, two instances of the tax total must be present, but only one with tax subtotal.
65	Sum_of_ Invoice_ line_ net_ amount	0..1	Item level net amount	optional	Decimal (10,2)		Sum of all Invoice line net amounts in the Invoice. Must be rounded to maximum 2 decimals.
66	Sum_ of_allow-ances_	0..1	total discount	optional	Decimal (10,2)		Sum of all allowances on document level in the Invoice. Must be rounded to maximum 2 decimals.

	on_ docu-ment level						
67	Sum_of_ charg-es_on_ docu-mentlevel	0..1	total other charges	optional	Decimal (10,2)		Sum of all charges on document level in the Invoice. Must be rounded to maximum 2 decimals.
68	Pre Tax Details		Breakup of the tax rate at invoice level	Optional	Refer A 1.3		The total amount of the Invoice without GST. Must be rounded to maximum 2 decimals.
69	Paid_ amount	1..1	Paid amount	Manda-tory	Decimal (10,2)		The sum of amounts which have been paid in advance. Must be rounded to maximum 2 decimals.
70	Amount_ due_for_ payment	1..1	Payment Due	Manda-tory	Decimal (10,2)		The outstanding amount that is requested to be paid. Must be rounded to maximum 2 decimals.
71	Extra Informa-tion	0..1		Optional			
72	Tax Scheme	1..1	GST, Excise, Custom, VAT etc.	Manda-tory	string (Max length: 4)	GST, CUST, VAT etc..	Mandatory element. Use “GST”
73	Remarks	0..1	Remarks/ Note	Optional	string (Max length: 100)	New batch Items submit-ted	A textual note that gives unstructured information that is relevant to the Invoice as a whole. Such as the reason for any correction or assignment note in case the invoice has been factored.
74	Addi-tional Support-ing Docu-ments	0..n		optional			
75	Addi-tional_ Support-ing_ Docu-ments_ url	0..1	Support-ing docu-ment URLs	optional	string (Max length: 100)		A group of business terms providing information about additional supporting documents substantiating the claims made in the Invoice. The additional supporting documents can be used for both referencing a document number which is expected to be known by the receiver, an external document (referenced by a URL) or as an embedded document, Base64 encoded (such as a time report).

76	Additional_Supporting_Documents	0..1	Supporting document in base64 format.	optional	string (Max length: 1000)		A group of business terms providing information about additional supporting documents substantiating the claims made in the Invoice. The additional supporting documents can be used for both referencing a document number which is expected to be known by the receiver, an external document (referenced by a URL) or as an embedded document, Base 64 encoded (such as a time report).
77	Invoice_Allowances_or_Charges	0..1	Total Value of allowances and charges at invoice level	optional	Decimal (10,2)		A group of business terms providing information about allowances or charges applicable at invoice level as sometime discount or charges may be applicable on invoice level not on line item level.
78	E-wayBill Details	0..1		Optional			
79	Transporter ID	1..1	Transporter Id	Optional	Alphanumeric with 15 characters	29AADFV7589C1ZO	GSTIN :: 29AMRPV8729L1Z1
80	Trans-Mode	1..1	Mode of transportation	Road / Rail / Air / Ship	Drop Down - Fixed		1/2/3/4
81	Trans Distance	1..1	Distance of transportation		Decimal (10,2)		20
82	Transporter Name	0..1	Transporter Name		string (Max length: 100)		SPURTHI R
83	Trans DocNo	0..1	Transporter Doc No				TA120; Mandatory if the mode of transport is other than by Road
84	Trans Doc Date	0..1	Transporter Doc Date		string (DD/MM/YYYY)	21-07-2019	20/9/2017
85	Vehicle No	1..1	Vehicle No	Optional	string (Max length: 20)		KA12KA1234 or KA12K1234 or KA123456 or KAR1234
86	Signature Details	0..1		Mandatory			
87	DSC	1..1	Digital Signature of the Document			DSC KEY Hash	an optional field since it is signed by the GSTN Portal also and data travels through secured platform

	A 1.0 Ship To Details	0..1					
S No	**Parameter Name**		**Description**		**Field Specifications**	**Sample Value**	
1	Shipping To_Name	1..1	Shipping To_Trade Name	Mandatory	String (Max length: 60)	Adarsha	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
2	Shipping To_GSTIN	1..1	Shipping To_ GSTIN	Mandatory	string (Max length: 100)	36AABCT2223L1ZF	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
3	Shipping To_ Address1	1..1	Shipping To_ Address1	Mandatory	string (Max length: 50)	Address	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
4	Shipping To_ Address2	0..1	Shipping To_ Address2	Optional	string (Max length: 50)	Address	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
5	Shipping To_ Place	0..1	Shipping To_ Place	Optional	string (Max length: 50)	Bangalore	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
6	Shipping To_ Pin Code	1..1	Shipping To_ Pin_ Code	Mandatory	string (Max length: 6)	560001	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
7	Shipping To_State	1..1	Shipping To_ State	Mandatory	string (Max length: 100)	Karnataka	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
8	Sub-supply Type		Supply Type	Mandatory	String (Max length: 2)	Supply/ export/ Jobwork	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.
9	Transaction Mode		Transaction Mode	Mandatory	String (Max length: 2)	Regular/ Bill To/Ship To	A group of business terms providing information about the address to which goods and services invoiced were or are delivered.

A 1.1 Dispatch From Details							
S No	**Parameter Name**		**Description**		**Field Specifications**	**Sample Value**	
1	Company_ Name	1..1	Company_ Name	Mandatory	string (Max length: 60)	ICAI	Detail of person and address wherefrom goods are dispatched.
2	Address1	1..1	Address1	Mandatory	string (Max length: 100)	Vasanth Nagar	Detail of person and address wherefrom goods are dispatched.
2	Address2	0..1	Address2	Optional	string (Max length: 100)	Millers Road	Detail of person and address wherefrom goods are dispatched.
3	City	1..1	Place	Optional	string (Max length: 100)	Bangalore	Detail of person and address wherefrom goods are dispatched.
4	State	1..1	State	Mandatory	String (Max length: 2)	Karnataka	Detail of person and address wherefrom goods are dispatched.
5	Pin Code	1..1	Pin Code	Mandatory	string (Max length: 6)	560087	Detail of person and address wherefrom goods are dispatched.
	A 1.2 Item Details	**1..n**					
S No	**Parameter Name**		**Description**		**Field Specifications**	**Sample Value**	
1	Sl.No	1..1	Serial Number	Mandatory	int	1,2,3	
2	Item Description	0..1	Item description	optional	string (Max length: 300)	Mobile	The identification scheme identifier of the Item classification identifier
3	ISService	0..1	ISService	Optional	Character	Y/N	Specify whether supply is that of Services or not
4	HSN code	0..1	HSN code	Optional	string (Max length: 8)	1122	A code for classifying the item by its type or nature.
5	Batch	0..1	...	Optional	ReferA 1.3.1	galaxy	Batch number details are important to be mentioned for certain set of manufacturers
6	Barcode	0..1	ItemBar Code	Optional	string (Max length: 30)	b123	Barcoding if to be provided need to be specified
7	Quantity	1..1	Quantity	Mandatory	Decimal (13,3)	10	The quantity of items (goods or services) that is charged in the Invoice line.

8	Free Qty	0..1	free quantity	Optional	Decimal (13,3)	1	Detail of any FOC item
9	UQC	0..1	uom	Optional	string (Max length: 8)	Box	The unit of measure that applies to the invoiced quantity. Codes for unit of packaging from UNECE Recommendation No. 21 can be used in accordance with the descriptions in the “Intro” section of UN/ ECE Recommendation 20, Revision 11 (2015): The 2 character alphanumeric code values in UNECE Recommendation 21 shall be used. To avoid duplication with existing code values in UNECE Recommendation No. 20, each code value from UNECE Recommendation 21 shall be prefixed with an “X”, resulting in a 3 alphanumeric code when used as a unit of measure.
10	Rate	1..1	Item Rate per quantity	Manda-tory	Decimal (10,2)	500.5	The number of item units to which the price applies.
11	Gross Amount	1..1	gross amount	Optional	Decimal (10,2)	5000	The price of an item, exclusive of GST, after subtracting item price discount. The Item net price has to be equal with the Item gross price less the Item price discount, if they are both provided. Item price can not be negative.
12	Discount Amount	0..1	discount amount	Optional	Decimal (10,2)		The total discount subtracted from the Item gross price to calculate the Item net price.
13	Pre Tax Amount	0..1	Pretax	Optional	Decimal (10,2)	50	This is the Value after the Tax. Ideally this would be taxable value in most cases, when ever there is a change in the assesseable value then pretax amount should be used for.
14	Assess-eebleV-alue	1..1	net amount	Manda-tory	Decimal (13,2)	5000	The unit price, exclusive of GST, before subtracting Item price discount, can not be negative
15	GST Rate	1..1	Rate	Manda-tory	Deci-mal(3,2)	5	The GST rate, represented as percentage that applies to the invoiced item.
16	Iamt	0..1	IGST Amount as per item	Manda-tory	Deci-mal(11,2)		A group of business terms providing information about GST breakdown by different categories, rates and exemption reasons
17	Camt	0..1	CGST Amount as per item	Manda-tory	Deci-mal(11,2)	650.00	

18	Samt	0..1	SGST Amount as per item	Mandatory	Decimal(11,2)	650.00	
19	Csamt	0..1	CESS Amount as per item	Optional	Decimal (11,2)	65.00	
20	State CessAmt	0..1	State cess amount as per item	Optional	Decimal(11,2)	65.00	
21	Other Charges	0..1	Other if any	Optional	Decimal(11,2)		A group of business terms providing information about allowances applicable to the Invoice as a whole. A group of business terms providing information about charges and taxes other than GST, applicable to the Invoice as a whole.
22	Invoice_ line_ net_ amount	0..1	Invoice line Net Amount	Optional	Decimal(11,2)		The total amount of the Invoice line. The amount is “net” without GST, i.e. inclusive of line level allowances and charges as well as other relevant taxes. Must be rounded to maximum 2 decimals.
23	Order_ Line_ Reference	0..1	Reference to purchase order	Optional	String (50)		Reference of purchase order.
24	ItemTotal	1..1	net amount	Optional	Decimal (13,2)	5000	A group of business terms providing the monetary totals for the Invoice.
25	Origin_ Country	0..1	Origin country of item	Optional	String (Max length: 2)		This is to specify item origin country like mobile phone sold in India could be manufactured in China.
26	Serial NoDetails	0..1	...	Optional	Refer A 1.3.2		
	A 1.3 Total Details	1..1		Mandatory			
S No	**Parameter Name**		**Description**		**Field Specifications**	**Sample Value**	
1	IGST Value	0..1	IGST Amount as per invoice	Optional	Decimal (11,2)		Appropriate taxes based on rule will be applicable. For example either of CGST& SGST or IGST will be mandatory. As there is no way to show conditional mandatory,optional has been mentioned against all taxes.

2	CGST Value	0..1	CGST Amount as per invoice	Optional	Decimal (11,2)		Taxable value as per Act to be specified
3	SGST Value	0..1	SGST Amount as per invoice	Optional	Decimal (11,2)		Taxable value as per Act to be specified
4	CESS Value	0..1	cess Amount as per invoice	Optional	Decimal (11,2)		Taxable value as per Act to be specified
5	State Cess-Value	0..1	State cess Amount as per invoice	Optional	Decimal (11,2)		Taxable value as per Act to be specified
6	Rate	0..1	Tax Rate	Optional	Decimal (11,2)		Tax Rate
7	Freight	0..1	Charges	Optional	Decimal (11,2)		
8	Insur-ance	0..1	Charges	Optional	Decimal (11,2)		
9	Packag-ing and Forward-ing	0..1	Charges	Optional	Decimal (11,2)		
10	Other Charges	0..1	Pretax/ post charges	Optional	Decimal (11,2)		A group of business terms providing information about allowances applicable to the Invoice as a whole. A group of business terms providing information about charges and taxes other than GST, applicable to the Invoice as a whole.
11	Roundoff	0..1	Roundoff value	Optional	Decimal (11,2)		The amount to be added to the invoice total to round the amount to be paid. Must be rounded to maximum 2 decimals.
12	Total Invoice Value	1..1	Total amount	Manda-tory	Decimal (11,2)		The total amount of the Invoice with GST. Must be rounded to maximum 2 decimals.
	A 1.3.1 Batch Details	1..1					
S No	Param-eter Name		Descrip-tion		Field Specifi-cations	Sample Value	
1	Batch Name	1..1	Batch number/ name	Manda-tory	string (Max length: 20)		Batch number details are important to be mentioned for certain set of manufacturers

2	Batch Expiry Date	0..1	Expiry Date	optional	string (DD/MM/YYYY)		Expiry Date of the Batch
3	Warran-tyDate	0..1	Warranty Date	Optional	string (DD/MM/YYYY)		Warranty Date of the ITEM
	A 1.3.2 Serial Number Details	0..1					
S No	Param-eter Name		Descrip-tion		Field Specifi-cations	Sample Value	
1	Serial-Number	1..1	Serial Number in case of each item having unique number	Optional	string (Max length: 15)		0
2	Other Detail1	0..1	other detail of serial number	Optional	string (Max length: 10)		0
3	Other Detail2	0..1	other detail of serial number	Optional	string (Max length: 10)		0
	A 1.3.3 Pre Tax Details						
S No	Param-eter Name		Descrip-tion		Field Specifi-cations	Sample Value	
1	Pretax Particu-lars		Pretax ledger/ particu-lars	Optional	string (Max length: 100)		0
2	TaxOn		Pretax on gross amount or any other	Optional	Decimal (11,2)		0
3	Amount		Amount	Optional	Decimal (11,2)		0

(Pramod Kumar)
Director, 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, vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 75/2019 - Central Tax, dated the 26th December, 2019, published vide number G.S.R. 954 (E), dated the 26th December, 2019. (iv) Designation of approving (iv) Designation of approving

Notification amending notification No. 62/2019-CT dated 26.11.2019 to amend the transition plan for the UTs of J & K and Ladakh.

Notification No. 03/2020-Central Tax

F. No. 20/06/07/2019 – GST (Pt. II) New Delhi, the 01st January, 2020

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 amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 62/2019–Central Tax, dated the 26th November, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 879(E), dated the 26th November, 2019, namely:–

In the said notification,–

(i) in paragraph 2, in clause (iii), for the figures, letters and words "30th day of October, 2019" and "31st day of October, 2019", the figures, letters and words "31st day of December, 2019" and "1st day of January, 2020" shall respectively be substituted;

(ii) in paragraph 3, for the figures, letters and words "31st day of October, 2019", the figures, letters and words "1st day of January, 2020" shall be substituted.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification extending the one time amnesty scheme to file all FORM GSTR-1 from July 2017 to November, 2019 till 17.01.2020

Notification No. 04/2020-Central Tax

F. No. 20/06/07/2019-GST (Pt. II) New Delhi, the10th January, 2020

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 Central Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 4/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 53(E), dated the 23rd January, 2018, namely:–

In the said notification, in the third proviso for the figures, letters and word "10th January, 2020", the figures, letters and words "17th January, 2020" shall be substituted.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 4/2018-Central Tax, dated 23rd January, 2018 was published in the Gazette of India, Extraordinary, vide number G.S.R. 53(E), dated the 23rd January, 2018 and was last amended by notification No. 74/2019-Central Tax, dated the 26th December, 2019, published in the Gazette of India, Extraordinary, vide number G.S.R. 953(E), dated the 26th December, 2019.

Notification appointing Revisional Authority under CGST Act, 2017.

Notification No. 05/2020-Central Tax

F. No. 20/06/07/2019-GST New Delhi, the 13th January, 2020

G.S.R.....(E).– In pursuance of the provisions of section 5 read with clause (99) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Board of Indirect Taxes and Customs hereby authorises -

(a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and

(b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.

as the Revisional Authority under section 108 of the said Act.

Sd/-
Pramod Kumar)
Director, Government of India

Notification extending the last date for furnishing of annual return/ reconciliation statement in FORM GSTR-9/FORM GSTR-9C for the period 01.07.2017 to 31.03.2018 up to 05.02.2020/07.02.2.2020

Notification No. 06/2020- Central Tax
along with Corrigendum dated 04.02.2020

F.No.20/06/07/2019-GST] New Delhi, the 3rd February, 2020

G.S.R.....(E).–In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with rule 80 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, in respect of the period from the 1st July,2017 to the 31st March, 2018, for the class of registered person specified in column (2) of the Table below, till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

Sl. No.	Registered person, whose principal place of business is in	Due date for furnishing return under section 44 of the said Act read with rule 80 of the said rules for the FY 2017-18
(1)	(2)	(3)
1.	Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand.	5th February, 2020.
2.	Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim, Telangana, Tripura, West Bengal, Other Territory.	7th February, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Corrigendum

F.No.20/06/07/2019-GST New Delhi, the 04th February, 2020

G.S.R...(E).:- In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 06/2020-Central Tax, dated the 03rd February,2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 82(E), dated the 03rd February, 2020,-

i. at page 2, in line 30, *for* the words "Tamil Nadu, Uttar Pradesh, Uttarakhand", *read* "Tamil Nadu, Uttarakhand";

ii. at page 2, in line 35, *for* the words "Tripura, West Bengal", *read* "Tripura, Uttar Pradesh, West Bengal".

Sd/-
(Gaurav Singh)
Deputy Secretary to the Government of India

Notification prescribing due dates for filing of return in form GSTR-3B in a staggered manner.

Notification No. 07/2020-Central Tax

[F. No. 20/06/09/2019-GST] New Delhi, the 3rd February, 2020

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), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide numberG.S.R.767(E), dated the 09th October, 2019, namely:–

In the said notification, after the third proviso, the following provisos shall be inserted, namely: –

"Provided also that the return in FORM GSTR-3B of the said rules for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees

five Crore in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep shall be furnished electronically through the common portal, on or before the 22nd February, 2020, 22nd March, 2020, and 22nd April, 2020, respectively:

Provided also that the return in FORM GSTR-3B of the said rules for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States 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 and Delhi shall be furnished electronically through the common portal, on or before the 24th February, 2020, 24th March, 2020 and 24th April, 2020, respectively."

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019 and was last amended by notification number 77/2019 – Central Tax, dated the 26th December, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 956(E), dated the 26th December, 2019.

Notification amending rule 31A of the CGST Rules, 2017 to prescribe the value of lottery.

Notification No. 08/2020-Central Tax

F. No. 20/06/03/2020 – GST New Delhi, the 2nd March, 2020

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. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, 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, with effect from the 1st March, 2020,in rule 31A, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Explanation:– For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.".

Sd/-
(Pramod Kumar)
Director, 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, vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 02/2020 - Central Tax, dated the 01st January, 2020, published vide number G.S.R. 4 (E), dated the 01st January, 2020.

Notification exempting foreign airlines from furnishing reconciliation Statement in FORM GSTR-9C.

Notification No. 09/2020-Central Tax

F. No-20/08/01/2019-GST New Delhi, the16th March, 2020

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) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the persons who

are foreign company which is an airlines company covered under the notification issued under sub-section (1) of section 381 of the Companies Act, 2013 (18 of 2013) and who have complied with the sub-rule (2) of rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014, as the class of registered persons who shall follow the special procedure as mentioned below.

2. The said persons shall not be required to furnish reconciliation statement in FORM GSTR-9C to the Central Goods and Services Tax Rules, 2017 under sub-section (2) of section 44 of the said Act read with sub-rule (3) of rule 80 of the said rules:

Provided that a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India is submitted for each GSTIN by the 30th September of the year succeeding the financial year.

Sd/-
(Pramod Kumar)
Director to the Government of India

Notification providing special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to merger of the two Union Territories.

Notification No. 10/2020-Central Tax

[F. No.20/06/03/2020-GST] New Delhi, the 21st March, 2020

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) (hereinafter referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies those persons whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020; and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th day of January, 2020 onwards, as the class of persons who shall, except as respects things done or omitted to be done before the notification, follow the following special procedure till the 31st day of May, 2020 (hereinafter referred to as the transition date) as mentioned below.

2. The said registered person shall,-

(i) ascertain the tax period as per sub-clause (106) of section 2 of the said Act for the purposes of any of the provisions of the said Act for the month of January, 2020 and February, 2020 as below:-

(a) January, 2020: 1st January, 2020 to 25th January, 2020;

(b) February, 2020: 26th January, 2020 to 29th February, 2020;

(ii) irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from the 26th January, 2020 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act;

(iii) who have registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu and the erstwhile Union territory of Dadra and Nagar Haveli till the 25th day of January, 2019 have an option to transfer the balance of input tax credit (ITC) after the filing of the return for January, 2020, from the registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu to the registered GSTIN in the new Union territory of Daman and Diu and Dadra and Nagar Haveli by following the procedure as below:-

(a) the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration;

(b) the ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date;

(c) the transfer of ITC shall be carried out through the return under section 39 of the said Act for the tax period immediately before the transition date and the transferor GSTIN shall debit the said ITC from its electronic credit ledger in Table 4(B)(2) of **FORM GSTR-3B** and the transferee GSTIN shall credit the equal amount of ITC in its electronic credit ledger in Table 4(A)(5) of **FORM GSTR-3B**.

3. The balance of Union territory taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Daman and Diu, as on the 25th day of January,

2020, shall be transferred as balance of Union territory tax in the electronic credit ledger.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification providing special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.

Notification No. 11/2020-Central Tax

F.No.20/06/03/2020-GST New Delhi, the 21st March, 2020

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) (hereinafter referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies those registered persons(hereinafter referred to as the erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below.

2. Registration.- The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration)in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP:

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

3. Return.-The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

4. Input tax credit.-(1)The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the said rules).

(2) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-rule (4) of rule 36 of the said rules.

(5) Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

Explanation.- For the purposes of this notification, the terms “corporate debtor”, “corporate insolvency resolution professional”, “interim resolution professional” and “resolution professional” shall have the same meaning as assigned to them in the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

Sd/-
(Pramod Kumar)
Director, Government of India

Notification waiving off the requirement for furnishing FORM GSTR-1 or FORM GST CMP-08 for all tax periods of 2019-20 for taxpayers who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate)

Notification No. 12/2020-Central Tax

F.No.20/06/03/2020-GST New Delhi, the 21st March, 2020

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 Central

Government, 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. 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 paragraph 2, the following proviso shall be inserted, namely: –

"Provided that the said persons who have, instead of furnishing the statement containing the details of payment of self-assessed tax in **FORM GST CMP-08** have furnished a return in **FORM GSTR-3B** under the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) for the tax periods in the financial year 2019-20, such tax payers shall not be required to furnish the statement in outward supply of goods or services or both in **FORM GSTR-1** of the said rules or the statement containing the details of payment of self-assessed tax in **FORM GST CMP-08** for all the tax periods in the financial year 2019-20."

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 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.

Notification exempting certain class of registered persons from issuing e-invoices and extending the date for implementation of e-invoicing to 01.10.2020.

Notification No. 13/2020-Central Tax

F. No.20/06/03/2020-GST New Delhi, the 21st March, 2020

G.S.R. …..(E).— In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017(hereinafter referred as said rules), the Government on the recommendations of the Council, and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 70/2019 – Central Tax, dated the 13th December, 2019, published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 926 (E), dated the 13th December, 2019, except as respects things done or omitted to be done before such supersession, hereby notifies registered person, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said rules, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice and other prescribed documents, in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person.

2. This notification shall come into force from the 1st October, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification exempting certain class of registered persons capturing dynamic QR code and extending the date for implementation of QR Code to 01.10.2020.

Notification No. 14/2020-Central Tax

F. No.20/06/03/2020-GST New Delhi, the 21st March, 2020

G.S.R. …..(E).— In exercise of the powers conferred by the sixth proviso to rule 46 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), the Government, on the recommendations of the Council, and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 72/2019 – Central Tax, dated the 13th December, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 928(E), dated the 13th December, 2019, except as respects things done or omitted to be done before such supersession, hereby notifies that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of said rules, and registered person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, to an unregistered person (hereinafter referred to as B2C invoice), shall have Dynamic Quick Response (QR) code:

Provided that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-

reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

2. This notification shall come into force from the 1st day of October, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification extending time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2018-2019 till 30.06.2020.

Notification No. 15/2020-Central Tax

F. No CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with rule 80 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, for the financial year 2018-2019 till 30.06.2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification making CGST (3rd Amendment) Rules, 2020.

Notification No. 16/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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 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 (Third Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, 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 (hereinafter referred to as the said rules), in rule 8, after sub-rule (4), the following sub-rule shall be inserted, namely:-

"(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.".

3. In the said rules, in rule 9, in sub-rule (1), with effect from 01.04.2020, the following subrule shall be inserted, namely:-

"Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.".

4. In the said rules, for rule 25, the following rule shall be substituted, namely:-

25. "Physical verification of business premises in certain cases.-Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.".

5. In the said rules, in rule 43, in sub-rule (1) with effect from the 1st April, 2020,-

(a) for clause (c), the following clause shall be substituted, namely:-

"c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A' being the amount of tax

as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a),denoted as, 'Tie', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:

Provided further that the amount, 'Tie' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**.

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause."

(b) for clause (d), the following clause shall be substituted, namely:-

"the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as,'Tc', shall be the common credit in respect of such capital goods:

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value, 'Tc';";

(c) in clause (e), the following Explanation shall be inserted, namely:-

"Explanation.- For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.";

(d) clause (f) shall be omitted.

6. In the said rules, in rule 80, in sub-clause (3), the following proviso shall be inserted, namely:-

"Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C** for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.".

7. In the said rules, in rule 86, after sub-rule (4), the following sub-rule shall be inserted, namely:-

"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03**.".

8. In the said rules, in rule 89, in sub-rule (4), for clause (C), the following clause shall be substituted, namely:-

'(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;".

9. In the said rules, in rule 92,-

(a) after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in **FORM RFD-06** sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper

officer shall issue **FORM GST PMT-03** re-crediting the said amount as Input Tax Credit in electronic credit ledger.";

(b) in sub-rule (4), after the words, brackets and figure "amount refundable under sub-rule(1)", the words, brackets, figure and letter "or sub-rule (1A)", shall be inserted;

(c) in sub-rule (5), after the words, brackets and figure "amount refundable under sub-rule (1)", the words, figures and letter "or sub-rule (1A)", shall be inserted.

10. In the said rules, in rule 96, in sub-rule (10),in clause (b) with effect from the 23rd October, 2017, the following Explanation shall be inserted, namely,-

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

11. In the said rules, after rule 96A, the following rule shall be inserted, namely:-

"96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised. –(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of nonrealisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act,

1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.".

12. In the said rules, in rule 141, in sub-rule (2), for the word "Commissioner". the words "proper officer" shall be substituted.

13. In the said rules, in **FORM GST RFD-01**, after the declaration under rule 89(2)(g), the following undertaking shall be inserted, namely:-

"UNDERTAKING
I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules, 2017.

Signature-

Name –

Designation / Status".

Sd/-
(Pramod Kumar)
Director, 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, vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 08/2020 - Central Tax, dated the 02nd March, 2020, published vide number G.S.R. 147 (E), dated the 02nd March, 2020.

Notification specifying the class of persons who shall be exempted from aadhar authentication.

Notification No. 17/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

G.S.R.….(E).- In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that the provisions of sub-section (6B) or sub-section (6C) of the said Act shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:–

(a) Individual;

(b) authorised signatory of all types;

(c) Managing and Authorised partner; and

(d) Karta of an Hindu undivided family.

2. This notification shall come into effect from the 1st day of April, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification notifying the date from which an individual shall undergo authentication of Aadhaar number in order to be eligible for registration.

Notification No. 18/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

G.S.R.….(E).- In exercise of the powers conferred by sub-section (6B) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which an individual shall undergo authentication, of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in order to be eligible for registration:

Provided that if Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

2. This notification shall come into effect from the 1st day of April, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification specifying class of persons, other than individuals who shall undergo authentication of Aadhaar number in order to be eligible for registration.

Notification No. 19/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

G.S.R.….(E).- In exercise of the powers conferred by sub-section (6C) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which the -

(a) authorised signatory of all types;

(b) Managing and Authorised partners of a partnership firm; and

(c) Karta of an Hindu undivided family,

shall undergo authentication of possession of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017(hereinafter referred to as the said rules), in order to be eligible for registration under GST:

Provided that if Aadhaar number is not assigned to the said persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

2. This notification shall come into effect from the 1st day of April, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification extending due date for furnishing FORM GSTR-7 for those taxpayers whose principal place of business is in the erstwhile State of Jammu and Kashmir for July, 2019 to October, 2019 and November, 2019 to February, 2020 upto 24.03.2020.

Notification No. 20/2020-Central Tax

F.No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

G.S.R.....(E).–In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, for the second and third proviso, the following provisos shall be substituted, namely: –

"Provided further that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in **FORM GSTR-7** of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to October,2019, whose principal place of business is in the erstwhile State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 24th March, 2020:

Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in **FORM GSTR-7** of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of November, 2019 to February, 2020, whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh shall be furnished electronically through the common portal, on or before the 24th March, 2020."

2. This notification shall be deemed to have come into force with effect from the 20th Day of December, 2019.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 26/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 78/2019 – Central Tax, dated the 26th December, 2019, published in the Gazette of India, Extraordinary vide number G.S.R. 957(E), dated the 26th December, 2019.

Notification extending due date for furnishing of FORM GSTR-1 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh for the quarter October-December, 2019 till 24.03.2020.

Notification No. 21/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 45/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 768 (E), dated the 09th October, 2019, namely:–

In the said notification, in the second paragraph, the following proviso shall be inserted, namely: –

> "Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh, shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and

Services Tax Rules, 2017 effected during the quarter October-December, 2019 till 24th March, 2020.".

2. This notification shall be deemed to come into force with effect from the 31st Day of January, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 45/2019 – Central Tax, dated the 09th October, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 768(E), dated the 09th October, 2019.

Notification extending due date for furnishing **FORM GSTR-1** for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, and having aggregate turnover of more than Rs. 1.5 crore rupees in the preceding financial year or current financial year, for the months of October, 2019 and November, 2019 to February, 2020 till 24.03.2020.

Notification No. 22/2020-Central Tax, dt. 23.03.2020

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

G.S.R.....(E).–In exercise of the powers conferred by 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) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2019 – Central Tax, dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.769(E), dated the 09th October, 2019, namely:–

i. In the said notification, in the first paragraph, for the first proviso, the following proviso shall be substituted, namely: –

"Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover

of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of October, 2019 till 24th March, 2020.".

ii. In the said notification, in the first paragraph, after the second proviso, the following proviso shall be inserted, namely: –

"Provided that for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the months of November, 2019 to February, 2020 till 24th March, 2020.".

2. This notification shall be deemed to come into force with effect from the 20th Day of December, 2019

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 46/2019 – Central Tax, dated the 09th October, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 769(E), dated the 9th October, 2019 and was last amended by notification No. 76/2019 – Central Tax, dated the 26th December, 2019, published in the Gazette of India, Extraordinary vide number G.S.R. 955(E), dated the 26th December, 2019

Notification extending due date for furnishing **FORM GSTR-1** for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 24.03.2020.

Notification No. 23/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

G.S.R.....(E).–In exercise of the powers conferred by 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) (hereafter in this notification

referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.28/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.454(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be substituted, namely: –

"Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 24th March, 2020."

2. This notification shall be deemed to come into force with effect from the 20th Day of December, 2019

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 28/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 454(E), dated the 28th June, 2019 and was last amended by notification No. 63/2019 – Central Tax, dated the 12th December, 2019, published in the Gazette of India, Extraordinary vide number G.S.R907(E), dated the 12th December, 2019.

Notification extending due date for furnishing FORM GSTR-1 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, for the quarter July-September, 2019 till 24.03.2020.

Notification No. 24/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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) (hereafter

in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 453 (E), dated the 28th June, 2019, namely:–

In the said notification, in the second paragraph, for the first proviso, the following proviso shall be substituted, namely: –

"Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and Services Tax Rules, 2017 effected during the quarter July-September, 2019 till 24th March,2020.".

2. This notification shall be deemed to come into force with effect from the 30th Day of November, 2019.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 27/2019 – Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 453(E), dated the 28th June, 2019 and was last amended by notification No. 52/2019 – Central Tax, dated the 14th November, 2019, published in the Gazette of India, Extraordinary vide number G.S.R. 846(E), dated the 14th November, 2019.

Notification extending due date for furnishing FORM GSTR-3B for the months of October, 2019, November, 2019 to February, 2020 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir on or before 24.03.2020.

Notification No. 25/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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) read with sub-rule

(5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019, namely:–

i. In the said notification, in the first paragraph, for the first proviso, the following proviso shall be substituted, namely: –

"Provided that the return in **FORM GSTR-3B** of the said rules for the months of October, 2019 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 24th March, 2020."

ii. In the said notification, in the first paragraph, after the fifth proviso, the following proviso shall be inserted, namely: –

"Provided also that the return in **FORM GSTR-3B** of the said rules for the months of November, 2019 to February, 2020 for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh, shall be furnished electronically through the common portal, on or before the 24th March, 2020."

2. This notification shall be deemed to come into force with effect from the 20th Day of December, 2019

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019 and was last amended by notification number 07/2020 – Central Tax, dated the 3rd February, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 83(E), dated the 3rd February, 2020.

Notification extending due date for furnishing FORM GSTR-3B for the months of July, 2019 to September, 2019 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, and providing that it shall be furnished electronically through the common portal, on or before the 24.03.2020.

Notification No. 26/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.29/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.455(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, for the fourth proviso, the following proviso shall be substituted, namely: –

"Provided also that the return in **FORM GSTR-3B** of the said rules for the months of July,2019 to September, 2019 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 24th March, 2020."

2. This notification shall be deemed to come into force with effect from the 20th Day of December, 2019

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 29/2019 – Central Tax, dated the 28thJune, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 455(E), dated the 28th June, 2019 and was last amended by notification No. 66/2019 – Central Tax, dated the 12th December, 2019 published in the Gazette of India, Extraordinary vide number G.S.R. 910(E), dated the 12th December, 2019.

Notification prescribing special procedure and due dates for furnishing FORM GSTR-1 for the quarters April, 2020 to June, 2020 and July, 2020 to September, 2020 for registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year.

Notification No. 27/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

The said registered persons shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
(1)	(2)	(3)
1	April, 2020 to June, 2020	31st July, 2020
2	July, 2020 to September, 2020	31st October, 2020

The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of April, 2020 to September, 2020 shall be subsequently notified in the Official Gazette.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification prescribing due date for furnishing FORM GSTR-1 by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from April, 2020 to September, 2020 as 11th day of the month succeeding such month.

Notification No. 28/2020-Central Tax

F. No.CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from April,2020 to September, 2020 till the eleventh day of the month succeeding such month.

2. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of April,2020 to September, 2020 shall be subsequently notified in the Official Gazette.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification prescribing return in FORM GSTR-3B of CGST Rules, 2017 along with due dates of furnishing the said form for April, 2020 to September, 2020 as 20th day of the month succeeding such month.

Notification No. 29/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 23rd March, 2020

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) (hereafter in this

notification referred to as the said Act), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby specifies that the return in **FORM GSTR-3B** of the said rules for each of the months from April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month:

Provided that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in **FORM GSTR-3B** of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.

2. **Payment of taxes for discharge of tax liability as per FORM GSTR-3B.** – Every registered person furnishing the return in **FORM GSTR-3B** of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax by debiting the electronic cash ledger or electronic credit ledger, as the case may be and his liability towards interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification making CGST (Fourth Amendment) Rules, 2020 in order to allow opting Composition Scheme for FY 2020-21 till 30.06.2020 and to allow cumulative application of condition in rule 36(4) for the period February 2020 to August 2020, in September, 2020 return

Notification No. 30/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 3rd April, 2020

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. (1) These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2020.

(2) Save as otherwise provided, 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 (hereinafter referred to as the said rules), with effect from the 31st March, 2020, in sub-rule (3) of rule 3, the following proviso shall be inserted, namely:-

"Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in **FORM GST CMP-02**, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of rule 44 upto the 31st day of July, 2020.".

3. In the said rules, in sub-rule (4) of rule 36, the following proviso shall be inserted, namely:-

"Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in **FORM GSTR-3B** for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.".

Sd/-
(Pramod Kumar)
Director, 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. 16/2020 - Central Tax, dated the 23rd March, 2020 published vide number G.S.R. 199 (E), dated the 23rd March, 2020.

Notification providing relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020.

Notification No. 31/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 3rd April, 2020

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) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Central Government, on the recommendations of the Council, hereby makes the following amendment 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:–

In the said notification, in the first paragraph, the following provisos shall be inserted, namely: –

"Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in FORM GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely:--

Table

S. No. (1)	Class of registered persons (2)	Rate of interest (3)	Tax period (4)	Condition (5)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding year	Nil for first 15 days from the due date, and 9 percent thereafter	February, 2020, March 2020, April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 24th day of June, 2020

2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020, March, 2020	If return in **FORM GSTR-3B** is furnished on or before the 29th day of June, 2020
			April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
3.	Taxpayers having anaggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
			March, 2020	If return in **FORM GSTR-3B** is furnished on or before the 3rd day of July, 2020
			April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 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.

Notification providing conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to April, 2020.

Notification No. 32/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 3rd April, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, 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. 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 second 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 tax period as specified in column (3) of the Table given below, 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, but furnishes the said return according to the condition mentioned in the corresponding entry in column (4) of the said Table, namely:--.

Table

S. No. (1)	Class of registered persons (2)	Tax period (3)	Condition (4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than Rs 1.5 cr & upto Rs 5 cr in the preceding financial yr	February, 2020 and March, 2020	If return in **FORM GSTR-3B** is furnished on or before the 29th day of June, 2020
		April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	February, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
		March, 2020	If return in **FORM GSTR3-B** is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 76/2018-Central Tax, dated 31st December, 2018 was published in the Gazette of India, Extraordinary,*vide* number G.S.R. 1253(E), dated the 31st December, 2018.

Notification providing conditional waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods of February, 2020 to April, 2020.

Notification No. 33/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 3rd April, 2020

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 amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 4/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 53(E), dated the 23rd January, 2018, namely:–

In the said notification, after the third proviso, the following proviso shall be inserted, namely: –

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the months of March, 2020, April, 2020 and May, 2020, and for the quarter ending 31st March, 2020, for the registered persons who fail to furnish the details of outward supplies for the said periods in **FORM GSTR-1** by the due date**,** but furnishes the said details in **FORM GSTR-1**, on or before the 30th day of June, 2020.".

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 4/2018– Central Tax, dated the 23rd January, 2018, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 53(E), dated the 23rd

January,2018 and was last amended by notification No. 4/2020- Central Tax, dated the 10th January, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 26(E) dated the 10th January, 2020.

Notification extending due date of furnishing FORM GST CMP-08 for the quarter ending March, 2020 till 07.07.2020 and filing FORM GSTR-4 for FY 2020-21 till 15.07.2020.

Notification No. 34/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 3rd April, 2020

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,-

(i) in the second paragraph, the following proviso shall be inserted, namely: –

"Provided that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in **FORM GST CMP-08** of the Central Goods and Services Tax Rules, 2017, for the quarter ending 31st March, 2020, till the 7th day of July, 2020.";

(ii) in the third paragraph, the following proviso shall be inserted, namely: –

"Provided 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, 2020, till the 15th day of July, 2020.".

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 322(E), dated the 23rd April, 2019 and was subsequently amended

by notification No. 74/2019-Central Tax, dated the 26th December, 2019, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 953(E), dated the 26th December, 2019.

Seeks to extend due date of compliance which falls during the period from "20.03.20 to 29.06.2020" till 30.06.2020 and to extend validity of e-way bills.

Notification No. 35/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 3rd April, 2020

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 countries of the world including 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 20th day of March, 2020 to the 29th day of June, 2020, 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 30th day of June, 2020, 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 provisions of the said Act, as mentioned below-

(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;

(ii) where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 and its period of validity expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020.

2. This notification shall come into force with effect from the 20th day of March, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Seeks to extend due date for furnishing FORM GSTR-3B for supply made in the month of May, 2020

Notification No. 36/2020-Central Tax

F. No. CBEC-20/06/04/2020-GST New Delhi, the 3rd April, 2020

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), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said Rules), the Commissioner, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 29/2020 – Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 212 (E), dated the 23rd March, 2020, namely:–

In the said notification, in the first paragraph, after the second proviso, the following provisos shall be inserted, namely: –

"Provided also that, for taxpayers having an aggregate turnover of more than rupees 5 crore rupees in the previous financial year, the

return in **FORM GSTR-3B** of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 27th June, 2020:

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 12th day of July, 2020:

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar,Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in **FORM GSTR-3B** of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 14th day of July, 2020.".

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 29/2020 – Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.212(E), dated the 23rd March, 2020.

Notification enforcing provisions of Rule 87(13) and FORM GST PMT-09 of the CGST Rules, 2017

Notification No. 37/2020 – Central Tax

F.No. CBEC-20/06/09/2019-GST New Delhi, the 28th April, 2020

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) read with clause © of rule 9 and rule 25 of the Central Goods and Services Tax (Fourth

Amendment) Rules, 2019 (hereinafter referred to as the rules), made vide notification No. 31/2019-Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 457€, dated the 28th June, 2019, the Government, hereby appoints the 21st day of April, 2020, as the date from which the said provisions of the rules, shall come into force.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification amending by CGST Rules by CGST (Fifth Amendment) Rules, 2020

Notification No. 38/2020 – Central Tax

[F. No. CBEC-20/06/04/2020-GST] New Delhi, the 5th May, 2020

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 (1) These rules may be called the Central Goods and Services Tax (Fifth Amendment) Rules, 2020.

(2) Save as otherwise provided, 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 (hereinafter referred to as the said rules), with effect from the 21st April, 2020, in rule 26 in sub-rule (1), after the proviso, following proviso shall be inserted, namely: -

> "Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 21st day of April, 2020 to the *30*th day of June, 2020, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** verified through electronic verification code (EVC).".

3. In the said rules, after rule 67, with effect from a date to be notified later, the following rule shall be inserted, namely: -

"**67A. Manner of furnishing of return by short messaging service facility**.- Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** for a tax period, any reference to electronic furnishing shall include furnishing of the said return through a short messaging service using the registered mobile number and the said return shall be verified by a registered mobile number based One Time Password facility.

Explanation. - For the purpose of this rule, a Nil return shall mean a return under section 39 for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B**.".

Sd/-
(Pramod Kumar)
Director, 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. 30/2020 - Central Tax, dated the 3rd April, 2020, published vide number G.S.R. 230 (E), dated the 3rd April, 2020.Notification amending special procedure for Corporate Debtors undergoing the corporate insolvency resolutions process under the Insolvency and Bankruptcy Code, 2016

Notification amending special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016

Notification No. 39/2020 – Central Tax

[F. No. CBEC-20/06/04/2020-GST] New Delhi, the 5th May, 2020

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 amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.11/2020- Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 194(E), dated the 21st March, 2020, namely:-

In the said notification

(i) in the first paragraph, the following proviso shall be inserted, namely: -

"Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP.";

(ii) for the paragraph 2, with effect from the 21st March, 2020, the following paragraph shall be substituted, namely: -

"2. **Registration**.- The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration)in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later:.".

Sd/-
(Pramod Kumar)
Director, Government of India

Notification extending the validity of e-way bills which expire during 20.03.2020 to 15.04.2020 and generated till 24.03.2020 till 31.05.2020

Notification No. 40/2020 – Central Tax

[F. No. CBEC-20/06/04/2020-GST] New Delhi, the 5th May, 2020

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), the Central Government, 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.35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (ii), the following proviso shall be inserted, namely: -

"Provided that where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and its period of validity expires during the period 20th day of March, 2020 to the 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 31st day of May, 2020.".

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 35/2020-Central Tax, dated the 3rd April, 2020, published vide number G.S.R. 235(E), dated the 3rd April, 2020.

Notification extending due date for furnishing of Form GSTR 9/9C for F.Y. 2018-19 till 30.09.2020

Notification No. 41/2020 – Central Tax

[F. No. CBEC-20/06/04/2020-GST] New Delhi, the 5th May, 2020

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with rule 80 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), and in supersession of notification No. 15/2020-Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 198(E), dated the 23rd March, 2020, except as respects things done or omitted to be done before such supersession, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, for the financial year 2018-2019 till the 30th September, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification extending due date for furnishing FORM GSTR-3B, for registered persons of J&K and Ladakh

J & K	Nov. 19 to Feb. 20	24.03.2020
Ladakh	Nov. 19 & Dec. 19	24.03.2020
Ladakh	Jan. 20 to Mar. 20	20.05.2020

Notification No. 42/2020 – Central Tax

[F. No. CBEC-20/06/04/2020-GST] New Delhi, the 5th May, 2020

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) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, 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.44/2019 – Central Tax, dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 9th October, 2019, namely:–

In the said notification, in the first paragraph, for the sixth proviso, the following provisos shall be substituted, namely: –

"Provided also that the return in **FORM GSTR-3B** of the said rules for the months of November, 2019 to February, 2020 for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 24th March, 2020:

Provided also that the return in **FORM GSTR-3B** of the said rules for the months of November, 2019 to December, 2019 for registered persons whose principal place of business is in the Union territory of Ladakh, shall be furnished electronically through the common portal, on or before the 24th March, 2020:

Provided also that the return in **FORM GSTR-3B** of the said rules for the months of January, 2020 to March, 2020 for registered persons whose principal place of business is in the Union territory of Ladakh, shall be furnished electronically through the common portal, on or before the 20th May, 2020.".

This notification shall be deemed to come into force with effect from the 24th Day of March, 2020

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019 and was last amended by notification number 25/2020 – Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 208(E), dated the 23rd March, 2020.

Notification bringing into force Section 128 of Finance Act, 2020 in order to bring amendment in Section 140 of CGST Act into force w.e.f. 01.07.2017.

Notification No. 43/2020 – Central Tax

[F. No. CBEC-20/06/04/2020-GST] New Delhi, the 16th May, 2020

G.S.R. ….(E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2020 (12 of 2020) (hereafter in this notification referred to as the said Act), the Central Government hereby appoints the 18th day of May, 2020, as the date on which the provisions of section 128 of the said Act, shall come into force.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification giving effect to the provisions of Rule 67A for furnishing a NIL return in FORM GSTR-3B by SMS

Notification No. 44/2020 – Central Tax

[F. No. CBEC-20/06/16/2018-GST] New Delhi, the 8th June, 2020

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) read with rule 3 of the Central Goods and Services Tax (Fifth Amendment) Rules, 2020

(hereinafter referred to as the rules), made vide notification No. 38/2020 – Central Tax, dated the 5th May, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 272(E), dated the 5th May, 2020, the Government, hereby appoints the 8th day of June, 2020, as the date from which the said provisions of the rules, shall come into force.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification extending the date for transition under GST on account of merger of erstwhile Union Territories of Daman and Diu and Dadar and Nagar Haveli.

Notification No. 45/2020 – Central Tax

[F. No. CBEC-20/06/16/2018-GST] New Delhi, the 09th June, 2020

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 amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.10/2020- Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 193(E), dated the 21st March, 2020, namely:-

In the said notification, in the first paragraph, for the figures, letters and words “31st day of May, 2020”, the figures, letters and words “31st day of July, 2020” shall be substituted.

2. This notification shall come into force with effect from the 31st day of May, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 10/2020-Central Tax, dated the 21st March, 2020, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 193(E), dated the 21st March, 2020.

Notification extending period to pass order under Section 54(7) of CGST Act till 30.06.2020 or in some cases 15-days thereafter

Notification No. 46/2020 – Central Tax

[F. No. CBEC-20/06/03/2020-GST] New Delhi, the 09th June, 2020

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 countries of the world including India, the Government, on the recommendations of the Council, hereby notifies that 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 20th day of March, 2020 to the 29th day of June, 2020, 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 30thday of June, 2020, whichever is later

2. This notification shall come into force with effect from the 20th day of March, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification extending validity of e-way bills generated on or before 24.03.2020 (whose validity expired on or after 20th day of March 2020) till 30.06.2020

Notification No. 47/2020 – Central Tax

[F.No CBEC-20/06/03/2020-GST] New Delhi, the 09th June, 2020

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), the Government, on the recommendations of the Council, hereby makes

the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (ii), for the proviso, the following proviso shall be substituted, namely: -

"Provided that where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30st day of June, 2020.".

2. This notification shall come into force with effect from the 31st day of May, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) No. 35/2020-Central Tax, dated the 3rd April, 2020 vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 40/2020 – Central Tax, dated the 5th May, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 274(E), dated the 5th May, 2020.

Notification amending Rule 26(1) through CGST (Sixth Amendment) Rules, 2020

Notification No. 48 /2020 – Central Tax

[F. No. CBEC-20/06/08/2020-GST] New Delhi, the 19th June, 2020

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. (1) These rules may be called the Central Goods and Services Tax (Sixth Amendment) Rules, 2020.

(2) They shall come into force on 27th day of May, 2020.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 26 in sub-rule (1), for the second proviso, following provisos shall be substituted, namely: -

"Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 21st day of April, 2020 to the 30th day of September, 2020, also be allowed to furnish the return under section 39 in FORM GSTR-3B verified through electronic verification code (EVC).

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 May, 2020 to the 30th day of September, 2020, also be allowed to furnish the details of outward supplies under section 37 in FORM GSTR-1 verified through electronic verification code (EVC).".

Sd/-
(Pramod Kumar)
Director, 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. 38/2020 - Central Tax, dated the 5th May, 2020, published vide number G.S.R. 272 (E), dated the 5th May, 2020.

Notification bringing into force Sections 118, 125, 129 & 130 of Finance Act, 2020 in order to bring amendments to Sections 2, 109, 168 & 172 of CGST Act w.e.f. 30.06.2020.

Notification No. 49/2020 – Central Tax

[F. No. CBEC- 20/06/09/2019-GST] New Delhi, the 24th June, 2020

G.S.R. …. (E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2020 (12 of 2020) (hereinafter referred to as the said Act), the Central Government hereby appoints the 30th day of June, 2020, as the date on which the provisions of sections 118, 125, 129 and 130 of the said Act, shall come into force.

Sd/-
(Pramod Kumar)
Director to the Government of India

Notification making CGST (Seventh Amendment) Rules, 2020 amending Rule 7 of CGST Rules

Notification No. 50/2020 – Central Tax

[F. No. CBEC-20/06/09/2019-GST] New Delhi, the 24th June, 2020

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. (1) These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2020.

(2) They shall come into force with effect from the 01st day of April, 2020.

2. In the Central Goods and Services Tax Rules, 2017, in rule 7, for the Table, the following Table shall be substituted, namely:-

Sl. No.	Section under which composition levy is opted	Category of registered persons	Rate of tax
(1)	(1A)	(2)	(3)
1.	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State or Union territory
2.	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State or Union territory
3.	Sub-sections (1) and (2) of section 10	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory
4.	Sub-section (2A) of section 10	Registered persons not eligible under the composition levy under subsections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10	three per cent. of the turnover of taxable supplies of goods and services in the State or Union territory.''.

Sd/-
(Pramod Kumar)
Director, 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. 48/2020 - Central Tax, dated the 19th June, 2020 published vide number G.S.R. 394 (E), dated the 19th June, 2020.

Notification providing relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.

Notification No. 51/2020 – Central Tax

[F. No. CBEC-20/06/09/2019-GST] New Delhi, the 24th June, 2020

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 Central Government, on the recommendations of the Council, hereby makes the following further amendment 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:–

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be substituted, namely : –

> "Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the period mentioned therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in **FORM GSTR-3B**, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, namely:--

Table

Sl. No.	Class of registered persons	Rate of interest	Tax period
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent thereafter till 24th day of June, 2020	February, 2020, March 2020, April, 2020
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till the 30th day of June, 2020, and 9 per cent thereafter till the 30th day of September, 2020	February, 2020
		Nil till the 3rd day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	March, 2020
		Nil till the 6th day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	April, 2020
		Nil till the 12th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	May, 2020
		Nil till the 23rd day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	June, 2020
		Nil till the 27th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	July, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana,	Nil till the 30th day of June, 2020, and 9 per cent thereafter till the 30th day of September, 2020	February, 2020
		Nil till the 5th day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	March, 2020

		Nil till the 9th day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	April, 2020
		Nil till the 15th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	May, 2020
		Nil till the 25th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	June, 2020
		Nil till the 29th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	July, 2020.".

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 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 and was last amended vide notification number 31/2020 – Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.231(E), dated the 3rd April, 2020.

Notification providing one time amnesty by lowering/waiving of late fees for non furnishing of FORM GSTR-3B from July, 2017 to January, 2020 and providing relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to July, 2020

Notification No. 52/2020 – Central Tax

[F. No. CBEC-20/06/09/2019-GST] New Delhi, the 24th June, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of

the said Act, 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, Subsection (i) vide number G.S.R. 1253(E), dated the 31st December, 2018, namely :–

In the said notification,-

(i) in the third proviso, for the Table, the following Table shall be substituted, namely : –

Table

Sl. No.	Class of registered persons	Tax period	Condition
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 24th day of June, 2020
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	February, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
		March, 2020	If return in **FORM GSTR-3B** is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 6th day of July, 2020
		May, 2020	If return in **FORM GSTR-3B** is furnished on or before the 12th day of September, 2020
		June, 2020	If return in **FORM GSTR-3B** is furnished on or before the 23rd day of September, 2020
		July, 2020	If return in **FORM GSTR-3B** is furnished on or before the 27th day of September, 2020

3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States 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 and Delhi	February, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
		March, 2020	If return in **FORM GSTR-3B** is furnished on or before the 5th day of July, 2020
		April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 9th day of July, 2020
		May, 2020	If return in **FORM GSTR-3B** is furnished on or before the 15th day of September, 2020
		June, 2020	If return in **FORM GSTR-3B** is furnished on or before the 25th day of September, 2020
		July, 2020	If return in **FORM GSTR-3B** is furnished on or before the 29th day of September, 2020

(ii) after the third proviso, the following provisos shall be inserted, namely: –

"Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01 st day of July, 2020 to 30th day of September, 2020:

Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020.".

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 76/2018-Central Tax, dated 31st December, 2018 was published in the Gazette of India, Extraordinary, vide number G.S.R. 1253(E), dated the 31st December, 2018 and was last amended vide notification number 32/2020 – Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R.232 (E), dated the 3rd April, 2020.

Notification providing relief by waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for the months March, 2020 to June, 2020 for monthly filers and for quarters from January, 2020 to June, 2020 for quarterly filers

Notification No. 53/2020 – Central Tax

New Delhi, the 24th June, 2020

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 amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 4/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 53(E), dated the 23rd January, 2018, namely:–

In the said notification, for the third proviso, the following proviso shall be substituted, namely: –

> "Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who fail to furnish the details of outward supplies for the months or quarter mentioned in column (2) of the Table below in FORM GSTR-1 by the due date, but furnishes the said details on or before the dates mentioned in column (3) of the said Table:-

Sl. No. (1)	Month/ Quarter (2)	Dates (3)
1.	March, 2020	10th day of July, 2020
2.	April, 2020	24th day of July, 2020

3.	May, 2020	28th day of July, 2020
4.	June, 2020	05th day of August, 2020
5.	January to March, 2020	17th day of July, 2020
6.	April to June, 2020	03rd day of August, 2020.”.

[F. No. CBEC-20/06/09/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 4/2018– Central Tax, dated the 23rd January, 2018, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 53(E), dated the 23rd January, 2018 and was last amended by notification No. 33/2020-Central Tax, dated the 3 rd April, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 233(E) dated the 3rd April, 2020.

Notification extending due date for furnishing FORM GSTR-3B for supply made in the month of August, 2020 for taxpayers with annual turnover upto Rs. 5 crore

Notification No. 54/2020 – Central Tax

[F. No. CBEC-20/06/09/2019-GST] New Delhi, the 24th June, 2020

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), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said Rules), the Commissioner, 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. 29/2020 – Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 212 (E), dated the 23rd March, 2020, namely:–

In the said notification, in the first paragraph, after the fifth proviso, the following provisos shall be inserted, namely: –

“Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose

principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in FORM GSTR-3B of the said rules for the month of August, 2020 shall be furnished electronically through the common portal, on or before the 1 st day of October, 2020:

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in FORM GSTR-3B of the said rules for the month of August, 2020 shall be furnished electronically through the common portal, on or before the 3 rd day of October, 2020.".

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 29/2020 – Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.212(E), dated the 23rd March, 2020 and was last amended vide notification number 36/2020 – Central Tax, dated the 3 rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.236(E), dated the 3 rd April, 2020.

Notification extending due of compliance which falls during the period from 20.03.2020 to 30.8-2020 till 31.08.2020

Notification No. 55/2020 – Central Tax

[F. No. CBEC-20/06/08/2020-GST] New Delhi, the 27th June, 2020

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), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax

Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (i),--

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be substituted;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020" shall be substituted.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 47/2020 – Central Tax, dated the 9th June, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 362(E), dated the 9th June, 2020.

Notification extending period to pass order under section 54(7) of CGST Act till 31.08.2020 or in some cases upto 15 days thereafter

Notification No. 56/2020 – Central Tax

[F. No. CBEC-20/06/08/2020-GST] New Delhi, the 27th June, 2020

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), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, 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.46/2020-Central Tax, dated the 9 th June, 2020, published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 361(E), dated the 9 th June, 2020, namely:-

In the said notification, in the first paragraph,--

(i) for the words, figures and letters “29th day of June, 2020”, the words, figures and letters “30th day of August, 2020” shall be substituted;

(ii) for the words, figures and letters “30th day of June, 2020”, the words, figures and letters “31st day of August, 2020” shall be substituted.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 46/2020-Central Tax, dated the 9 th June, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 361(E), dated the 9 th June, 2020.

Notification providing conditional waiver of late fees for the periods from July 2017 to July 2020

Notification No. 57/2020 – Central Tax

[F. No. CBEC-20/06/08/2020-GST] New Delhi, the 30th June, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, 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 third proviso, the following provisos shall be inserted, namely: –

“Provided also that for the class of registered persons mentioned in column (2) of the Table of the above proviso, who fail to furnish the returns for the tax period as specified in column (3) of the said Table, according to the condition mentioned in the corresponding entry in column (4) of the said Table, but furnishes the said return

till the 30th day of September, 2020, the total amount of late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of central tax payable in the said return is nil:

Provided also that for the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, who fail to furnish the return in FORM GSTR-3B for the months of May, 2020 to July, 2020, by the due date but furnish the said return till the 30th day of September, 2020, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of central tax payable in the said return is nil.".

2. This notification shall be deemed to have come into effect from the 25th day of June, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 76/2018-Central Tax, dated 31st December, 2018 was published in the Gazette of India, Extraordinary, vide number G.S.R. 1253(E), dated the 31st December, 2018 and was last amended vide notification number 52/2020 – Central Tax, dated the 24th June, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R.405 (E), dated the 24th June, 2020.

Notification making CGST (8th Amendment) Rules, 2020

Notification No. 58/2020 – Central Tax

[F. No. CBEC-20/06/08/2020-GST] New Delhi, the 1st July, 2020

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. (1) These rules may be called the Central Goods and Services Tax (Eighth Amendment) Rules, 2020.

(2) They shall come into force from 1st July,2020.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), for the rule 67A, the following rule shall be substituted, namely:-

"**67A. Manner of furnishing of return or details of outward supplies by short messaging service facility.-** Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies through a short messaging service using the registered mobile number and the said return or the details of outward supplies shall be verified by a registered mobile number based One Time Password facility

Explanation. - For the purpose of this rule, a Nil return or Nil details of outward supplies shall mean a return under section 39 or details of outward supplies under section 37, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1, as the case may be.".

Sd/-
(Pramod Kumar)
Director, 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. 50/2020 - Central Tax, dated the 24.06.2020, published vide number G.S.R. 403 (E), dated the 24th June 2020.

NOTIFICATIONS ISSUED UNDER IGST ACT, 2017

Notification bringing into force certain provisions of the Finance (No. 2) Act, 2019 i.e. section 114 of the said Act to amend the IGST Act, 2017 w.e.f. 01.01.2020

Notification No. 01/2020-Integrated Tax

F.No.20/06/09/2019-GST New Delhi, the 01st January, 2020

G.S.R. .....(E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of January, 2020, as the date on which the provisions of section 114 of the Finance (No. 2) Act, 2019 (23 of 2019) shall come into force.

Sd/-
(Pramod Kumar)
Director, Government of India

Notification amending place of supply for B2B MRO services to the location of the recipient.

Notification No. 02/2020-Integrated Tax

F. No. 354/32/2020- TRU New Delhi, the 26th March, 2020

G.S.R.....(E).- In exercise of the powers conferred by sub-section (13) of section 13 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.4/2019- Integrated Tax, dated the 30th September, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 748 (E), dated the 30th September, 2019, namely:-

In the said notification, in Table A, after serial number (1) and the entries relating thereto, the following serial number and entry shall be inserted, namely: -

(1)	(2)	(3)
"2	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service."

2. This notification shall come into force with effect from the 1st day of April, 2020.

Sd/-
(Pramod Kumar)
Director to the Government of India

Notification providing relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020.

Notification No. 03/2020-Integrated Tax, dt. 08-04-2020

F. No. CBEC-20/06/04/2020-GST New Delhi, the 8th April, 2020

G.S.R.....(E).—In exercise of the powers conferred by section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (1) of section 50 and section 148 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 amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 6/2017 – Integrated 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. 698(E), dated the 28th June, 2017, namely:–

In the said notification, in the first paragraph, the following provisos shall be inserted, namely: –

"Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in **FORM GSTR-3B**, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, but furnish the said return

according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely:-

Table

S. No.	Class of registered persons	Rate of interest	Tax period	Condition
(1)	(2)	(3)	(4)	(5)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent thereafter	February, 2020, March, 2020, April, 2020	If return in FORM GSTR-3B is furnished on orbefore the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020, March, 2020	If return in FORM GSTR-3B is furnished on or before the 29th day of June, 2020
			April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
			March, 2020	If return in **FORM GSTR-3B** is furnished on or before the 3rd day of July, 2020
			April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification number 6/2017 – Integrated 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.698 (E), dated the 28th June, 2017.

ORDERS ISSUED UNDER CGST RULES, 2017

Order extending time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the CGST Rules, 2017 in certain cases.

Order No. 1/2020-GST dt. 07.02.2020

F. No. CBEC-20/06/17/2018-GST (Pt. I) New Delhi, the 7th February, 2020

Subject: Extension of time limit for submitting the declaration in FORM GST TRAN-I under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases

In exercise of the powers conferred by sub-rule (IA) of rule 117 of the Central Goods and Services Tax Rules, 2017 read with section 168 of the Central Goods and Services Tax Act, 2017, on the recommendations of the Council, and in supersession of Order No. 01/2019-GST dated 31.01.2019, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the period for submitting the declaration in FORM GST TRAN-I till 31st March, 2020, for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.

Sd/-
(Yogendra Garg)
Principal Commissioner (GST)

Ordinance No. 2 of 2020 empowering Government to extend time limits specified or prescribed under GST in special circumstances (*force majeure*)

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 31st March, 2020/Chaitra 11, 1942 (Saka)

THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020

NO. 2 OF 2020

Promulgated by the President in the Seventy-first Year of the Republic of India.

An Ordinance to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto.

WHEREAS, in view of the spread of pandemic COVID-19 across many countries of the world including India, causing immense loss to the lives of people, it has become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws;

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: -

CHAPTER I

PRELIMINARY

1. **Short title and commencement** (1) This Ordinance may be called the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

(2) Save as otherwise provided, it shall come into force at once.

2. **Definitions** (1) In this Ordinance, unless the context otherwise requires, -

(a) "specified Act" means-

(i) the Wealth-tax Act, 1957 (27 of 1957);

(ii) the Income-tax Act, 1961 (43 of 1961);

(iii) the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988);

(iv) Chapter VII of the Finance (No. 2) Act, 2004 (22 of 2004);

(v) Chapter VII of the Finance Act, 2013 (17 of 2013);

(vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);

(vii) Chapter VIII of the Finance Act, 2016 (28 of 2016); or

(viii) the Direct Tax *Vivad se Vishwas* Act, 2020 (3 of 2020);

(b) "notification" means the notification published in the Official Gazette.

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act,1944 (1 of 1944), the Customs Act, 1962 (52 of 1962), the Customs Tariff Act, 1975 (51 of 1975) or the Finance Act,1994 (32 of 1994), as the case may be, shall have the meaning respectively assigned to them in that Act.

CHAPTER II

RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

3. **Relaxation certain provisions specified Act.** (1) Where, anytime limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as-

(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 specified Act; 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 specified Act; or

(c) in case where the specified Act is the Income-tax Act, 1961 (43 of 1961),-

(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in-

(I) sections 54 to 54GB or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or

(II) such other provisions of that Act, subject to fulfillment of such conditions, as the Central Government may, by notification, specify; or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005 (28 of 2005), has been issued on or before the 31st day of March, 2020,

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, notwithstanding anything contained in the specified Act, stand extended to the 30th day of June, 2020, or such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions.

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2).

(2) Where any due date has been specified in, or prescribed or notified under, the specified Act for payment of any amount towards tax or levy, by whatever name called, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and such amount has not been paid within such date, but has been paid on or before the 30th day of June, 2020, or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act,-

(a) the rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth per cent for every month or part thereof;

(b) no penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.

Explanation.- For the purposes of this sub-section, "the period of delay" means the period between the due date and the date on which the amount has been paid.

CHAPTER III

AMENDMENT TO THE INCOME-TAX ACT, 1961

4. **Amendment of sections 10 and 80G of Act 43 of 1961.** In the Income-tax Act, 1961, with effect from the 1" day of April, 2020 (43 of 1961),-

(i) in section 10, in clause (23C), in sub-clause (i), after the word "Fund", the words and brackets "or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)" shall be inserted;

(ii) in section 80G, in sub-section (2), in clause (a), in sub-clause (iiia), after the word "Fund", the words and brackets "or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)" shall be inserted.

CHAPTER IV

AMENDMENTS TO THE DIRECT TAX *VIVAD SE VISHWAS* ACT

5. **Amendment of section 3 of Act (3 of 2020).** In section 3 of the Direct Tax *Vivad Se Vishwas* Act, 2020, -

(a) in third column, in the heading, for the figures, letters and words "31st day of March, 2020", the figures, letters and words "30th day of June, 2020"shall be substituted;

(b) in fourth column, in the heading, for the figures, letters and words "1st day of April, 2020", the figures, letters and words "1st day of July, 2020" shall be substituted.

CHAPTER V

RELAXATION OF TIME LIMIT UNDER CERTAIN INDIRECT TAX LAWS

6. **Relaxation of time limit under Central Excise Act, 1944, Customs Act, 1962, Customs Tariff Act, 1975 and Finance Act, 1994.** Notwithstanding anything contained in the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41 A, 46 and 47), the Customs Tariff Act, 1975 (51 of 1975) or Chapter V of the Finance Act,1994 (32 of 1994), as it stood prior to its omission vide section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1st day of July,2017, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as-

(a) completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called,

shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of June, 2020 or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions under clause (a) or clause (b).

CHAPTER VI

AMENDMENT TO THE FINANCE ACT (NO. 2), 2019

7. **Amendment of section 127 of Act 23 of 2019.** In section 127 of the Finance Act (No.2), 2019, -

(i) in sub-section (1), for the words “within a period of sixty days from the date of receipt of the said declaration”, the words, figures and letters “on or before the 31st day of May, 2020” shall be substituted;

(ii) in sub-section (2), for the words "within thirty days of the date of receipt of the declaration", the words, figures and letters "on or before the 1st day of May, 2020" shall be substituted;

(iii) in sub-section (4), for the words "within a period of sixty days from the date of receipt of the declaration", the words, figures and letters "on or before the 31' day of May, 2020" shall be substituted;

(iv) in sub-section (5), for the words "within a period of thirty days from the date of issue of such statement", the words, figures and letters "on or before the 30th day of June, 2020" shall be substituted.

Chapter VII

AMENDMENT TO THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

8. **Insertion of new section 168A in Act 12 of 2017.** After section 168 of the Central Goods and Services Tax Act, 2017, the following section shall be inserted, namely:-

'168A. **Power of Government to extend time limit in special circumstances.** (1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to *force majeure*.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.— For the purposes of this section, the expression "*force majeure*" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.'.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

ORDER ISSUED UNDER CGST ACT

Order No. 01/2020 extending date of service of cancellation order to allow the filing of application for revocation of cancellation order.

New Delhi, the 25th June, 2020

Order No. 01/2020-Central Tax

S.O. 2064(E).—WHEREAS, sub-section (2) of section 29 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act) provides for cancellation of registration by proper officer in situations described in clauses (a) to (e) as under: -

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts: Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

AND WHEREAS, sub-section (1) of section 169 of the said At provides for service of notice (opportunity of being heard); clauses (c) and (d) of said sub-section are as under: -

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

AND WHEREAS, sub-section (1) of section 30 of the said Act provides for application for revocation of cancellation of the registration within thirty days from the date of service of the cancellation order;

AND WHEREAS, sub-section (1) of section 107 of the said Act provides for filing appeal by any person aggrieved by any decision or order passed

by an adjudicating authority within three months from the date on which the said decision or order is communicated to such person and sub-section (4) of section 107 of the said Act empowers the Appellate Authority that it may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month;

AND WHEREAS, a large number of registrations have been cancelled under sub-section (2) of section 29 of the said Act by the proper officer by serving notices as per clause (c) and clause (d) of sub-section (1) of section 169 of the said Act and the period of thirty days provided for application for revocation of cancellation order in sub-section (1) of section 30 of the said Act, the period for filing appeal under section (1) of section 107 of the said Act and also the period of condoning the delay provided in sub-section (4) of Section 107 of the said Act has elapsed; the registered persons whose registration have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act are unable to get their cancellation of registration revoked despite having fulfilled all the requirements for revocation of cancellation of registration; the said Act being a new Act, these taxpayers could not apply for revocation of cancellation within the specified time period of thirty days from the date of service of the cancellation order, as a result whereof certain difficulties have arisen in giving effects to the provisions of sub¬section (1) of section 30 of the said Act;

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely: —

1. Short title.- This Order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2020.

2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating the period of thirty days for filing application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act for those registered persons who were served notice under clause (b) or clause (c) of sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and where cancellation order was passed up to 12th June, 2020, the later of the following dates shall be considered:-

a) Date of service of the said cancellation order; or

b) 31st day of August, 2020.

[F.No. CBEC-20/06/09/2019-GST)
PRAMOD KUMAR, Director

CIRCULARS ISSUED UNDER CGST ACT

Circular providing Standard Operating Procedure (SOP) to be followed by Exporters

Circular No. 131/9/2020/-GST

CBEC-20/16/07/2020-GST New Delhi, the 23rd January, 2020

To

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners (All)

Madam/Sir,

Subject: Standard Operating Procedure (SOP) to be followed by exporters– regarding

As you are aware, several cases of monetisation of credit fraudulently obtained or ineligible credit through refund of Integrated Goods & Service Tax (IGST) on exports of goods have been detected in past few months. On verification, several such exporters were found to be non-existent in a number of cases. In all these cases it has been found that the Input Tax Credit (ITC) was taken by the exporters on the basis of fake invoices and IGST on exports was paid using such ITC.

2. To mitigate the risk, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further verification. Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance till the verification report in respect of such cases is received from the field formations. Further, the export consignments/ shipments of concerned exporters are subjected to 100 % examination at the customs port.

3. While the verifications are caused to mitigate risk, it is necessary that genuine exporters do not face any hardship. In this context it is advised that exporters whose scrolls have been kept in abeyance for verification would be informed at the earliest possible either by the jurisdictional CGST or by Customs. To expedite the verification, the exporters on being informed in this regard or on their own volition should fill in information in

the format attached as Annexure 'A'to this Circular and submit the same to their jurisdictional CGST authorities for verification by them. If required, the jurisdictional authority may seek further additional information for verification. However, the jurisdictional authorities must adhere to timelines prescribed for verification.

3.1 Verification shall be completed by jurisdiction CGST office within 14 working days of furnishing of information in proforma by the exporter. If the verification is not completed within this period, the jurisdiction officer will bring it the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief Commissioner/Chief Commissioner Office.

3.2 After a period of 14 working days from the date of submission of details in the prescribed format, the exporter may also escalate the matter to the Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax by sending an email to the Chief Commissioner concerned (email IDs of jurisdictional Chief Commissioners are in Annexure B).

3.3 The Jurisdictional Pr.Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed within next 7 working days.

4. In case, any refund remains pending for more than one month, the exporter may register his grievance at www.cbic.gov.in/issue by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export & CGST formation where the details in prescribed format had been submitted etc.. All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

Sd/-
(Yogendra Garg)
Principal Commissioner
email: IGSTrefund-cbic@gov.in

Copy for information to:
The Principal Director Generals/ Director Generals (All)
Director General FIEO

Annexure A

The details to be provided by the exporter for verification:

I. GST related data:

1. GSTIN –

2. Please provide the following details if the proprietor/director/partner of this entity is also associated with other entities.

S No	Name of Director/ Partner/ Proprietor	Name of the other Entity Associated with	PAN (DIN if Director)	GSTIN	Registration status (Active / Inactive)
1					
2					
3					

3. Turnover of previous Financial Year –
(For New Entity till date Current Financial Year Turnover, if any)

4. Details of GST liability–

S No	Return Type	Declared aggregate liability for Previous Financial Year	Declared aggregate liability for Current Financial Year
1	GSTR 3B		
2	GSTR 1		

5. Details of ITC :

FY	ITC available in GSTR-2A	ITC availed in GSTR-3B	Mismatch	Details of payment or reversal of mismatched ITC
2017-18				
2018-19				
2019-20				

6. Details of refund claimed in previous Financial Year and current Financial Year-

S No	GSTIN	Type of Refund	ARNNo. andDate	Amount		Authority from which refund claimed
				Claimed	Sanctioned	

7. Summary of E way Bills generated for relevant period.

S No	Supplies	No of E way Bill generated	HSNs	Taxable Amount
1	Inward			
2	Outward			

II. Financial Data

1. Bank Account details including the bank accounts of proprietor/partner/ directors–

S. No.	Account Number	IFSC Code	Account Type	Name of Account Holder	PAN of Account Holder	Date of opening of Bank Account

2. Bank Account statement of past 6 months in respect of the bank accounts provided above.

3. BRCs/FIRCs evidencing receipt of foreign remittances against the exports made in past 1 year.

4. Bank letter for up to date KYC of all bank accounts provided above.

5. Top 5 creditors and Debtors (with GSTIN) from account(s) where refunds are proposed to be received and from which major business transactions (payments for supplies and receipts) are carried out.

III. Additional Data

1. Copy of PAN.
2. Copy of IEC
3. Certificate of Incorporation or partnership deed
4. Rent agreement of all premises along with geo-taggedphotos
5. Telephone Bill of past 3 months for all premises
6. Electricity Bill of past 3 months for all premises
7. Number of employees and the statement of PF evidencing employees
8. Copy of the following schedules of the latest Income Tax Return:
   (i) Computation of depreciation on plant and machinery under the Income Tax Act
   (ii) Computation of depreciation on other assets under the Income-tax Act
   (iii) Summary of depreciation on all the assets under the Income-tax Act

Annexure-B

Following are the official email IDs of Pr. Chief Commissioner's/Chief Commissioner's office of CGST zones under CBIC:

Sl. No.	Name of Zone	Email ID
1	Ahmedabad	ccu-cexamd@nic.in
2	Bengaluru	ccbz-excise@nic.in
3	Bhopal	ccu-cexbpl@nic.in
4	Bhubaneshwar	ccu-cexbbr@nic.in
5	Chandigarh	ccu-cexchd@nic.in
6	Chennai	ccu-cexchn@nic.in
7	Cochin	cccochin@nic.in
8	Delhi	ccu-cexdel@nic.in
9	Hyderabad	ccu-cexhyd@nic.in
10	Jaipur	ccu-cexjpr@nic.in
11	Kolkata	ccu-cexkoa@nic.in
12	Lucknow	ccu-cexlko@nic.in
13	Meerut	ccu-cexmeerut@nic.in
14	Mumbai	ccu-cexmum1@nic.in
15	Nagpur	ccu-cexngpr@nic.in
16	Panchkula	cco.gstpkl@gov.in
17	Pune	ccu-cexpune@nic.in
18	Ranchi	ccu-cexranchi@nic.in
19	Shillong	ccu-cexshlng@nic.in
20	Vadodara	ccu-cexvdr@nic.in
21	Vishakhapatnam	ccu-cexvzg@nic.in

Circular issuing clarification in respect of appeal in regard to non-constitution of Appellate Tribunal

Circular No. 132/2/2020-GST

F.No. CBEC-20/06/13/2019-GST New Delhi, the 18th March, 2020

To,

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal – reg.

Various representations have been received wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. It has been gathered that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed. Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act").

2. The matter has been examined in detail. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3.1 Appeal against an adjudicating authority is to be made as per the provisions of Section 107 of the CGST Act. The sub-section (1) of the section reads as follows: -

> "107. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or

order is communicated to such person."

3.2 Relevant rules have been prescribed for implementation of the above Section. The relevant rule for the same is rule 109A of Central Goods and Services Tax Rules, 2017 which reads as follows

"109A. Appointment of Appellate Authority.- *(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –*

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,

within three months from the date on which the said decision or order is communicated to such person."

3.3 Hence, if the order has been passed by Deputy or Assistant Commissioner or Superintendent, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Joint Commissioner. Further, if the order has been passed by Additional or Joint Commissioner, appeal has to be made to the Commissioner (Appeal) appointed for the same.

4.1 The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the CGST Act which reads as follows: -

"112 (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal."

4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued **the**

Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order **or** date on which the President or the State President, as the case maybe, of the Appellate Tribunal enters office, **whichever is later**.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sd/-
(Yogendra Garg)
Principal Commissioner (GST)

Circular clarifying issues in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules.

Circular No. 133/03/2020-GST

F.No. CBEC-20/06/18/2019-GST New Delhi, the 23rd March, 2020

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners ofCentral Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Sub: Clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules - reg.

Representations have been received from various taxpayers seeking clarification in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business. Certain doubts have been raised regarding the interpretation of sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) and sub-rule (1) of rule 41of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) in the context of business reorganization.

2. According to sub-section (3) of section 18 of the CGST Act,

"Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."

Further, according to sub-rule (1) of rule 41 of the CGST Rules:

"*A registered person shall, in the event of sale, merger, de-merger**,** amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in* ***FORM GST ITC-02,*** *electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:*

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation*:- For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.*

3. The issues raised in various representations have been analyzed in the light of various legal provisions under GST. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act clarifies the issues involved in the Table below.

S. No.	Issue / Question	Clarification
a.	(i) In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-Indialevel.	Proviso to sub-rule (1) of rule 41 of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-rule (1) of rule 41 of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under subrule (1) of rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.
		Illustration A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P.,i.e. 10/40 = 0.25.
	(ii) Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?	No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

b.	The proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business in transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?	Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.
c.	(i) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?	No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.
		Illustration A: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.
	(ii) How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC–02 by the transferor?	The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-rule (1) of rule 41 of the CGST Rules [refer 3 (c) (i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head. This is shown in the illustration below:

1	2	3	4	5	6
State	**Asset Ratio of Transferee**	**Tax Heads**	**ITC balance of Transferor (preapportionment) as on the date of filing FORMGSTITC–02)**	**Total amount of ITC transferred to the Transferee under FORMGST ITC-02**	**ITC balance of Transferor (post apportionment) after filing of FORM GST ITC–02)[Col (4) –Col (5)]**
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

d.	(i) In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.	According to sub-section (3) of section 18 of the CGST Act, "Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilizedin his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed." Further, sub-rule (1) of rule 41 of the CGST Rules prescribes that the registered person shall file the details in FORMGST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

		A conjoint reading of sub-section (3) of section 18 of the CGST Act along with sub-rule (1) of rule 41 of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor.
	(ii) Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?	According to section 232 (6) of the Companies Act, 2013, "The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date". The said legal provision appears to indicate that the "appointed date of demerger" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger".
		In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

4. Difficulty, if any, in implementation of the Circular may be brought to the notice of the Board. Hindi Version would follow.

Sd/-
(Yogendra Garg)
Principal Commissioner
y.garg@nic.in

Circular clarifying issues in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016.

Circular No. 134/04/2020-GST

CBES-20/16/12/2020-GST New Delhi, dated the 23rd March, 2020

To,

The Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016 - Reg.

Various representations have been received from the trade and industry seeking clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC").

2. As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT")

3. To address the aforementioned problems, notification No.11/2020-Central Tax, dated 21.03.2020 has been issued by the Government prescribing special procedure under section 148 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in the table below:-

S.No.	Issue	Clarification
1.	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.
2.	Should the GST registration of corporate debtor be cancelled?	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3.	Is IRP/RP liable to file returns of pre-CIRP period?	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the InsolvencyCommence-mentDate. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
<u>During CIRP period</u>		
4.	Should a new registration be taken by the corporate debtor during the CIRP period?	The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notificationNo.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.

5.	How to file First Return after obtaining new registration?	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.
6.	How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020-Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP ?	The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40. The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020-Central Tax, dated 21.03.2020. This exception is made only for the first return filed under section 40of the CGST Act.
7.	How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020- Central Tax, dated 21.03.2020?	Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except theprovisions of sub-rule (4) of rule 36 of theCGST Rules.
8.	Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/ GSTR-1 are not filed for the said period. The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sd/-
(Yogendra Garg)
Principal Commissioner (GST)
y.garg@nic.in

Circular clarifying certain issues on refund

Circular No. 135/05/2020-GST

CBEC-20/01/06/2019-GST New Delhi, the 31st March, 2020

To

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification on refund related issues – Reg.

Various representations have been received seeking clarification on some of the issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

2. Bunching of refund claims across Financial Years

2.1 It may be recalled that the restriction on clubbing of tax periods across different financial years was put in vide para 11.2 of the Circular No. 37/11/2018-GST dated 15.03.2018. The said circular was rescinded being subsumed in the Master Circular on Refunds No. 125/44/2019-GST dated 18.11.2019 and the said restriction on the clubbing of tax periods across financial years for claiming refund thus has been continued vide

Paragraph 8 of the Circular No. 125/44/2019-GST dated 18.11.2019, which is reproduced as under:

> *"8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods.* ***The period for which refund claim has been filed, however, cannot spread across different financial years.*** *Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file* ***FORM GSTR-1*** *on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier."*

2.2 Hon'ble Delhi High Court in Order dated 21.01.2020, in the case of M/s Pitambra Books Pvt Ltd., vide para 13 of the said order has stayed the rigour of paragraph 8 of Circular No. 125/44/2019-GST dated 18.11.2019 and has also directed the Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the Order. Hon'ble Delhi High Court vide para 12 of the aforesaid Order has observed that the **Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law**.

2.3 Further, same issue has been raised in various other representations also, especially those received from the merchant exporters wherein merchant exporters have received the supplies of goods in the last quarter of a Financial Year and have made exports in the next Financial Year i.e. from April onwards. The restriction imposed vide para 8 of the master refund circular prohibits the refund of ITC accrued in such cases as well.

2.4 On perusal of the provisions under sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 and sub-section (3) of section 54 of the CGST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years.

2.5 The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.

3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

3.1 It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

4. Change in manner of refund of tax paid on supplies other than zero rated supplies

4.1 Circular No. 125/44/2019-GST dated 18.11.2019, in para 3, categorizes the refund applications to be filed in **FORM GST RFD-01** as under:

a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;

b. Refund of tax paid on export of services with payment of tax;

c. Refund of unutilized ITC on account of supplies made to SEZ Unit/ SEZ Developer without payment of tax;

d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;

e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;

f. Refund to supplier of tax paid on deemed export supplies;

g. Refund to recipient of tax paid on deemed export supplies;

h. Refund of excess balance in the electronic cash ledger;

i. Refund of excess payment of tax;

j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;

k. Refund on account of assessment/provisional assessment/appeal/ any other order;

l. Refund on account of "any other" ground or reason.

4.2 For the refund of tax paid falling in categories specified at S. No. (i) to (l) above i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.

4.3.1 As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, vide notification No.16/2020-Central Tax dated 23.03.2020, sub-rule (4A) has been inserted in rule 86 of the CGST Rules, 2017 which reads as under:

"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in ***FORM GST PMT-03****."*

4.3.2 Further, vide the same notification, sub-rule (1A) has also been inserted in rule 92 of the CGST Rules, 2017. The same is reproduced hereunder: *"(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in* ***FORM RFD-06*** *sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue* ***FORM GST PMT-03*** *re-crediting the said amount as Input Tax Credit in electronic credit ledger."*

4.4 The combined effect the above mentioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in **FORM GST RFD-06** for amount refundable in cash and **FORM GST PMT-03** to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

5. Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in **FORM GSTR-2A** was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the **FORM GSTR-2A** of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant. Accordingly,

para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

6. New Requirement to mention HSN/SAC in Annexure 'B'

6.1 References have also been received from the field formations that HSN wise details of goods and services are not available in **FORM GSTR-2A** and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in **Annexure–B** of the circular No. 125/44/2019GST dated 18.11.2019 so as to easily identify between the supplies of goods and services.

6.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, **Annexure-B** of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

6.3 A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their **FORM GSTR-2A**. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

7. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

8. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

Sd/-
(Yogendra Garg)
Principal Commissioner
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Circular clarifying various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19)

Circular No. 136/06/2020-GST

CBEX-20/06/04-2020-GST New Delhi, the 3rd April, 2020

To

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19) - Reg.

The spread of Novel Corona Virus (COVID-19) across many countries of the world, including India, has caused immense loss to the lives of people and resultantly impacted the trade and industry. In view of the emergent situation and challenges faced by taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), Government has announced various relief measures relating to statutory and regulatory compliance matters across sectors.

2. Government has issued following notifications in order to provide relief to the taxpayers:

S. No.	Notification	Remarks
1.	Notification No. 30/2020-Central Tax, dated 03.04.2020	Amendment in the CGST Rules so as to allow taxpayers opting for the Composition Scheme for the financial year 2020-21 to file their option in FORM CMP-02 till 30th June, 2020 and to allow cumulative application of the condition in rule 36(4) for the months of February, 2020 to August, 2020 in the return for tax period of September, 2020.

2.	Notification No.31/2020-Central Tax, dated 03.04.2020	A lower rate of interest of NIL for first 15 days after the due date of filing return in FORM GSTR-3B and @ 9% thereafter is notified for those registered persons having aggregate turnover above Rs. 5 Crore and NIL rate of interest is notified for those registered persons having aggregate turnover below Rs. 5 Crore in the preceding financial year, for the tax periods of February, 2020 to April, 2020. This lower rate of interest shall be subject to condition that due tax is paid by filing return in FORM GSTR-3B by the date(s) as specified in the Notification.
3.	Notification No. 32/2020- Central Tax, dated 03.04.2020	Notification under section 128 of CGST Act for waiver of late fee for delay in furnishing returns in FORM GSTR-3B for the tax periods of February, 2020 to April, 2020 provided the return in FORM GSTR-3B by the date as specified in the Notification.
4.	Notification No. 33/2020- Central Tax, dated 03.04.2020	Notification under section 128 of CGST Act for waiver of late fee for delay in furnishing the statement of outward supplies in FORM GSTR-1 for taxpayers for the tax periods March, 2020 to May, 2020 and for quarter ending 31st March 2020 if the same are furnished on or before 30th day of June, 2020.
5.	Notification No. 34/2020- Central Tax, dated 03.04.2020	Extension of due date of furnishing statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 for the quarter ending 31st March, 2020 till the 7th day of July, 2020 and filing FORM GSTR-4 for the financial year ending 31st-March, 2020 till the 15th day of July, 2020.
6.	Notification No. 35/2020- Central Tax, dated 03.04.2020	Notification under section 168A of CGST Act for extending due date of compliance which falls during the period from the 20th day of March, 2020 to the 29th day of June, to 30th day of June, 2020.

3. Various issues relating to above mentioned notifications have been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies each of these issues as under:-

S. No.	Issue	Clarification
1.	What are the measures that have been specifically taken for taxpayers who have opted to pay tax under section 10 the CGST Act or those availing the option to pay tax under the notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019?	1. The said class of taxpayers, as per the notification No. 34/2020- Central Tax, dated 03.04.2020, have been allowed, to,- (i) furnish the statement of details of payment of self-assessed tax in FORM GST CMP-08 for the quarter January to March, 2020 by 07.07.2020; and (ii) furnish the return in FORM GSTR-4 for the financial year 2019-20 by 15.07.2020. 2. In addition to the above, taxpayers opting for the composition scheme for the financial year 2020-21, have been allowed, as per the notification No. 30/2020- Central Tax, dated 03.04.2020, to,- (i) file an intimation in FORM GST CMP-02 by 30.06.2020; and (ii) furnish the statement in FORM GST ITC-03 till 31.07.2020.
2.	Whether due date of furnishing FORM GSTR-3B for the months of February, March and April, 2020 has been extended ?	The due dates for furnishing FORM GSTR-3B for the months of February, March and April, 2020 has not beenextended through any of the notifications referred in para 2 above. 2. However, as per notification No. 31/2020-Central Tax, dated 03.04.2020, NIL rate of interest for first 15 days after the due date of filing return in FORM GSTR-3B and reducedrate of interest @ 9% thereafter has been notified for those registered persons whose aggregate turnover in the preceding financial year is above Rs. 5 Crore. For those registered persons having turnover up to Rs. 5 Crore in the preceding financial year, NIL rate of interest has also been notified. 3. Further, vide notification as per the notification No. 32/2020- Central Tax, dated 03.04.2020, Government has waived the late fees for delay in furnishing the return in FORM GSTR-3B for the months of February, March and April, 2020. 4. The lower rate of interest and waiver of late fee would be available only if due tax is paid by filing return in FORM GSTR-3B by the date(s) as specified in the Notification.

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<td>3.</td>
<td>What are the conditions attached for availing the reduced rate of interest for the months of February, March and April,

2020, for a registered person whose aggregate turnover in the preceding financial year is above Rs. 5 Crore?</td>
<td>1. As clarified at Sl.no. (2) above, the due date for furnishing the return remains unchanged; i.e. 20th day of the month succeeding such month. The rate of interest has been notified as Nil for first 15 days from the due date, and 9 per cent per annum thereafter, for the said months.

2. The reduced rate of interest is subject to the condition that the registered person must furnish the returns in FORM GSTR-3B on or before 24th day of June, 2020.

In case the returns in FORM GSTR-3B for the said months are not furnished on or before 24th day of June, 2020 then interest at 18% per annum shall be payable from the due date of return, till the date on which the return is filed. In addition, regular late fee shall also be leviable for such delay along with liability for penalty.</td>
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<td>4.</td>
<td>How to calculate the interest for late payment of tax for the months of February, March and April, 2020 for a registered person whose aggregate turnover in preceding financial year is above Rs. 5 Crore?</td>
<td>1. As explained above, the rate of interest has been notified as Nil for first 15 days from the due date, and 9 per cent per annum thereafter, for the said months. The same can be explained through an illustration.

Illustration:- Calculation of interest for delayed filing of return for the month of March, 2020 (due date of filing being 20.04.2020) may be illustrated as per the below Table:</td>
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<tr><th>S. No</th><th>Date of filing GSTR – 3B</th><th>No. of days of delay</th><th>Wheather condition for reduced interest is fulfilled?</th><th>Interest</th></tr>
<tr><td>1</td><td>02.05.2020</td><td>11</td><td>Yes</td><td>Zero interest</td></tr>
<tr><td>2</td><td>20.05.2020</td><td>30</td><td>Yes</td><td>Zero interest for 15 days + interest rate @9% p.a. for 15 days</td></tr>
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<tr><td>3</td><td>20.06.2020</td><td>61</td><td>Yes</td><td>Zero interest for 15 days + interest rate @9% p.a. for 46 days</td></tr>
<tr><td>4</td><td>24.06.2020</td><td>65</td><td>Yes</td><td>Zero interest for 15 days + interest rate @9% p.a. for 50 days</td></tr>
<tr><td>5</td><td>30.06.2020</td><td>71</td><td>NO</td><td>Interest rate @18% p.a. for 71 days (i.e. no benefit of reduced interest)</td></tr>
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<td>5.</td>
<td>What are the conditions attached for availing the NIL rate of interest for the months of February, March and April, 2020, for a registeredperson whose aggregate turnover in preceding financial year is up to Rs. 5 Crore?</td>
<td>1. As clarified at sl.no. (2) above, the due date for furnishing the return remains unchanged. The rate of interest has been notified as Nil for the said months.

2. The conditions for availing the NIL rate of interest is that the registered person must furnish the returns in FORM GSTR-3B on or before the date as mentioned in the notification No. 31/2020- Central Tax, dated 03.04.2020.

In case the return for the said months are not furnished on or before the date mentioned in the notification then interest at 18% per annum shall be charged from the due date of return, till the date on which the return is filed as explained in the illustration at sl.no (4) above, against entry 5. In addition, regular late fee shall also be leviable for such delay along with liability for penalty.</td>
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6.	Whether the due date of furnishing the statement of outward supplies in FORM GSTR-1 under section 37 has been extended for the months of February, March and April 2020?	Under the provisions of section 128 of the CGST Act, in terms of notification No. 33/2020- Central Tax, dated 03.04.2020, late fee leviable under section 47 has been waived for delay in furnishing the statement of outward supplies in FORM GSTR-1 under Section 37, for the tax periods March, 2020, April 2020, May, 2020 and quarter ending 31st March 2020 if the same are furnished on or before the 30th day of June, 2020.
7.	Whether restriction under rule 36(4) of the CGST Rules would apply during the lockdown period?	Vide notification No. 30/2020- Central Tax, dated 03.04.2020, a proviso has been inserted in CGST Rules 2017 to provide that the said condition shall not apply to input tax credit availed by the registered persons in the returns in FORM GSTR-3B for the months of February, March, April, May, June, July and August, 2020, but that the said condition shall apply cumulatively for the said period and that the return in FORM GSTR-3B for the tax period of September, 2020 shall be furnished with cumulative adjustment of input tax credit for the said months in accordance with the condition under rule 36(4).
8.	What will be the status of e-way bills which have expired during the lockdown period?	In terms of notification No. 35/2020- Central Tax, dated 03.04.2020,Issued under the provisions of 168A of the CGST Act, where the validity of an e-way bill generated under rule 138 of the CGST Rules expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill has been extended till the 30th day of April, 2020
9.	What are the measures that have been specifically taken for taxpayers who are required to deduct tax at source under sec-tion 51, Input Service Distributors and Non-resident Taxable persons?	Under the provisions of section 168A of the CGST Act, in terms of notification No. 35/2020- Central Tax, dated 03.04.2020, the said class of taxpayers have been allowed to furnish the respective returns specified in sub-sections (3), (4) and (5) of section 39 of the said Act, for the months of March, 2020 to May, 2020 on or before the 30th day of June, 2020.

10.	What are the measures that have been specifically taken for tax-payers who are required to collect tax at source under section 52?	Under the provisions of section 168A of the CGST Act, in terms of notification No. 35/2020- Central Tax, dated 03.04.2020, the said class of taxpayers have been allowed to furnish the statement specified in section 52, for the months of March, 2020 to May, 2020 on or before the 30th day of June, 2020.
11.	The time limit for compliance of some of the provisions of the CGST Act is falling during the lock-down period announced by the Government. What should the taxpayer do?	Vide notification No. 35/2020- Central Tax, dated 03.04.2020, issued under the provisions of 168A of the CGST Act, except for few provisions covered in exclusion clause, any time limit for completion or compliance of any action which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, has been extended to 30th day of June, 2020.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sd/-
(Yogendra Garg)
Principal Commissioner
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Circular clarifying various issues regarding GST paid on Advances received and contracts cancelled, Goods returned, Expiry of LUT, due date for TDS payment and due date for making refund applications.

Circular No. 137/07/2020-GST

New Delhi, dated the 13th April, 2020

To

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws-reg.

Circular No.136/06/2020-GST, dated 03.04.2020 had been issued to clarify doubts regarding relief measures taken by the Government for facilitating taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") on account of the measures taken to prevent the spread of Novel Corona Virus (COVID-19). It has been brought to the notice of the Board that certain challenges are being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act which also need to be clarified.

The issues raised have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies as under:

S. No.	Issue	Clarification
1	An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim.
		However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
2.	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".

3.	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?	In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
4.	Letter of Undertaking (LUT) furnished for the purposes of zero-rated supplies as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 read with rule 96A of the CGST Rules has expired on 31.03.2020. Whether a registered person can still make a zero-rated supply on such LUT and claim refund accordingly or does he have to make such supplies on payment of IGST and claim refund of such IGST ?	Notification No. 37/2017-Central Tax, dated 04.10.2017, requires LUT to be furnished for a financial year. However, in terms of notification No. 35/2020 Central Tax dated 03.04.2020, where the requirement under the GST Law for furnishing of any report, document, return, statement or such other record falls during between the period from 20.03.2020 to 29.06.2020, has been extended till 30.06.2020. Therefore, in terms of Notification No. 35/2020-Central Tax, time limit for filing of LUT for the year 2020-21 shall stand extended to 30.06.2020 and the taxpayer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30.06.2020. Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents.
5.	While making the payment to recipient, amount equivalent to one per cent was deducted as per the provisions of section 51 of Central Goods and Services Tax Act, 2017 i. e. Tax Deducted at Source (TDS). Whether the date of deposit of such payment has also been extended vide notification N. 35/2020-Central Tax dated 03.04.2020?	As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (3) of section 39 and section 51 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for furnishing of return in FORM GSTR-7 along with deposit of tax deducted for the said period has also been extended till 30.06.2020 and no interest under section 50 shall be leviable if tax deducted is deposited by 30.06.2020.

6.	As per section 54 (1), a person is required to make an application before expiry of two years from the relevant date. If in a particular case, date for making an application for refund expires on 31.03.2020, can such person make an application for refund before 29.07.2020?	As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (1) of section 54 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for filing an application for refund falling during the said period has also been extended till 30.06.2020.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
y.garg@nic.in

Circular clarifying certain challenges faced by the registered persons in implementation of provisions of GST Laws viz. Issues related to Insolvency and Bankruptcy Code, 2016 and other Covid related representations.

Circular No. 138/08/2020-GST

New Delhi, dated the 06th May, 2020

To

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
|The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws-reg.

Circular No.136/06/2020-GST, dated 03.04.2020 and Circular No.137/07/2020-GST, dated 13.04.2020 had been issued to clarify doubts regarding relief measures taken by the Government for facilitating taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") on account of the measures taken to prevent the spread of

Novel Corona Virus (COVID-19). Post issuance of the said clarifications, certain challenges being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act were brought to the notice of the Board, and need to be clarified.

The issues raised have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies as under:

S. No.	Issue	Clarification
Issues related to Insolvency and Bankruptcy Code, 2016		
1	Notification No. 11/2020 – Central Tax dated 21.03.2020, issued under section 148 of the CGST Act provided that an IRP / CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that **the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.**	Vide notification No. 39/2020- Central Tax, dated 05.05.2020, the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide notification No. 11/2020 – Central Tax dated 21.03.2020 has been extended. Accordingly, IRP/RP shall now be required to obtain registration **within thirty days of the appointment of the IRP/ RP or by 30th June, 2020, whichever is later.**
2.	The notification No. 11/2020– Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment. **Clarification has been sought whether IRP would be required to take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor** (earlier GSTIN) i.e. all the GSTR-3Bs have been filed by the Corporate debtor / IRP prior to the period of appointment of IRPs and they have not been defaulted in return filing.	i. The notification No. 11/2020– Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide notification No. 39/2020 - Central Tax, dated 05.05.2020 so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP. ii. Accordingly, it is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).

3.	Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably, and in cases **where an appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be transferred from the IRP to RP**, or both will need to take fresh registration.	i. In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form. Changing the authorized signatory is a non- core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory. ii. The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.
Other COVID-19 related representations.		
4.	As per notification no. 40/2017-Central Tax (Rate) dated 23.10.2017, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, inter-alia, that the merchant exporter exports the goods within a period of ninety days from the date of issue of	i. Vide notification No. 35/2020-Central Tax dated 03.04.2020, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time. ii. Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 was issued under powers conferred by section 11 of the CGST Act,
	a tax invoice by the registered supplier. Request has been made to clarify the provision vis-à-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020.	2017. The exemption provided in notification No. 35/2020-Central Tax dated 03.04.2020 is applicable for section 11 as well. iii. Accordingly, it is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.
5.	Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of **FORM GST ITC-04** in respect of goods dispatched to a job	Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or

	month succeeding that quarter. Accordingly, the due date of filing of **FORM GST ITC-04** for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought as to whether the extension of time limit as provided in terms of notification No. 35/2020-Central Tax dated 03.04.2020 also covers furnishing of **FORM GST ITC-04** for quarter ending March, 2020	compliance of such action has not been made within such time. Accordingly, it is clarified that the due date of furnishing of **FORM GST ITC-04** for the quarter ending March, 2020 stands extended up to 30.06.2020.
6.	As per section 54 (1), a person is required to make an application before expiry of two years from the relevant date. If in a particular case, date for making an application for refund expires on 31.03.2020, can such person make an application for refund before 29.07.2020?	As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (1) of section 54 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for filing an application for refund falling during the said period has also been extended till 30.06.2020.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
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Circular Clarifying Refund Related Issues

Circular No. 139/09/2020-GST

New Delhi, Dated the 10th June, 2020

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/Commissioners of Central Tax (All)
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification on refund related issues – reg.

Various representations have been received seeking clarification on the issue relating to refund of accumulated ITC in respect of invoices whose

details are not reflected in the **FORM GSTR-2A** of the applicant. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

2. Circular No.135/05/2020 – GST dated the 31st March, 2020 states that:

> "5. Guidelines for refunds of Input Tax Credit under Section 54(3)
> 5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.
>
> 5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent."

3.1 Representations have been received that in some cases, refund sanctioning authorities have rejected the refund of accumulated ITC is respect of ITC availed onImports, ISD invoices, RCM etc. citing the above-mentioned Circular on the basis that the details of the said invoices/ documents are not reflected in FORM GSTR-2A of the applicant.

3.2 In this context it is noteworthy that before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020, refund was being granted even in respect of credit availed on the strength of missing invoices (not reflected in FORM GSTR-2A) which were uploaded by the applicant along with the refund application on the common portal. However, vide Circular No.135/05/2020 – GST dated the 31st March, 2020, the refund related to these missing invoices has been restricted. Now, the refund of accumulated

ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

4. The aforesaid circular does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc.. It is hereby clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
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Clarification in respect of levy of GST on Director's Remuneration

Circular No: 140/10/2020 - GST

New Delhi, dated the 10th June, 2020

To

The Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of levy of GST on Director's remuneration - Reg.

Various references have been received from trade and industry seeking clarification whether the GST is leviable on Director‟s remuneration paid by companies to their directors. Doubts have been raised as to whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. "services by an employee to

the employer in the course of or in relation to his employment" or whether the same are liable to be taxed in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).

2. The issue of remuneration to directors has been examined under following two different categories:

(i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and

(ii) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue as below:

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

4.1 The primary issue to be decided is whether or not a „Director" is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he **may be a person who is not an employee of the company**.

b. the definition of 'independent directors' under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that **such director should not have been an employee** or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

4.2 Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly

outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

4.3 Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

5.1 Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.

5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director‟s remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

5.3. Accordingly, it is clarified that the part of Director‟s remuneration which are declared as „Salaries‟ in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

5.4 It is further clarified that the part of employee Director‟s remuneration which is declared separately other than „salaries‟ in the Company‟s accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST

Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

6 It is requested that suitable trade notices may be issued to publicize the contents of this circular.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sd/-
(Yogendra Garg)
Principal Commissioner
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Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of COVID-19

Circular No.141/11/2020-GST

New Delhi, dated the 24th June, 2020

To

The Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19) - Reg.

Circular No. 136/06/2020-GST, dated 03.04.2020 was issued by the Board on the subject issue clarifying various issues relating to the measures announced by the Government providing relief to the taxpayers. The GST Council, in its 40th meeting held on 12.06.2020, recommended further relief to the taxpayers and accordingly, following notifications have been issued

S. No.	Notification No.	Remarks
1.	Notification No.51/2020-Central Tax, dated 24.06.2020.	Seeks to provide relief to taxpayers by reducing the rate of interest from 18% per annum to 9% per annum for specified period.
2.	Notification No.52/2020-Central Tax, dated 24.06.2020.	Seeks to provide relief to taxpayers by conditional waiver of late fee for delay in furnishing **FORM GSTR-3B** for specified period.
3.	Notification No.53/2020-Central Tax, dated 24.06.2020.	Seeks to provide relief to taxpayers by conditional waiver of late fee for delay in furnishing **FORM GSTR-1** for specified period.

2. The above referred notifications have amended the parent notifications through which the relief from interest for late payment of GST and late fee for delay in furnishing of FORM GSTR-3B / FORM GSTR-1 was provided for the tax periods of February, March and April, 2020. Accordingly, the clarifications issued vide Circular No. 136/06/2020-GST, dated 03.04.2020 stand modified to the extent as detailed in the succeeding paragraphs to incorporate the decisions of the 40th meeting of the GST Council. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") clarifies the issues detailed below: Manner of calculation of interest for taxpayers having aggregate turnover above Rs. 5 Cr.

3.1 Vide notification No.31/2020- Central Tax, dated 03.04.2020, a conditional lower rate of interest was provided for various class of registered persons for the tax period of February, March and April, 2020. The same was clarified through Circular No. 136/06/2020-GST, dated 03.04.2020 (para 3, sl. No. 3, 4 and 5). It was clarified that in case the return for the said months are not furnished on or before the date mentioned in the notificationNo.31/2020- Central Tax, dated 03.04.2020, interest at 18% per annum shall be charged from the due date of return, till the date on which the return is filed.

3.2 The Government, vide notification no 51/2020- Central Tax, dated 24.06.2020 has removed the said condition. Accordingly, a lower rate of interest of NIL for first 15 days after the due date of filing return in FORM GSTR-3B and @ 9% thereafter till 24.06.2020 is notified. After the specified date, normal rate of interest i.e. 18% per annum shall be charged for any further period of delay in furnishing of the returns.

3.3 The calculation of interest in respect of this class of registered persons for delayed filing of return for the month of March, 2020 (due date of filing being 20.04.2020) is as illustrated in the Table below:

Sl. No	Date of filing GSTR-3B	No. of days of delay	Interest
1	02.05.2020	12	Zero interest
2	20.05.2020	30	Zero interest for 15 days, thereafter interest rate @9% p.a. for 15 days
3	20.06.2020	61	Zero interest for 15 days, thereafter interest rate @9% p.a. for 46 days
4	24.06.202	65	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days
5	30.06.2020	71	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days and interest rate @18% p.a. for 6 days

Manner of calculation of interest for taxpayers having aggregate turnover below Rs. 5 Cr.

4.1 For the taxpayers having aggregate turnover below Rs. 5 Crore, notification No.31/2020- Central Tax, dated 03.04.2020 provided a conditional NIL rate of interest for the tax period of February, March and April, 2020. The Government, vide notification no 52/2020- Central Tax, dated 24.06.2020 provided the NIL rate of interest till specified dates in the said notification and 9% per annum thereafter till 30th September, 2020. Similar relaxation of reduced rate of interest has been provided for the tax period of May, June and July 2020 also for the said class of registered persons having aggregate turnover below Rs. 5 Crore in the preceding financial year. **The notification, thus, provides NIL rate of interest till specified dates and after the specified dates lower rate of 9% would apply till 30th September 2020. After 30thSeptember, 2020, normal rate of interest i.e. 18% per annum shall be charged for any further period of delay in furnishing of the returns.**

4.2 The calculation of interest in respect of this class of registered persons for delayed filing of return for the month of March, 2020 (for registered persons for whom the due date of filing was 22.04.2020) and June, 2020 (for registered persons for whom the due date of filing is 22.07.2020) is as illustrated in the Table below:

Table

S. No.	Tax period	Applicable rate of interest	Date of filing GSTR-3B	No. of days of delay	Interest
1	**March, 2020**	Nil till the 3rd day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	22.06.2020	61	Zero interest
2			22.09.2020	153	Zero interest for 72 days, thereafter interest rate @9% p.a. for 81 days
3			22.10.2020	**183**	**Zero interest for 72 days, thereafter interest rate @9% p.a. for 89 days and interest rate @18% p.a. for 22 days**
4	June, 2020	Nil till the 23rd day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	28.08.2020	**37**	Zero interest
5			28.09.2020	**68**	Zero interest for 63 days, thereafter interest rate @9% p.a. for 5 days
6			28.10.2020	**98**	**Zero interest for 63 days, thereafter interest rate @9% p.a. for 7 days and interest rate @18% p.a. for 28 days**

Manner of calculation of late fee

5.1 Vide notification No. 32/2020- Central Tax, dated 03.04.2020, a conditional waiver of late fee was provided for the tax period of February, March and April, 2020, if the return in was filed by the date specified in the said notification. The same was clarified through Circular No. 136/06/2020-GST, dated 03.04.2020.

5.2 The Government, vide notification No. 52/2020- Central Tax, dated 24.06.2020 has provided the revised dates for conditional waiver of late

fee for the months of February, March and April, 2020 and extended the same for the months of May, June and July, 2020 for the small taxpayers.

5.3 It is clarified that the waiver of late fee is conditional to filing the return of the said tax period by the dates specified in the said notification. In case the returns in FORM GSTR3B for the said months are not furnished on or before the dates specified in the said notification, then late fee shall be payable from the due date of return, till the date on which the return is filed.

6. The contents of the Circular 136/06/20-GST, dated 03.04.2020 are modified to this extent. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
y.garg@nic.in

Order in respect to Transfer/posting in VAT/SGST Department

No. F.III/66/DT&T/2005/Estt./Pt.File-III/3141-147 Dated: 03.07. 2020

ORDER

The Competent Authority is pleased to order transfer/ posting of the following officials in addition to their present place of posting with immediate effect.

All the officers who are deployed on COVID duty and relieved from this department shall not work for the department in order to avoid any duplicacy/confusion. The following link arrangements are made for discharge of their duties by the officers available in the department.

This arrangement will remain valid till the joining of Officers in this department who are deployed on COVID duty:-

Zone	Name of Officers (Sh./Ms.)	Present Place of Posting	Additional Charge
Zone I	(i) Rajeev Chauhan, GSTO	W-3	W-4 & 5
	(ii) Babita Sharma, GSTO	W-6	W-24 & 25
	(iii) Savita Aggarwal, GSTO	W-27	W-26 & 28
	(iv) Renu Arora, GSTO	W-29	W-32
	(v) Sushma Rani, GSTO	W-30	W-36
	(vi) Ramesh Bagade, GSTO	W-31	W-38 & 39
Zone II	(i) Jal Ram Meenja, GSTO	W-2	W-7,8,9,10 & 12
	(ii) Rita Sahni, GSTO	W-14	W-20 & 21
	(iii) Renu Gupta, GSTO	W-16	W-22 & 23
	(iv) Hemant Kumar, GSTO	W-11 & 15	W-13, 17,18,19
Zone III	(i) V.S. Malik, AC	W-40, 41	W-33
	(ii) R.K. Ahuja, AC	W-44	W-43
	(iii) Reena Toppo	W-45, 52	W-46 & 47
	(iv) Sushma Singh	W-55	W-53 & 54
	(v) Jyoti Bhola, GSTO	W-40 & 41	W-33 & 34
	(vi) Uma Kirthivasan, GSTO	W-50	W-51
	(vii) Sangeeta Kholi, GSTO	W-55	W-49
	(viii) Monika, GSTO	W-69	W-65 & 68
	(ix) Alka Hasija, GSTO	W-73	W-48
Zone-IV	(i) Daniel Masih, AC	W-58	W-56
	(ii) Anshu Mongia, GSTO	W-59	W-105 & 106
	(iii) Damodar Singh Meena, AC	W-70	W-60
Zone-V	(i) Naresh Kumar Tehlan, GSTO	W-62	W-61
Zone-VI	(i) R.K. Meena, AC	W-71	W-67
	(ii) Virender Kumar Indora, GSTO	W-71	W-72
Zone-VII	(i) Ramesh Kirad, AC	W-78	W-76
Zone-VIII	(i) Rajiv Kumar, GSTO	W-87	W-88
	(ii) Anshu Garg, GSTO	W-90	W-91
	(iii) Vimal Diwakar, AC	W-93	W-89
	(iv) Krishan Kumar, AC	W-94	W-92
Zone-IX	(i) Rajesh Kumar, AC	W-98	W-104
Zone-XI	(ii) Manoj Kumar Sharma, AC	W-206	W-205
Zone-XII	(iii) Vijay Kumar Sharma, GSTO	W-116	W-107, 108, 109, 110, 111, 112, 113, 114, 115

Non-compliance will invite strict action as per Rules.

Assistant Commissioner (HR)

Notification No. 60/2020 dated 20.07.2020 substituting FORM GST INV-01 Format/Schema for e-invoice

Notification No. 60/2020 – Central Tax

[F. No. CBEC-20/13/01/2019-GST] New Delhi, the 30th July, 2020

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. (1) These rules may be called the Central Goods and Services Tax (Ninth Amendment) Rules, 2020.

(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, for **FORM GST INV-01**, the following form shall be substituted, namely:-

"FORM GST INV – 1
(See Rule 48)

Format/Schema for e-Invoice

Note 1: Cardinality means whether reporting of the item(s) is mandatory or optional as explained below:

0..1: It means that reporting of item is optional and when reported, the same cannot be repeated.

1..1: It means that reporting of item is mandatory but cannot be repeated.

1..n: It means that reporting of item is mandatory and can be repeated more than once.

0..n: It means that reporting of item is optional but can be repeated more than once if reported. For example, *previous invoice reference is optional but if required one can mention many previous invoice references.*

Note 2: Field specification Number (Max length: m, n) indicates 'm' places before decimal point and 'n' places after decimal point. For example, *Number (Max length: 3,3) will have the format 999.999*

Schema (Version 1.1)							
Sr. No.	**Technical name of the field**	**Cardinality (0..1/ 1..1/ 0..n/ 1..n)**	**Brief Description of the field**	**Whether Mandatory/ Optional**	**Technical Field Specification**	**Sample Value of the field**	**Explanatory Notes**
1.	**Basic Details**	**1..1**		**Mandatory**			**Header for Basic Details**
1.0	Version	1..1	Version Number	Mandatory	String (Max. Length : 6)	1.1	This is version of the e-invoice schema. It will be used to keep track of version of Invoice specification.
1.1	IRN	1..1	Invoice Reference Number	Mandatory	String (Length: 64)	a5c12dca80e74 33217…..ba4013750f 2046f229	This will be a unique reference number for the invoice. **However, the supplier will not be populating this field.** The registration request may not have this field populated. The Invoice Registration Portal (IRP) will generate this IRN and respond to the registration request. e-invoice is valid only when it has the IRN. Hence, this is marked as mandatory field.
1.2	Supply_Type_ Code	1..1	Code for Supply Type	Mandatory	Enumerated List	B2B/B2C/SEZWP/ SEZWOP/EXP WP/EXPWOP/DEXP	This will be the code to identify type of supply. ***B2B:*** *Business to Business* ***B2C:*** *Business to Consumer* ***SEZWP:*** *To SEZ with Payment* ***SEZWOP:*** *To SEZ without Payment* ***EXPWP:*** *Export with Payment* ***EXPWOP:*** *Export without Payment* ***DEXP:*** *Deemed Export*
1.3	Document_ Type_Code	1..1	Code for Document Type	Mandatory	Enumerated List	INV / CRN / DBN	Type of Document: **INV** for Invoice, **CRN** for Credit Note, **DBN** for Debit note.
1.4	Document_ Num	1..1	Document Number	Mandatory	String (Max Length:16)	Sa/1/2019	This is as per relevant rule in CGST/SGST/UTGST Rules.

1.5	Document_ Date	1..1	Document Date	Mandatory	String (DD/MM/YYYY)	21/07/2019	The date on which the Invoice was issued. Format "DD/ MM/YYYY"
1.6	Additional_ Currency_ Code	0..1	Additional Currency Code	Optional	Enumerated List	USD, EUR	The field is for reporting additional currency, if any, in which all invoice amounts can be given, along with INR. One such additional currency may be used in the invoice, as per list published under **ISO 4217** standard. List published and updated from time to time at https://www.icegate.gov.in/Webappl/CUR_ENQ
1.7	Reverse_ Charge	0..1	Reverse Charge	Optional	String (Length:1)	Y	Whether the tax liability payable is under Reverse Charge.
1.8	IGST_ Applicability_ despite_ Supplier_and_ Recipient_ located_in_ same_ State/ UT	0..1	IGST Applicability despite Supplier and Recipient located in same State/UT	Optional	String (Length: 1)	N	To report the scenarios where the supply is chargeable to IGST despite the fact that the Supplier and Recipient are located within same State/UT
2.	**Document_ Period**	**0..1**		**Optional**			**Header for Document Period**
2.1	Document_ Period_Start _Date	1..1	Document Period Start Date	Mandatory	String (DD/MM/YYYY)	21/07/2019	This is the start date of the document period (delivery/ invoice period). *(This field is mandatory only if this section is selected)*
2.2	Document_ Period_End_ Date	1..1	Document Period End Date	Mandatory	String (DD/MM/YYYY)	21/07/2019	This is the end date of the document period (delivery/ invoice period). *(This field is mandatory only if this section is selected)*
3.	**Preceding Document / Contract Reference**	**0..1**	**Optional**				**Header for Preceding Document / Contract Reference**
3.1	**Preceding Document Reference**	**0..n**	**Optional**				**Sub-header for Preceding Document Reference**

3.1.1	Preceding_ Document_ Number	1..1	Preceding Document Number	Mandatory	String (Max length : 16)	Sa/1/2019	This is the reference of original document/invoice to be provided optionally in the case of debit or credit notes. Credit/Debit notes, against invoices can also be referred here. *(This field is mandatory only if this section is selected)*
3.1.2	Preceding_ Document_ Date	1..1	Date of Preceding Document	Mandatory	String (DD/MM/YYYY)	21/07/20 19	Date of preceding document/invoice. *(This field is mandatory only if this section is selected)*
3.1.3	Other_ Reference	0..1	Other Reference	Optional	String (Max length:20)	KOL01	This field is to provide any additional reference e.g. specific branch, their user ID, their employee ID, sales centre reference etc.
3.2	**Receipt / Contract Reference**	**0..n**		**Optional**			**Sub-header for Receipt / Contract References**
3.2.1	Receipt_ Advice_ Reference	0..1	Receipt Advice Reference	Optional	String (Max length:20)	CREDIT30	This reference is kept for user to provide number of their receipt advice to their customer, in lieu of advance.
3.2.2	Receipt_ Advice _Date	0..1	Date of Receipt Advice	Optional	String (DD/MM/YYYY)	21/07/2019	Date of issue of receipt advice for advance.
3.2.3	Tender_or_ Lot_Reference	0..1	Tender or Lot Reference	Optional	String (Max length:20)	TENDERJAN2020	This reference is kept for mentioning number or details of Lot or Tender, if supplies are made under such Lot or tender.
3.2.4	Contract_ Reference	0..1	Contract Reference	Optional	String (Max length:20)	CONT23072019	This reference is kept for mentioning contract number, if supplies are made under any specific Contract
3.2.5	External_ Reference	0..1	External Reference	Optional	String (Max length:20)	EXT23222	An additional field for provision of any additional/external reference number for the supply.
3.2.6	Project_ Reference	0..1	Project Reference	Optional	String (Max length:20)	PJTCODE01	This reference is kept for mentioning project number, if supplies are made under any specific project
3.2.7	PO _Ref_Num	0..1	PO Reference Number	Optional	String (Max length:16)	Vendor PO /1	This is the reference number of Purchase Order
3.2.8	PO_Ref_Date	0..1	PO Reference Date	Optional	String (DD/MM/YYYY)	21/07/2019	This is the date of Purchase Order.

4.	Supplier Information	1..1		Mandatory			Header for Supplier Information
4.1	Supplier_ Legal_Name	1..1	Supplier Legal Name	Mandatory	String (Max. length:100)	XYZ Ltd.	Legal Name, as appearing in PAN of the Supplier
4.2	Supplier_ Trade_ Name	0..1	Trade Name of Supplier	Optional	String (Max length:100)	ABC Traders	A name by which the Supplier is known, i.e. Business Name, other than legal name
4.3	Supplier_ GSTIN	1..1	GSTIN of Supplier	Mandatory	String (Length:15)	29AADFV7589C1ZX	GSTIN of the Supplier
4.4	Supplier_ Address1	1..1	Supplier Address 1	Mandatory	String (Max length:100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 1 of the Supplier (Building/Flat no., Road/Street, Locality etc.)
4.5	Supplier_ Address2	0..1	Supplier Address 2	Optional	String (Max length:100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 2 of the Supplier (Building/Flat no., Road/Street, Locality etc.), if any
4.6	Supplier_ Place	1..1	Supplier Place	Mandatory	String (Max length : 50)	Bangalore	Location of the Supplier (City/Town/Village)
4.7	Supplier_ State_Code	1..1	Supplier State Code	Mandatory	Enumerated List	29	State Code of the Supplier as per GST System List published and updated from time to time at https://www.icegate.gov.in/Webappl/STATE_ENQ
4.8	Supplier_ Pincode	1..1	Supplier PIN Code	Mandatory	Number (Length: 6)	560087	PIN Code of the Supplier Locality
4.9	Supplier_ Phone	0..1	Supplier Phone	Optional	String (Max length: 12)	9999999999	Contact number of the Supplier
4.10	Supplier_ Email	0..1	Supplier e-mail	Optional	String (Max length:100)	supplier@abc.com	e-mail ID of the Supplier, as per REGEX (Regular Expressions) pattern
5.	Recipient Information	1..1		Mandatory			Header for Recipient Information
5.1	Recipient_ Legal_Name	1..1	Recipient Legal Name	Mandatory	String (Max. length:100)	PQR Pvt. Ltd.	It will be legal name of recipient, as per PAN.

5.2	Recipient_ Trade_Name	0..1	Recipient Trade Name	Optional	String (Max length:100)	Adarsha	It will be trade name of recipient, if available.
5.3	Recipient_ GSTIN	1..1	GSTIN of Recipient	Mandatory	String (Length:15)	29ABCCR1832C1ZX, URP	GSTIN of the Recipient, if available. URP: In case of exports or if supplies are made to unregistered persons
5.4	Place_Of_ Supply_State_ Code	1..1	Place of Supply (State Code)	Mandatory	Enumerated List	29, 96	Code/State Code of Place of Supply as per GST System. List published and updated from time to time at https://www.icegate.gov.in/Webappl/STATE_ENQ
5.5	Recipient_ Address1	1..1	Recipient Address 1	Mandatory	String (Max length:100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 1 of the Recipient (Building/Flat no., Road/Street, Locality etc.)
5.6	Recipient_ Address2	0..1	Recipient Address 2	Optional	String (Max length:100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 2, if any, of the Recipient (Building/Flat no., Road/Street, Locality etc.), if any
5.7	Recipient_ Place	1..1	Recipient Place	Mandatory	String (Max length:100)	Mysore	Location of the Recipient (City/Town/Village)
5.8	Recipient_ State_Code	1..1	Recipient State Code	Mandatory	Enumerated List	29	Code/State Code of the Recipient. List published and updated from time to time at https://www.icegate.gov.in/Webappl/STATE_ENQ
5.9	Recipient_ Pincode	0..1	Recipient PIN Code	Optional	Number (Length: 6)	560002	PIN code of the Recipient locality. In case of export, Pincode need not be mentioned.
5.10	Country_ Code_of_ Export	0..1	Country Code of Export	Optional	Enumerated List	AN	Code of country of export as per ISO 3166-1 alpha-2 / Indian Customs EDI system. List published and updated from time to time at https://www.icegate.gov.in/Webappl/COUNTRY_ENQ
5.11	Recipient_ Phone	0..1	Recipient Phone	Optional	String (Max length:12)	0802223323	Contact number of the Recipient
5.12	Recipient_ email_ID	0..1	Recipient e-mail ID	Optional	String (Max length:100)	billing@xyz.com	e-mail ID of the Recipient, as per REGEX (Regular Expressions) pattern

6.	Payee Information	0..1		Optional			Header for Payee Information
6.1	Payee_Name	0..1	Payee Name	Optional	String (Max length:100)	Ramesh K	Name of the person to whom payment is to be made
6.2	Payee_ Bank_A ccount_ Number	0..1	Payee Bank Account Number	Optional	String (Max length:18)	3868501747262	Bank Account Number of Payee
6.3	Mode_of_ Payment	0..1	Mode of Payment	Optional	String (Max length:18)	Direct Transfer	Mode of Payment: Cash/Credit/Direct Transfer etc.
6.4	Bank _ Branch_Code	0..1	Bank Branch Code	Optional	String (Max length:11)	SBIN9876543	Indian Financial System Code (IFSC) of Payee's Bank Branch
6.5	Payment_ Terms	0..1	Payment Terms	Optional	String (Max length:100)	Text	Terms of Payment, if any, with the Recipient can be provided.
6.6	Payment_ Instruction	0..1	Payment Instruction	Optional	String (Max length:100)	Text	Instruction, if any, regarding payment can be provided
6.7	Credit_ Transfer_ Terms	0..1	Credit Transfer Terms	Optional	String (Max length:100)	Text	Terms to specify credit transfer payments.
6.8	Direct_Debit_ Terms	0..1	Direct Debit Terms	Optional	String (Ma x length:100)	Text	Terms, if any, to specify a direct debit.
6.9	Credit_Days	0..1	Credit Days	Optional	Numeric (Max length:4)	30	Number of days within which payment is due.
7	**Delivery_ Information**	**0..1**		**Optional**			**Header for Delivery Information**
7.1	Ship _ To _ Details	0..1	Ship To Details	Optional	Refer A 1.0		Details of location to which the supply has to be delivered.
7.2	Dispatch_ From_Details	0..1	Dispatch From Details	Optional	Refer A 1.1		Details of location from where Supply has to be dispatched.
8.	**Invoice Item Details**	**1..n**		**Mandatory**			**Header for Invoice Item Details**

8.1	Item_List	1..n	Item List	Mandatory	Refer A 1.2		Provides information about the goods and services being invoiced.
9	**Document Total**	**1..1**		**Mandatory**			**Header for Document Total Details**
9.1	Document_ Total_Details	1..1	Document Total Details	Mandatory	Refer A 1.3		Details of document total including taxes.
10	**Extra Information**	**0..1**		**Optional**			**Header for Extra Information**
10.1	Tax_Scheme	1..1	Tax Scheme	Mandatory	String (Max length: 10)	GST	To specify the tax/levy applicable – GST (This field is mandatory only if this section is selected)
10.2	Remarks	0..1	Remarks	Optional	String (Max length: 100)	New batch Items submitted	A textual note that gives unstructured information that is relevant to the Invoice as a whole e.g. reasons for any correction or assignment note in case the invoice has been factored etc.
10.3	Port_Code	0..1	Port Code	Optional	Enumerated List	Alpha numeric	In case of export/supply to SEZ, port code can be mentioned as per Indian Customs EDI System (ICES), if applicable and available at the time of reporting e-invoice. Lists published and updated from time to time at below URLs: EDI Port Codes: https://www.icegate.gov.in/Webappl/LOCATION_ENQ Non-EDI Port Codes: https://www.icegate.gov.in/Webappl/nonlocation_det_all.jsp
10.4	Shipping_Bill_ Number	0..1	Shipping Bill Number	Optional	String (Max length: 20)	Alpha numeric	In case of export/supply to SEZ, shipping bill number as per Indian Customs EDI System (ICES), can be mentioned, if applicable and available at the time of reporting e-invoice.
10.5	Shipping_Bill_ Date	0..1	Shipping Bill Date	Optional	String(DD/MM/YYYY)	03/12/2020	Date of Shipping Bill as per Indian Customs EDI System (ICES)
10.6	Export_Duty_ Amount	0..1	Export Duty Amount	Optional	Number (Max Length: 12,2)	1200000.50	Amount of Export Duty in INR, if any, applicable (in case of invoices for export)

10.7	Supplier_Can_Opt_Refund	0..1	Supplier Can Opt Refund	Optional	String (Length: 1)	Y / N	In case of deemed export supplies, this field is for mentioning whether supplier can exercise the option of claiming refund or not.
10.8	ECOM_GSTIN	0..1	e-Commerce Operator's GSTIN	Optional	String (Length: 15)	29ABCCR1832C1CX	GSTIN of e-commerce operator, if supply is made through him/her.
11.	**Additional_Supporting_Documents**	**0..n**		**Optional**			**Header for Additional Supporting Documents**
11.1	Additional_Supportin g_Documents_URL	0..1	Additional Supporting Documents URL	Optional	String (Max length: 100)	http://www.xyz.com/abc	This is to enter URL reference of additional supporting documents, if any.
11.2	Additional_Supporting_Documents_base64	0..1	Additional Supporting Document in base64	Optional	String (Max length: 1000)	Base 64 encoded Document	This is to add any additional document in PDF/Microsoft Word in Base64 encoded format.
11.3	Additional_Information	0..1	Additional Information	Optional	String (Max length: 1000)	Free text, remarks, identifiers, etc.	Any additional information, names, values, data etc. that is specific for the Supplier-Recipient transaction e.g. CIN, trade-specific information, Drug Licence Reg. No., FOB/ CIF etc.
12	**E-way Bill Details**	**0..1**		**Optional**			**Header for e-way Bill Details**
12.1	Transporter_ID	0..1	Transporter ID	Optional	String (Length: 15)	29AADFV7589C1ZO	Registration / Enrolment Number of the transporter *(This field is required if Part-A of E-waybill has to be generated)*
12.2	Trans_Mode	0..1	Mode of Transportation	Optional	Enumerated List	1/2/3/4	Option to be provided based on mode of transport available on e-Way Bill Portal 1 for Road; 2 for Rail; 3 for Air; 4 for Ship *(This field is required if Part-B of e-way bill is also to be generated)*

12.3	Trans_ Distance	1..1	Distance of Transportation	Mandatory	Number (Max length: 4)	200	Distance of Transportation *(This field is mandatory only if this section is selected)*
12.4	Transporter_ Name	0..1	Transporter Name	Optional	String (Max length: 100)	Sphurthi Transporters	Name of the Transporter
12.5	Trans_Doc_ No.	0..1	Transport Document Number	Optional	String (Max length: 15)	As/34/746	Transport Document Number *(This field is mandatory if mode of Transport is Rail or Air or Ship)*
12.6	Trans_Doc_ Date	0..1	Transport Document Date	Optional	String (DD/MM/ YYYY)	21/07/2019	Date of Transport document. *(This field is mandatory if mode of Transport is Rail or Air or Ship)*
12.7	Vehicle_No.	0..1	Vehicle Number	Optional	String (Max. length: 20)	KA12KA1234 or KA12K1234 or KA123456 or KAR1234	Vehicle Registration Number *(This field is mandatory if mode of Transport is Road)*
12.8	Vehicle_Type	0..1	Vehicle Type	Optional	Enumeration List	O / R	To mention nature of vehicle: O: Over-Dimensional Cargo R: Regular *(This field is mandatory if Part-B of e-way bill is also to be generated)*
A 1.0	**Ship To Details**	**0..1**		**Optional**			**Header for Annexure A 1.0: Ship To Details**
Sr. No.	**Parameter Name**	**Cardinality**	**Description**	**Whether optional or mandatory**	**Field Specifications**	**Sample Value**	**Explanatory Notes**
A.1.0.1	Ship To_ Legal_Name	1..1	Ship To Legal Name	Mandatory	String (Max length: 100)	ABC-1 Ltd.	Legal Name of the entity to whom the supplies are shipped to. *(This field is mandatory only if this section is selected)*
A.1.0.2	ShipTo_ Trade_Name	0..1	Ship To Trade Name	Optional	String (Max length: 100)	XYZ-1	Trade Name of the entity to whom the supplies are shipped to.

A.1.0.3	ShipTo_ GSTIN	0..1	Ship To GSTIN	Optional	String (Length: 15)	36AABCT2223L1ZF	GSTIN of the entity to whom the supplies are shipped to.
A.1.0.4	ShipTo_ Address1	1..1	Ship To Address1	Mandatory	String (Max length: 100)	Flat No. 2, Priya Towers, Omega Road, Srinivasa Nagar	Address 1 of the entity to whom the supplies are shipped to *(This field is mandatory only if this section is selected)*
A.1.0.5	ShipTo_ Address2	0..1	Ship To Address2	Optional	String (Max length: 100)	Flat No. 2, Priya Towers, Omega Road, Srinivasa Nagar	Address 2, if any, of the entity to whom the supplies are shipped to
A.1.0.6	ShipTo_Place	1..1	Ship To Place	Mandatory	String (Max length: 100)	Bangalore	Place (City/Town/Village) of entity to whom the supplies are shipped to. *(This field is mandatory only if this section is selected)*
A.1.0.7	ShipTo_ Pincode	1..1	Ship To Pincode	Mandatory	Number (Max length: 6)	560001	PIN code of the location to which the supplies are shipped to. *(This field is mandatory only if this section is selected)*
A.1.0.8	Ship_To_ State_Code	1..1	Ship To State Code	Mandatory	Enumerated List	29	Code/State Code (as per GST System) to which the supplies are shipped to. List published and updated from time to time at https:// www.icegate.gov. in/Webappl/STATE_ENQ *(This field is mandatory only if this section is selected)*
A 1.1	**Dispatch From Details**	**0..1**		**Optional**			**Header for Annexure A 1.1: Dispatch From Details**
Sr. No.	**Parameter Name**	**Cardinality**	**Description**	**Whether mandatory or optional**	**Field Specifications**	**Sample Value**	**Explanatory Notes**
A.1.1.1	Dispatch From_Name	1..1	Dispatch From Name	Mandatory	String (Max length:100)	XYZ-2	Name of the entity from which goods are dispatched. *(This field is mandatory only if this section is selected)*
A.1.1.2	Dispatch From_ Address1	1..1	Dispatch From Address1	Mandatory	String (Max length: 100)	Building No. 4/2, Flat No. 3, Kakatiya Apartments, Vasanth Nagar	Address 1 of the entity from which goods are dispatched. *(This field is mandatory only if this section is selected)*

A.1.1.3	Dispatch From_ Address2	0..1	Dispatch From Address 2	Optional	String (Max length: 100)	Building No. 4/2, Flat No. 3, Kakatiya Apartments, Vasanth Nagar	Address 2 of the entity from which go
A.1.1.4	Dispatch From_Place	1..1	Dispatch From Place	Mandatory	String (Max length: 100)	Bangalore	Place (City/Town/Village) of the entity from which goods are dispatched. *(This field is mandatory only if this section is selected)*
A.1.1.5	Dispatch From_State_ Code	1..1	Dispatch From State Code	Mandatory	Enumerated List	29	Code/State Code of the entity (as per GST System), from which goods are dispatched. List published and updated from time to time at https:// www.icegate.gov.in/Webappl/STATE_ENQ *(This field is mandatory only if this section is selected)*
A.1.1.6	Dispatch From_Pincode	1..1	Dispatch From Pincode	Mandatory	Number (Length: 6)	560087	Pincode of the locality of entity from where goods are dispatched. *(This field is mandatory only if this section is selected)*
A 1.2	**Item Details**	**1..n**		**Mandatory**			**Header for Annexure A 1.2: Item Details**
Sr. No.	**Parameter Name**	**Cardinality**	**Description**	**Whether mandatory or optional**	**Field Specifications**	**Sample Value**	**Explanatory Notes**
A.1.2.1	Sl_No.	1..1	Serial Number	Mandatory	String (Max length: 6)	1,2,3	Serial number of the item
A.1.2.2	Item_ Description	0..1	Item Description	Optional	String (Max length: 300)	Mobile	Description of the item
A.1.2.3	Is_Service	1..1	Service	Mandatory	String (Length: 1)	Y/N	Specify whether supply is service or not.
A.1.2.4	HSN_Code	1..1	HSN Code	Mandatory	String (Max length: 8)	1122	To enter applicable HSN / SAC Code of Goods / Service
A.1.2.5	Batch Details	0..1		Optional	Refer A 1.4		Some manufacturers may mention batch details (in Section A 1.4)
A.1.2.6	Barcode	0..1	Barcode	Optional	String (Max length: 30)	b123	Barcode, if any, of the item.

A.1.2.7	Quantity	0..1	Quantity	Optional	Number (Max length: 10,3)	10	The quantity of items to be mentioned in the invoice. *This is mandatory only in case of goods.*
A.1.2.8	Free_Qty	0..1	Free Quantity	Optional	Number (Max length: 10,3)	99	Quantity of item(s), if any, given free of charge (FOC)
A.1.2.9	Unit_Of_ Measurement	0..1	Unit of Measurement	Optional	String (Max length: 8)	Box	The Unit of Measurement (UOM), if any, applicable on invoiced goods.
A.1.2.10	Item_Price	1..1	Item Price	Mandatory	Number (Max length : 12,3)	500.5	Price per unit item.
A.1.2.11	Gross_ Amount	1..1	Gross Amount	Mandatory	Number (Max length : 12,2)	5000	The gross price of an item (cost multiplied by quantity - rounded off to 2 decimal), exclusive of taxes.
A.1.2.12	Item_ Discount_ Amount	0..1	Item Discount Amount	Optional	Number (Max length: 12,2)	10.25	Discount amount, if any, for the item.
A.1.2.13	Pre_Tax_ Value	0..1	Pre-Tax Value	Optional	Number (Max length: 12,2)	99.00	If pre-tax value is different from taxable value, mention the pre-tax value and taxable values separately. In some cases, the pre-tax value may be different from taxable value. For example, where old goods are exchanged for new ones (e.g. new phone supplied for INR 20,000 along with exchange of old phone, then pre-tax value would be INR 20,000 and taxable value would be INR 24,000, assuming exchange value of old phone is 4,000. Another example is in the case of real estate where pre-tax value may be different from taxable value.
A.1.2.14	Item_Taxable_ Value	1..1	Item Taxable Value	Mandatory	Number (Max length: 12,2)	5000	This is the value on which tax is computed. Value cannot be negative.
A.1.2.15	GST_Rate	1..1	GST Rate	Mandatory	Number (Max length: 3,3)	5	The GST rate, represented as percentage that applies to the invoiced item. It will be IGST rate or sum of CGST & SGST Rates.

A.1.2.16	IGST_Amt	0..1	IGST Amount	Optional	Number (Max Length: 12,2)	999.45	Amount of IGST payable per item (rounded off to 2 decimals). If IGST is reported, then CGST & SGST/UTGST will be blank. For taxable supplies, either IGST or CGST &SGST/UTGST should be reported.
A.1.2.17	CGST_Amt	0..1	CGST Amount	Optional	Number (Max Length: 12,2)	650.00	Amount of CGST payable per item (rounded off to 2 decimals). If CGST is reported, then SGST/UTGST has to be reported and IGST will be blank.
A.1.2.18	SGST_ UTGST Amt	0..1	SGST/UTGST Amount	Optional	Number (Max length: 12,2)	650.00	Amount of SGST/UTGST payable per item (rounded off to 2 decimals). If SGST/UTGST is reported, then CGST must be reported and IGST will be blank.
A1.2.19	Comp_Cess_ Rate_Ad_ valorem	0..1	Compensation Cess Rate, Ad_ Valorem	Optional	Number (Max length: 3,3)	2.5%	Ad valorem Rate of GST Compensation Cess, applicable, if any
A1.2.20	Comp_ Cess_Amt_ Ad_Valorem	0..1	Compensation Cess Amount, Ad Valorem	Optional	Number (Max length: 12,2)	56.00	GST Compensation Cess amount, ad valorem (rounded off to 2 decimals) (based on value of the item)
A1.2.21	Comp_Cess_ Amt_Non_Ad_ Valorem	0..1	Compensation Cess Amount, Non ad valorem	Optional	Number (Max length:12,2) 23.00		GST Compensation Cess amount, computed on the basis other than value of item (i.e. specific cess amount computed based on quantity, number etc.)
A1.2.22	State_Cess_ Rate_ad_ valorem	0..1	State Cess Rate, Ad Valorem	Optional	Number (Max length: 3,3)	1.5 %	Ad valorem Rate of State/UT Cess, applicable, if any
A1.2.23	State_Cess_ Amt_Ad_ Valorem	0..1	State Cess Amount, ad valorem	Optional	Number (Max length: 12,2)	43.00	State/UT Cess amount, ad valorem (based on value of the item)
A1.2.24	State_Cess_ Amt_Non_Ad_ Valorem	0..1	State Cess Amount, non ad valorem	Optional	Number (Max length: 12,2)	12.00	State/UT Cess amount, computed on the basis other than value of item (i.e. specific cess amount computed based on quantity, number etc.)
A.1.2.25	Other_ Charges_ Item_Level	0..1	Other Charges (item level)	Optional	Number (Max length: 12,2)	874.95	Any other charges applicable at item level. These may not be part of taxable value, e.g. in case of pure agent reimbursement.

A.1.2.26	Purchase_ Order_Line_ Reference	0..1	Purchase Order Line Reference	Optional	String (Max length: 50)	746/ABC/01	Reference of Purchase Order Line
A.1.2.27	Item_Total_ Amt	1..1	Item Total Amount	Mandatory	Number (Max length: 12,2)	5000	The item total value that includes all taxes, cesses, as well as other charges. However, this value excludes discount, if any.
A.1.2.28	Origin_ Country_Code	0..1	Code of Country of Origin	Optional	Enumerated List	DZ	This is to specify country of origin of the item, e.g. mobile phone sold in India could be manufactured in other country; Code of country of export as per ISO 3166-1 alpha-2 / Indian Customs EDI system (ICES). List published and updated from time to time at https://www.icegate.gov.in/Webappl/COUNTRY_ENQ
A.1.2.29	Unique_ Serial_ Number	0..1	Unique Serial Number	Optional	String (Max length: 20)	553	Serial number, in case of each item having a unique number.
A.1.2.30	**Product_ Attribute_ Details**	**0..n**	**Optional**	**Refer A 1.5**			**Attribute details of product**
A 1.3	**Document Total Details**	**1..1**		**Mandatory**			**Header for Annexure A 1.3: Document Total Details**
Sr. No.	**Parameter Name**	**Cardinality**	**Description**	**Whether mandatory or optional**	**Field Specifications**	**Sample Value**	**Explanatory Notes**
A.1.3.1	Taxable_ Value_Total	1..1	Total Taxable Value	Mandatory	Number (Max length: 14,2)	768439.35	This is the sum of the taxable values of all the items in the document.
A.1.3.2	IGST_Amt_ Total	0..1	Total IGST Amount	Optional	Number (Max length : 14,2)	265.50	Total IGST amount for the invoice. Appropriate taxes based on rule will be applicable. For example, either of CGST & SGST/UTGST or IGST will be mandatory. As this is conditional mandatory, it is marked as 'optional'

A.1.3.3	CGST_Am_ Total	0..1	Total CGST Amount	Optional	Number (Max length: 14,2)	65.45	Total CGST amount for the invoice. Appropriate taxes based on rule will be applicable. For example, either of CGST & SGST/UTGST or IGST will be mandatory. As this is conditional mandatory, it is marked as 'optional'
A.1.3.4	SGST_ UTGST_Amt_ Total	0..1	Total SGST/ UTGST Amount	Optional	Number (Max length : 14,2)	65.45	Total SGST/UTGST amount for the invoice. Appropriate taxes based on rule will be applicable. For example, either of CGST & SGST/UTGST or IGST will be mandatory. As it is conditional mandatory, it is marked as 'optional'
A.1.3.5	Comp_Cess_ Amt_Total	0..1	Total Compensation Cess Amount	Optional	Number (Max length : 14,2)	24.95	Total GST Compensation Cess amount for the invoice (ad valorem as well as non-ad valorem)
A.1.3.6	State_Cess_ Amt_Total	0..1	Total State Cess Amount	Optional	Number (Max length : 14,2)	5.45	Total State cess amount for the invoice (ad valorem as well as non-ad valorem)
A.1.3.7	Discount_ Amt_Invoice_ Level	0..1	Invoice Level Discount Amount	Optional	Number (Max length: 14,2)	100.00	This is Discount Amount, if any, applicable on total invoice value
A.1.3.8	Other_ Charges_ Invoice_Level	0..1	Other Charges (Invoice Level)	Optional	Number (Max length: 14,2)	200.00	This is Other charges, if any, applicable on total invoice value
A.1.3.9	Round_Off_ Amount	0..1	Round Off Amount	Optional	Number (Max length: 2,2)	31.21	This is round off amount of total invoice value
A.1.3.10	Total_Invoice_ Value_INR	1..1	Total Invoice Value in INR	Mandatory	Number (Max length: 14,2)	745249678.50	The total value of invoice including taxes/GST and rounded to two decimals maximum.
A.1.3.11	Total_Invoice_ Value_FCNR	0..1	Total Invoice Value in FCNR	Optional	Number (Max length: 14,2)	$5729.65	The total value of invoice in Additional Currency

A.1.3.12	Paid_Amount	0..1	Paid Amount	Optional	Number (Max length:14,2)	8463.50	The amount, if any, which has been paid in advance. It must be rounded to maximum 2 decimals.
A.1.3.13	Amount_Due_	0..1	Amount Due	Optional	Number (Max length:14,2)	98789.50	The outstanding amount due for payment. It must be rounded to maximum 2 decimals.
A 1.4	**Batch Details**	**0..1**		**Optional**			**Header for Annexure A 1.4: Batch Details**
Sr. No.	**Parameter Name**	**Cardinality**	**Description**	**Whether mandatory or optional**	**Field Specifications**	**Sample Value**	**Explanatory Notes**
A.1.4.1	Batch_ Number	1..1	Batch Number	Mandatory	String (Max Length: 20)	673927	Certain set of manufacturers may mention batch number details. (This field is mandatory only if this section is selected)
A.1.4.2	Batch_Expiry_ Date	0..1	Batch Expiry Date	Optional	String (DD/MM/YYYY)	21/11/2019	Expiry Date of the Batch, if any
A.1.4.3	Warranty_ Date	0..1	Warranty Date	Optional	String (DD/MM/YYYY)	21/11/2019	Warranty date for the Item, if any.
A 1.5	**Attribute Details of Item**	**0..n**		**Optional**			**Header for Annexure A 1.5: Attribute Details of Item**
Sr. No.	**Parameter Name**	**Cardinality**	**Description**	**Whether mandatory or optional**	**Field Specifications**	**Sample Value**	**Explanatory notes**
A.1.5.1	Attribute_ Name	0..1	Attribute Name	Optional	String (Max Length: 100)	Colour	Attribute Name of the item.
A.1.5.2	Attribute_ Value	0..1	Attribute Value	Optional	String (Max Length: 100)	Red, green, etc.	**Attribute Value of item.".**

Sd/-
(Pramod Kumar)
Director, 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. 58/2020 - Central Tax, dated the 01st July, 2020, published vide number G.S.R. 426(E), dated the 01st July, 2020.

Notification mandating Tax Payers (subject to exceptions) whose aggregate turnover exceeds Rs. 500 crores to prepare e-invoice.

Notification No. 61/2020 – Central Tax

[F. No. CBEC-20/13/01/2019-GST] New Delhi, the 30th July, 2020

G.S.R.....(E).—In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 196(E), dated the 21st March, 2020, namely:–

In the said notification, in the first paragraph,

(i) before the words “those referred to in sub-rules”, the words “a Special Economic Zone unit and” shall be inserted;

(ii) for the words “one hundred crore rupees”, the words “five hundred crore rupees” shall be substituted.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 13/2020-Central Tax, dated the 21st March, 2020, published vide number G.S.R. 196(E), dated the 21st March, 2020.