DELHI SALES TAX CASES

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HIGHLIGHTS

"I hate paying taxes.
But I love the civilization
they give me"

Oliver Wendell Holmes

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From the Desk of Editor in Chief

Welcome to the next issue of the DSTC Vol.-62 containing case law, Articles, Notifications and Circulars. I hope you found this journal informative.

The new Executive of Sales Tax Bar Association under the able leadership of Sh. Sanjay Sharma, President has again reposed trust in me and did not accept my resignation. I have accepted the directive of the Executive in all humility. I shall try my best to maintain the quality of the journal and try to add some more informative pages.

I shall feel obliged if all collogues will contribute towards this publication rather publish in their individual Names or separately for their clients some things done for general public is always restowed with Godly appreciation.

The assistance of Mr. Rahul and Mr. Mukesh was there to get the issue published.

I hope you find this journal worth reading.

Happy reading

Kumar Jee Bhat, Advocate
Editor-in-Chief

DELHI SALES TAX CASES

Volume 62 Part 1

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THE HIGH COURT OF JUDICATURE AT ALLAHABAD

[Shekhar B. Saraf, J.]

WRIT TAX No. - 433 OF 2020

M/s Mid Town Associates Petitioner

V.

Additional Commissioner Grade-2 (Appeal),
Judicial Division IInd, State Tax, Moradabad & Others ... Respondent

Date of Judgment: 09.05.2024

GOODS BEING TRANSFERRED BY PETITIONER FROM CHANDIGARH TO USA THROUGH ICD, MORADABAD VIDE INVOICE NO. MID/126 THROUGH TRUCK NO. HR 38P8575. TRUCK WAS INTERCEPTED ON MAY 21, 2019 AT 8.52 AM ON THE GROUND, GOODS BEING TRANSPORTED WITHOUT E-WAY BILL. ORDER OF DETENTION U/S 20 OF IGST ACT R/W 129 OF THE CGST ACT WAS PASSED ON SAME DAY I.E. 21ST MAY, 2019 ON THE PRESUMPTION THAT GOODS WERE BEING TRANSPORTED WITH THE INTENTION TO EVADE TAX DUE TO NONPRODUCTION OF E-WAY BILL ON THE SAME DAY. SAME DAY ORDER U/S 20 OF IGST ACT R/W 129(3) OF THE CGST ACT WAS PASSED. AGAINST THIS ORDER APPEAL WAS FILED AND DISMISSED AND AFFIRMED THE ORDER PASSED. BEING AGGRIEVED THE PETITIONER FILED INSTANT PETITION.

GROUND NO. 1 PETITIONER HAD DOWN LOADED THE E-WAY BILL ON 08.38 AND INTERCEPTION TOOK PLACE ON 8.52 AM. A TIME LIMIT OF 7 DAYS PROVIDED BUT ORDER PASSED ON SAME DAY WITHOUT GIVING TIME. THERE WAS NO INTENTION TO EVADE TAX. THOUGH THE HARD COPY OF E-WAY BILL WAS NOT PROVIDED BUT THE NO WAS PROVIDED. THE ORDER WAS NOT JUSTIFIED.

Held: In light of the above discussion, I am of the view that there was no intention to evade tax on the part of the petitioner. Further, respondent authorities failed to check the genuineness of the E-way bill number as informed by the driver from the GST portal and did not provide an opportunity of hearing to the petitioner which was against the principles of natural justice which strengthens my view that the authorities did not act in accordance with the law. The respondent authorities are directed to refund the amount of tax and penalty deposited by the petitioner.

Present for the Petitioner : Suyash Agrawal, Advocate

Present for the Respondent : Arvind Kumar Mishra, Standing Counsel

Judgement

Hon'ble Shekhar B. Saraf, J.

1. This is a writ petition under article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of certiorari

quashing the impugned order dated January 4, 2020 passed in appeal by Additional Commissioner Grade-2 (Appeal), Judicial Division 2nd State Tax, Moradabad/respondent No. 1. The said appeal was preferred against the penalty order dated May 21, 2019 passed by Assistant Commissioner, State Tax, Mobile Squad, Unit – III, Moradabad/respondent No. 2.

Facts

2. Factual matrix leading to the instant petition is delineated below:

a) The petitioner is a registered dealer, who deals in manufacturing, trading and exporting of handicraft, iron, glass, wax, marble, tiles, wooden handicraft etc.

b) On May 20, 2019, the goods in question were being transferred by the petitioner from Chandigarh to USA through Inland Container Depot (ICD), Moradabad vide Invoice No. MID/126. A truck bearing No. HR 38 P 8575 was assigned for the transportation of the said goods from Chandigarh to Moradabad.

c) On May 21, 2019 at 08:52 am, the respondent No. 2 intercepted the aforesaid truck at Moradabad and detained the same on the ground that the goods loaded on the truck were being transported without E-Way bill.

d) Subsequently, an order of detention under Section 20 of the Integrated Goods and Services Tax Act (hereinafter referred to as 'the IGST Act') read with Section 129 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") was passed on the same day, that is, on May 21, 2019 by the respondent No. 2 on the ground of presumption that the goods were being transported with the intention to evade tax due to the non production of E-Way Bill.

e) A notice under Section 20 of the IGST Act read with Section 129 (3) of the CGST Act dated May 21, 2019 was issued to the petitioner directing him to show cause as to why an amount of tax of Rs.2,90,011/- along with a penalty of same amount ought not to be recovered from him.

f) On the same day of issuing the show cause notice, the respondent No.2 passed the penalty order under Section 20 of the IGST Act read with Section 129 (3) of the CGST Act.

g) Against the order dated May 21, 2019 passed by the respondent No. 2, the petitioner filed an appeal before the respondent No.1, who vide its order dated January 4, 2020, dismissed the said appeal and affirmed the order passed by the respondent No. 2.

h) Being aggrieved by the order dated January 4, 2020, the petitioner has preferred the instant petition.

Contentions of the Petitioner

3. Sri Suyash Agrawal, learned counsel appearing on behalf of the petitioner has made the following submissions:

i. The petitioner had downloaded the E-Way Bill for the goods in question on May 21, 2019 at 08:38 am and the interception took place on the same day at 08:52 am which means the E- Way Bill was downloaded prior to the interception of the goods.

ii. In the show cause notice issued to the petitioner, a time limit of 7 days was mentioned to submit the reply but without waiting for 7 days and without giving an opportunity of hearing to the petitioner, the respondent No. 2 illegally passed the penalty order.

iii. The minor mistake in documentation was without any fraudulent intent or gross negligence and the same was later on rectified by downloading the E-Way Bill. This minor mistake of the petitioner is protected under Section 126 (1) of the CGST Act.

iv. As provided under rule 138 (A) (b) of the CGST Rules, the person incharge of a conveyance shall carry a copy of the E- Way Bill in physical form or E-Way bill number in electronic form. In the present case, although the driver of the vehicle could not provide a hard copy of the E-Way Bill to the respondent No. 2, yet he informed the respondent No. 2 about the E-Way bill number.

v. Since the E-Way Bill was downloaded prior to the interception of the goods and the driver of the vehicle informed the respondent No. 2 about the E-Way Bill number, the respondent No. 2 was not justified in passing the penalty order.

Contentions of the Respondents

4. Learned Standing Counsel appearing on behalf of the respondents has made the following submissions:

i. At the time of interception, the vehicle in question was in transit without there being the mandatory E-Way Bill which is a clear violation of the provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the UPGST Act').

ii. The proceedings under Section 129 (1) of the UPGST Act were initiated in view of the aforesaid anomaly.

iii. The proceedings initiated under Section 129(1) & 129(3) of the UPGST Act were just, proper and in accordance with the law.

iv. The penalty imposed and the entire proceedings were in consonance with the Rules and Law, particularly highlighting the necessity of E-Way Bills during transportation.

v. The appellate authority made a decision after due consideration of facts and materials, and thus upheld the penalty order.

Analysis and Conclusion

5. I have heard the counsel appearing for the parties and perused the material on record.

6. In the present case, the pivotal question pertains to the compliance of E-Way bill as requried under the provisions of the CGST/UPGST Act and related rules. The petitioner contends that compliance was timely achieved, while the respondents argued that the absence of an E-Way bill during transit constituted a violation.

7. The crux of the dispute lies in the interpretation of statutory provisions regarding E-Way bill, the presumption of tax evasion in its absence, and the procedural fairness in penalty imposition.

8. It is clear from the perusal of the record that the show cause notice and the penalty order both were issued on the same day, which indicates that no opportunity of hearing was given to the petitioner to submit his reply which is a gross violation of the principles of natural justice.

9. Upon a perusal of the E-Way Bill downloaded by the petitioner, it is clear that even though the driver could not produce the hard copy of the

E- Way Bill before the respondent No. 2, yet it was downloaded prior to the interception of the vehicle.

10. This Court had dealt with a similar issue in case of **M/S. Hindustan Herbal Cosmetics V. State Of U.P. And 2 Others** (WRIT TAX No. - 1400 of 2019 decided on January 2, 2024) wherein it has been held that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. The Court further emphasized that a minor error in the documentation can not be a valid ground for passing of the penalty orders by the authorities. Relevant paragraph of the judgment is delineated below:

> "8. Upon perusal of the judgments, the principle that emerges is that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty. In the case of M/s. Varun Beverages Limited (supra) there was a typographical error in the e-way bill of 4 letters (HR – 73). In the present case, instead of '5332', '3552' was incorrectly entered into the e-way bill which clearly appears to be a typographical error. In certain cases where lapses by the dealers are major, it may be deemed that there is an intention to evade tax but not so in every case. Typically when the error is a minor error of the nature found in this particular case, I am of the view that imposition of penalty under Section 129 of the Act is without jurisdiction and illegal in law."

11. This Court in case of **Falguni Steels v. State of U.P.** reported in **(2024) 124 GSTR 10** has held that in a case where the E-Way Bill is downloaded and produced before passing of the penalty order by the authorities and no mens rea can be inferred from the act of the petitioner, there is no justification in passing of the penalty order by the authorities. Relevant paragraph of the judgment is quoted below:

> "17. Once both the e-way bills were presented before passing of the penalty order, and all the documents including the tax invoices, were found to be in order, respondent No. 2 had no sound rationale to pass the impugned order dated February 20, 2019. A bare reading of the said order would show that the presence of the tax invoices, was recorded by respondent No. 2. Furthermore, respondent No. 2 also rejected the e-way bills which were generated post the detention of the goods, since the same in its opinion, was contrary to the provisions of the UPGST Act, 2017/CGST Act, 2017. Nowhere in the said impugned order, it has been recorded that

there was any definite intention to evade tax. The essence of any penal imposition is intrinsically linked to the presence of mens rea, a facet conspicuously absent from the record. The order, therefore, stands vulnerable to challenge on the grounds of disproportionate punitive measures meted out in the absence of concrete evidence substantiating an intent to evade tax liabilities."

12. The law laid down in **Falguni Steels (supra)** was also followed by this Court in case of **M/s Globe Panel Industries India Private Limited v. State Of U.P. And Others** (Writ Tax No. - 141 of 2023 decided on February 5, 2024). Relevant paragraph of the judgment is extracted below:

"4. This Court in M/s Hindustan Herbal Cosmetics v. State of U.P. and Others (Writ Tax No.1400 of 2019 decided on January 2, 2024) and M/ s Falguni Steels v. State of U.P. and Others (Writ Tax No.146 of 2023 decided on January 25, 2024) held that mens rea to evade tax is essential for imposition of penalty. The factual aspect in the present case did not indicate any intention whasoever to evade tax. Furthermore, the documents that have been relied upon by the petitioner have not been considered by the authorities. The authorities have dealt with the issue with regard to the expiry of the E-Way Bill and held that no explanation was offered by the petitioner with regard to the fresh generation of the E-Way Bill, as the same had expired ten days before the detention. However, it is to be noted that the goods in the vehicle were for two e-Invoices and two E-Way Bills and only one E-Way Bill had expired. There is no dispute with regard to the consignor and consignee nor any dispute with regard to the description of the goods in the vehicle. In relation to the e-Invoices and the E-Way Bills, the authorities have not been able indicate any intention whatsoever on behalf of the petitioner to evade tax. Indubitably, there is a technical violation that has been committed by the petitioner. However, the authorities have not been able to indicate in any manner that the E-Way Bill had been used repeatedly nor have they made out any case with regard to an intention to evade tax by the petitioner. Accordingly, this Court is of the view that such a technical violation by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of the Act. This view is fortified by a catena of judgments as indicated above."

13. In the facts and circumstances, it is clear that only violation is a technical one wherein E-Way Bill was not present in the vehicle. However, it is clear that the E-Way Bill had been downloaded prior to the interception

of the vehicle. Furthermore, invoice and the E-Way Bill matched with the goods in the vehicle, and accordingly, one can infer that there was no mens rea for the evasion of tax.

14. In light of the above discussion, I am of the view that there was no intention to evade tax on the part of the petitioner. Further, respondent authorities failed to check the genuinness of the E-Way Bill number as informed by the driver from the GST portal and did not provide an opportunity of hearing to the petitioner which was against the principles of natural justice which strenghtens my view that the authorties did not act in accordance with the law.

15. Accordingly, the writ petition is allowed. The impugned orders dated January 4, 2020 and May 21, 2019 are hereby quashed and set aside.

16. The respondent authorities are directed to refund the amount of tax and penalty deposited by the petitioner within a period of four weeks from the date of this judgment.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
[T.S. Sivagnanam and Hiranmay Bhattacharyya J.J.]

MAT 2459 OF 2023

Lokenath Construction Private Limited ... Petitioner

Vs.

Tax/Revenue Government of West Bengal and Others ... Respondents

Date of Judgment: 02.05.2024

WHETHER ITC CAN BE DENIED TO THE APPELLANT WITHOUT CAUSING ANY VERIFICATION FROM THE SUPPLIER'S END? ALSO WHETHER THE SCN WAS WITHOUT JURISDICTION IN VIEW OF SUNCRAFT ENERGY?

Held: The order impugned in the writ petition dated 28.12.2023 is set aside as well as the show-cause notice dated 22.08.2023 is set aside with a direction to the authorities to first proceed against the supplier and only under exceptional circumstances as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC) and then only proceedings can be initiated against the appellant.

Present for the Petitioner : Mr. Arnab Chakraborty, Adv.,
Mr. Aniket Chaudhury, Adv.

Present for the Respondents : Mr. T.M. Siddique, Ld. AGP.
Mr. Tanoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.
Mr. Uday Shankar Bhattacharya,
Adv. Mr. Tapan Bhanja, Adv.

JUDGMENT

T.S. SIVAGNANAM, CJ.

1. The appeal and the writ petition were heard analogously and are disposed of by this common judgment and order.

2. We have heard Mr. Arnab Chakraborty and Mr. Aniket Chaudhury, learned Advocates appearing for the appellant/ petitioner, Mr. T.M. Siddique, learned A.G.P. assisted by Mr. Tanoy Chakraborty and Mr. Saptak Sanyal, learned Advocates appearing for the State in MAT 2459 of 2023 and Mr. Uday Shankar Bhattacharya and Mr. Tapan Bhanja, learned Advocates appearing for the CGST Authority.

3. MAT No. 2459 of 2023 has been filed challenging the order dated 04.12.2023 in WPA 2544 of 2023. In the said writ petition the appellant had challenged a show-cause notice dated 22nd August, 2023 issued by the WBGST Authorities on the ground that the notice has been issued without causing any verification from the supplier's end and denying credit to the appellant. The learned Writ Court disposed of the writ petition by directing the appellant to file the objection to the show-cause notice and the authority was directed to consider the same and take note of the judgment relied on by the appellant. The Court also directed that till the disposal of the objection no coercive action shall be taken against the appellant. It is contended before us by the learned Advocate for the appellant that in the writ petition the appellant had contended that the show-cause notice is without jurisdiction, more particularly in the light of the decision of this Court in ***Suncraft Energy Private Limited Versus Assistant Commissioner of State Tax[1].*** During the pendency of the appeal the respondent authority had adjudicated the show- cause notice and passed an order dated 28.12.2023 which was challenged in the writ petition in WPA 5222 of 2024 which has been tagged to be heard along with the appeal.

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1 (2023) 9 Centax 48 (Cal)

4. The respondent authority issued notice under Section 73 (1) of the CGST Act, 2017/ WBGST Act, 2017 dated 22.8.2023 holding that the appellant had failed to produce any evidence from which it can be ascertained that the suppliers had paid tax to Government on those supplies (which are disclosed/ admitted by the suppliers in their statement in GSTR-I) and that the appellant had availed and utilized Input Tax Credit (IPC) in contravention of Section 16 (2)(c) of the Act. Therefore, it was proposed that ITC of Rs. 4,52,739.42/- (IGST) is found reversible along with interest, payable as per provisions of Section 50 of the GST Acts. Challenging the said show-cause notice the writ petition had been filed as stated above, which has been disposed of by the impugned order.

5. The adjudicating authority in the order dated 28.12.2023 has confirmed the demand made in the show-cause notice. We find from the said order certain findings recorded by the authority are outside the scope of the allegations in this show-cause notice. These findings are in page 6 of the adjudication order dated 28.12.2023 which pertained to the allegation that the appellant who claimed to have received manpower services only did not conclusively prove whether he actually availed the services or not and that the appellant had not produce documents like the register of workers, the name of workers against whom the invoices were raised etc. from where it may be concluded that the actual service has been procured by the RPP for furtherance of his business. As a rightly pointed out by the learned Advocate for the appellant these were never part of the allegation in the show-cause notice. The adjudicating authority has admitted that the appellant has produced two certificates issued by the Chartered Accountants declaring that the suppliers had discharged the liability in corresponding GSTR-3B for the relevant periods. The adjudicating authority proceeded to reject those certificates issued by the Chartered Accountants by observing that they do not match with the facts stated in the returns as available in GST common portal. If there was any clarification required for the assessee, it would have been well open to the adjudicating authority to call upon the assessee to do so and without such opportunity the adjudicating authority unilaterally proceeded with the matter. The law and the subject was considered by the Court in the case of ***Suncraft Energy Private Limited***.

6. In the said case the assessee had impugned the order of the assessing officer who reversed the Input Tax Credit availed by the assessee therein under the provisions of the WBGST Act. In the said case the private respondent was the supplier of the assessee who provided supply of goods and services to the assessee who had made payment of tax to the private respondent at the time of effecting such purchase along with supply

of goods/ services. However, in some of the invoices of the said supplier were not reflected in the GSTR-2A of the assessee for the Financial Year 2017-18. In the said case the assessing authority issued notices for recovery of ITC to which the assessee objected by stating that without conducting any enquiry of the supplier who was the private respondent of the said proceedings and without effecting any recovery from the supplier the Assessing Officer was not justified in proceeding against the assessee. There are two show-cause notices issued for which reply was submitted by the assessee. The notice was adjudicated and the demand raised in the show-cause notice was affirmed. The said order was challenged by filing a writ petition which was disposed of by directing the petitioner therein to file a statutory appeal. Aggrieved by such order, the intra court appeal was preferred before this Court. The Court considered the scheme of the Act and held as follows:

> 3. For a dealer to be eligible to avail credit of any input tax, the conditions prescribed in Section 16 (2) of the Act have to be fulfilled. Sub-section (2) of Section 16 commences with a non-obstante clause stating that notwithstanding anything contained in Section 16 no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services or both to him unless-
>
> (a) he is in possession of tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
>
> (b) he has received the goods or services or both;
>
> (c) subject to the provisions of Section 41 or Section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of such supply; and
>
> (d) he has furnished the return under Section 39.
>
> 5. In the press release dated 18.10.2018 a clarification was issued stating that furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act. Further, it has been clarified that the apprehension that ITC can be availed only on the basis of reconciliation between Form GSTR-2B and Form GSTR-3B conducted before the due

date for filing of the return in Form GSTR-3B for the month of September, 2018 is unfounded and the same exercise can be done thereafter also. In the press release dated 4th May, 2018, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non- payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

6. The effect and purport of Form GSTR-2A was explained by the Hon'ble Supreme Court in Bharti Airtel Ltd. It was held that Form GSTR-2A is only a facilitator for taking a confirm decision while doing such self-assessment. Non-performance or non- operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit return on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. In Arise India Limited and Ors. Versus Commissioner of Trade and Taxes, Delhi and Ors. MANU/DE/3361/2017, the challenge was to the constitutional validity of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 (DVAT Act) as being violative of Article 14 of 19(g) of the Constitution of India. Section 9(2) of the DVAT Act sets out the conditions under which tax credit or ITC would not be allowed. Sub-clauses (a) to (f) specify certain kinds of purchase which would not be eligible for the claim of ITC. Clause (g) of the Section 9(2) of the DVAT Act states that to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period, would not be eligible for claim of ITC. The question that arose for consideration was as to whether for the default committed by the selling dealer can the purchasing dealer be made to bear the consequences of the denying the ITC and whether it is the violation of Article 14 of the Constitution. After taking note of the language used in Section 9(2)(g) of the DVAT Act where the expression "dealer or class of dealers" occurring in Section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transaction with validly registered selling dealer who have issued tax invoices in accordance with Section 15 of the said Act where there is no mismatch of transactions in

Annexures 2A and 2B and unless the expression "dealer or class of dealers" in Section 9(2)(g) is read down in the said manner, the entire provision would have to be held to be violative of Article 14 of the Constitution. It was further held that the result of such reading down would be that the department is precluded from invoking Section 9(2)(g) of DVAT Act to deny the ITC to the purchasing dealer who had bona fide entered into a purchase transaction with the registered selling dealer who had issued a tax invoice reflecting the TIN number and in the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against a defaulting selling dealer to recover such tax and not denying the purchasing dealer the ITC. It was further held that where however, the department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the department can proceed under Section 40A of the DVAT Act. With the above conclusion, the default assessment orders of tax interest and penalty were set aside. The decision in Arise India Limited was challenged before the Hon'ble Supreme Court by the Government in Commissioner of Trade and Taxes, Delhi Versus Arise India Limited and the special leave petition was dismissed by judgment dated 10.01.2018, reported in MANU/SCOR/01183/2018. Though the above decision arose under the provisions of the Delhi Value Added Tax Act, the scheme of availment of Input Tax Credit continues to remain the same even under the GST regime though certain procedural modification and statutory forms have been made mandatory.

9. The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily. Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by

them. Therefore, we are of the view that the demand raised on the appellant dated 20.02.2023 is not sustainable.

10. In the result, the appeal is allowed, the orders passed in the writ petition is set aside and the order dated 20.02.2023 passed by the first respondent namely the Assistant Commissioner, State Tax, Ballygaunge Charge, is set aside with a direction to the appropriate authorities to first proceed against the fourth respondent and only under exceptional MAT 1218 OF 2023 REPORTABLE circumstance as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC), then and then only proceedings can be initiated against the appellant. With the above observations and directions the appeal is allowed.

7. Against the above judgment the State preferred an appeal before the Hon'ble Supreme Court which was dismissed as reported in ***(2023) 13 Centax 189 (SC)***.

8. The decision in ***Suncraft Energy Private Limited*** applies with full force to the case on hand. Admittedly, the adjudicating authority without resorting to any action against the supplier who is the selling dealer, had ignored the tax invoices produced by the appellant as well as the certificates issue by the Chartered Accountants which is erroneous and wholly without jurisdiction. It is interesting to note in the facts of the instant case that even in the show- cause notice the authority has admitted that "*it is true that the recipient has made payment the element of tax to the supplier against such transaction but the payment of such tax has not been reciprocated to the exchequer*". If the authority has admitted the fact that the recipient who is the appellant has made payment of the tax to the supplier against the transaction and if it is a case of the department that such tax has not been remitted to the State exchequer, the elementary principle to be adopted is to cause enquiry with the supplier and without doing so to penalise the appellant would be arbitrary, illegal and without jurisdiction.

9. For all the above reasons the appellant is entitled to succeed. Accordingly, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition is allowed. The order impugned in the writ petition dated 28.12.2023 is set aside as well as the show-cause notice dated 22.08.2023 is set aside with a direction to the authorities to first proceed against the supplier and only under exceptional circumstances as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC) and then only proceedings can be initiated against the appellant.

THE HIGH COURT OF JUDICATURE AT ANDHRA PRADESH

[U.Durga Prasad Rao & A.V.Ravindra Babu, J.J.]

Writ Petition No.23426 of 2023

M/s. Neospark Drugs And Chemicals Private Limited ... Petitioner

Vs.

The Additional Commissioner of Central Tax ... Respondent

Date of Order: 14.09.2023

WHETHER AN APPEAL FILED ONLINE ON 26.09.2022 BUT PHYSICAL COPIES WERE RECEIVED ON 24.04.2023 OUGHT TO HAVE BEEN FILED ON 19.10.2022? THERE WAS A DELAY OF ABOUT SIX MONTHS FIVE DAYS IS BEYOND THE CONDONABLE PERIOD U/S 107 SHOULD THE APPEAL BE REJECTED AS TIME BARRED AND BEYOND CONDONABLE LIMIT?

Held: In our considered view, this approach of the 1st respondent cannot be accepted. Electronical filing of the appeal is a facilitation given to the assessees. the appeal filed by the petitioner in electronic mode is held as well within time and the matter is remitted back to the 1st respondent to register the appeal and decide the same in accordance with the governing law and rules expeditiously.

Present for the Petitioner : C Sanjeeva Rao, Adv.

Present for the Respondents : Santhi Chandra, Adv. Jr. Standing Counsel for CBIC

ORDER

U.Durga Prasad Rao

The challenge in this writ petition is to the order in Appeal No.06/2023(G) GST, dated 30.06.2023 passed by the Additional Commissioner of Central Tax (GST-Appeals)/1st respondent, rejecting the appeal filed by the petitioner challenging the assessment order O.C.No.120/2022-2023, dated 20.07.2022, passed by the 2nd respondent, on the ground that the appeal was filed with a delay beyond the condonable period.

2. Heard learned counsel for petitioner, Sri C.Sanjeeva Rao and Smt. Shanthi Chandra, learned Jr.Standing Counsel for CBIC for the respondents 1 to 3 and learned Deputy Solicitor General for the 4th respondent.

3. As can be seen, the 1st respondent observed that the assessment order was passed on 20.07.2022 by the 2nd respondent and the appeal was filed online on 26.09.2022 but the physical copies of the appeal were received by the office of the 1st respondent only on 24.04.2023 and since

the appeal in all respects ought to have been filed by 19.10.2022 and as such, there was a delay of about six months five days in between 26.09.2022 and 24.04.2023, which is beyond the condonable period under Section 107 of CGST Act and accordingly, rejected the appeal.

4. Learned counsel for petitioner would submit that admittedly the appeal was filed on 26.09.2022 online mentioning therein the particulars of the assessment order dated 20.07.2022, as the said assessment order was already uploaded by the Department on the official website and therefore, he mentioned the particulars of the said order. To that effect, learned counsel filed a copy of the screen shot showing the date of assessment order as 20.07.2022 and Order No.OIO No.01/2022-23-GST. Learned counsel would thus submit that the petitioner has complied with the requirement of filing the appeal online and the copy of the order. He would further submit that the petitioner filed the physical copies of appeal along with the required documents on 24.04.2023. Taking the said date, the 1st respondent held that the appeal was beyond the condonable period. Learned counsel for petitioner would further submit that as per Rule 108, appeal could be filed either electronically or otherwise and since the petitioner has filed the appeal electronically on 26.09.2022 and made a reference with regard to the impugned assessment order also therein, the 1st respondent ought to have considered the same and held that the appeal was filed well within time. However, taking the date of filing of the physical copies i.e., 24.04.2023, appeal was rejected holding that it was beyond the condonable period which is unjust.

5. Learned Jr.Standing Counsel for respondents 1 to 3 would submit that though the petitioner filed the appeal online on 26.09.2022, however, following the mandate of filing certified copy, he has not produced an online certified copy. However, he only mentioned the date of assessment order therein and thereby, has not fulfilled the conditions. He filed the physical copies of appeal and the assessment order copy only on 24.04.2023 which was far beyond the condonable period and therefore, the 1st respondent has rightly rejected the appeal.

6. We heard the above respective contentions of both the learned counsel.

7. The point for consideration is ‘Whether the impugned rejection order is sustainable in the eye of law?’.

8. Admittedly, in this matter, the assessment order was passed on 20.07.2022 and the same was uploaded on the official website on the same date. It is further admitted fact that the petitioner filed the appeal electronically on 26.09.2022, which was within the 90 days as prescribed under Section 107(1) of CGST Act. Now the bone of contention is with

regard to the uploading of the certified copy. According to the petitioner, since the assessment order was already hoisted on department website, he made a reference of the order number with OIO No.01/2022-23-GST and with order No.3CEEYK0402S07220015, dated 20.07.2022 and thus, substantially complied with the requirement.

9. On perusal of the copy of the screen shot filed along with the material papers, we find some force in the submission of learned counsel. Since admittedly the copy of the assessment order dated 20.07.2022 was already placed on the department website, the petitioner gave the reference of the said order while filing the appeal electronically. Therefore, we find force in the submission that the requirement was substantially met. Therefore, the 1st respondent ought to have taken the date of filing of the appeal as 26.09.2022 for all practical purposes. However, the 1st respondent took the date of filing as 24.04.2023, as on the date the appeal was filed along with the documents physically. In our considered view, this approach of the 1st respondent cannot be accepted. Electronical filing of the appeal is a facilitation given to the assessees. That being so, the copy of the impugned order which was already available on the web can be mentioned for easy reference.

10. Accordingly, this writ petition is allowed and the appeal filed by the petitioner in electronic mode is held as well within time and the matter is remitted back to the 1st respondent to register the appeal and decide the same in accordance with the governing law and rules expeditiously. No costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

IN THE HIGH COURT OF JUDICATURE AT PATNA

[Harish Kumar, CJ]

Civil Writ Jurisdiction Case No.3499 of 2024

Pawan Carrying Corporation a proprietory concern having its office at 133/282, Transport Nagar, Kanpur through its authorized signatory Shri Prakash Ojha (Male aged about 35 years) son of Shri Shailendra Ojha resident of Makhdum Saray, Adarsh Nagar, Tarwara More, Siwan, Bihar -841226.

... Petitioner/s

Vs

State of Bihar through the Commissioner of State Tax, & Ors. ... Respondent/s

Date of Order: 29.02.2024

WHETHER NOTICE AND ORDER OF DETENTION U/S 129(3) OF THE CGST ACT WAS OUT OF LIMITATION PERIOD AS PRESCRIBED IN THE RESPECTIVE SECTION?

Held: The petitioner had been informed at the time of verification, if the petitioner had sought for time on the seventh day from the date of serving of notice, there was nothing preventing the tax authority from rejecting the said prayer and passing the order, especially since, if the matter is kept pending, the proceedings would be barred by limitation. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in accordance with the provisions, we hence find no reason to sustain the demand raised. We set aside the orders passed for detention of the vehicles. The vehicle with the goods would be released immediately.

Present for the Petitioner/s : Mr. D.V.Pathy, Advocate

Present for the Respondent/s : Mr. Standing Counsel (11)

Judgment

The proceedings challenged in the present writ petition are initiated under section 129(3) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act', in short) and the ground raised is of limitation both in issuing a notice after the detention and then in passing the final order from the date of service of such notice; both prescribed under section 129(3) of the CGST Act.

2. On facts suffice it to notice that the petitioner, a carrier had been transporting tobacco from Kanpur in Uttar Pradesh to Dalkola in West Bengal, passing through the State of Bihar. Annexure-P/1 series are the e-way bills. Annexure-P/2 dated 28.12.2023 is the order of detention. Annexure-P/3 is the notice dated 05.01.2024 issued under section 129(3) of the CGST Act. The order passed is produced at Annexure-P/4 dated 15.01.2024.

3. The learned counsel for the petitioner Mr. D.V. Pathy, points out that the interception of the vehicle was made on 22.12.2023, and it cannot at all be said that the detention was made only on 28.12.2023 when Annexure-P/2 was issued and Annexure-P/3 notice was issued on 05.01.2024, beyond the seven days period provided under section 129 (3) of the CGST Act, going by both the date of interception and the date of alleged detention. The order passed on 15.01.2024 is also beyond the prescribed seven days period from the date of service of notice. The learned

counsel also specifically referred to the circular produced as Annexure-P/5 wherein Circular Number. 64/38/2018-GST dated 14.09.2018 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, by which negligible defects were directed to be ignored, one of such defects being that found in the present case.

4. Mr. Vikash Kumar, learned counsel for the State pointed out that the vehicle was intercepted on 22.12.2023 and the statement of the Driver GST MOV-1 was issued to him along with GST MOV-2 order for physical verification and inspection. Only when the driver of the vehicle submitted an application for physical verification on 28.12.2023, the vehicle was detained as per Annexure-3. The petitioner then submitted its letter of authority on 02.01.2024 and hence the notice was issued on 05.01.2024, under section 129(3) of the CGST Act. On 12.01.2024 and 15.01.2024, the petitioner sought time and hence, it was adjourned for 15.01.2024, on which date the reply was submitted by the petitioner and the order was passed.

5. Admittedly, the vehicle was intercepted on 22.12.2023 and there was absolutely no reason why the verification of the goods should await an application by the driver of the vehicle. Section 129 is a *non obstant*e clause which confers power for detention or seizure of any transport or goods, when they are in transit in contravention of the provisions of the CGST Act. Hence, when the vehicle was intercepted and detained by the tax authority there was no reason to wait for six days before carrying out the inspection of the goods. The defect noticed was also of two figures in the vehicle number differing from that recorded in the e-way bills; clearly covered by Annexure-P/5 circular.

6. Annexure-P/1 is series of e-way bills which shows the transport to be in vehicle no. UP78 CT 9645. On detention the transport was found to be made in a vehicle having no. UP78 CT 9650. The petitioner produced documents, as stated in the writ petition, establishing that the vehicles bearing both the registration numbers belonged to the petitioner. The tax authority in the order passed specifically pointed out that this would further the case of evasion and if the vehicles were with two different operators probably the recording of the number in the e-way bill was a bonafide mistake. We need not go into the merits of the case especially when the contention is of bar by virtue of limitation. We would also notice that the circular issued by the Central Board of Direct Taxes and Customs, speaks of *inter alia*, error in one or two digits of the vehicle number enabling the authority to not proceed against the consignor under Section 129 of the CGST Act.

7. Be that as it may, even if the detention is stated to be on 28.12.2023, the notice was only issued on 05.1.2024, after the seven day period

provided in Section 129(3) CGST Act. Likewise when the petitioner had been informed at the time of verification, if the petitioner had sought for time on the seventh day from the date of serving of notice, there was nothing preventing the tax authority from rejecting the said prayer and passing the order, especially since, if the matter is kept pending, the proceedings would be barred by limitation.

8. Section 129(3) of the CGST Act as substituted by Act 13 of 2021 is extracted hereunder:-

> "129(3) the proper officer detaining or seizing goods or conveyances shall issue notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of Sub Section (1)"
>
> (underlining by us for emphasis)

9. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in accordance with the provisions, we hence find no reason to sustain the demand raised. We set aside the orders passed for detention of the vehicles. The vehicle with the goods would be released immediately. Ordered, accordingly.

10. The petition is allowed.

HIGH COURT OF MEGHALAYA AT SHILLONG

[Sanjib Banerjee & W. Diengdoh, CJ, J]

MC (Central Excise Ap.) No. 1/2023 in
Central Excise Ap.No.4/2023

The Principal Commissioner of Central Goods and Service Tax ... Petitioner

vs.

M/s Green Valliey Industries Pvt Ltd ... Respondent

Date of Judgment: 26.07.2023

WHETHER AN EXCESS AMOUNT PAID UNDER PROTEST, RETAINED BY DEPARTMENT FOR CONSIDERABLE TIME, NOT BEING AGAINST ANY DEMAND OF TAX, INTEREST OR PENALTY WAS ENTITLED TO CARRY INTEREST OR NOT?

Held: Without going into the question as to whether any claim for interest on interest can be legally pursued, the Department would do well to make the payment of the interest due within four weeks from date. If the payment is made within such time, there will be no further claim of the assessee in respect of this matter. Otherwise, the assessee will be entitled to pursue any further remedy available in accordance with law.

Present for the Petitioner : Dr. N. Mozika, DSG with Ms. K. Gurung, Adv

Present for the Respondent : Mr. A. Kanodia, Adv

JUDGMENT

per the Hon'ble, the Chief Justice) (Oral)

The facts have been recorded in detail in the previous order of July 11, 2023 and may not warrant repetition. However, since the appeal is proposed to be disposed of by this order, the salient facts are reiterated.

2. At the outset, the delays of about 243 days against the main order and 43 days against the subsequent order are condoned in view of the good grounds shown.

3. The legal issue that has arisen here is as to whether the respondent assessee was entitled to any interest on the delayed refund made by the Department. There is no doubt that Section 11B of the Central Excise Act, 1944 does not provide for any payment of interest for refund of duty or interest. However, the moot question here is whether the refund that the respondent assessee was found liable to be was on account of excess duty or interest paid.

4. Since it is the unarguable position that the refund that the assessee was found entitled to was neither on account of excess duty nor on account of interest previously paid, the Appellate Tribunal held that the implied embargo on interest in Section 11B of the Act would not be applicable.

5. The Department initiated an investigation against the assessee on the ground that the assessee had claimed excess cenvat credit. However, even before a show-cause notice or any demand was issued, the assessee deposited a sum of Rs.94 lakh under protest. Indeed, the deposit was made by reversing a further cenvat credit to such extent, which amounted to almost payment in cash. A show-cause notice and a subsequent order-in-original followed. The assessee was found liable to refund cenvat credit to the extent of Rs.97 lakh. The assessee challenged the order before the Tribunal and the Tribunal found that the demand for excess cenvat credit

was good for about Rs.16 lakh. After providing for interest and penalty on the excess amount of cenvat credit availed, the Tribunal found that a sum of approximately Rs.78 lakh was liable to be refunded by the Department to the assessee out of the deposit of about Rs.94 lakh that had been previously made by the assessee.

6. It appears that the Department had no quarrel with the quantum of refund as directed to be made by the Tribunal. It is also the admitted position that the amount has been refunded. The assessee, however, contended that since the excess amount, that had been deposited under protest, was retained by the Department for a considerable period of time and such deposit was neither on account of any cenvat credit demand or on account of any claim for penalty or interest, the refund that the assessee was found entitled to, ought to carry interest.

7. The Department refused to pay any interest as the Customs, Excise and Service Tax Appellate Tribunal had not provided for any interest in the appellate order. The assessee again knocked at the doors of the Appellate Tribunal to claim that the refund that the assessee had received ought to have been paid with interest. The legal issue urged was that the possible embargo that is read into the payment of interest on account of refund of duty or refund of interest or the like in Section 11B of the Act would not apply when the initial deposit had not been made on account of any interest or duty, but had been made purely as a deposit and under protest.

8. In course of the appeal before the CESTAT, several judgments were looked into. By the order impugned dated April 11, 2022, the

Tribunal recorded its satisfaction that the refund in this case was not of any duty or interest on duty. Accordingly, the Tribunal found that the assessee was entitled to interest. On the quantum of interest, the Tribunal relied on several Supreme Court, High Court and its own judgments to arrive at a figure of 12 per cent per annum.

9. The Department sought a review or a correction of the relevant order and, as it stands today, the interest amount required to be paid by the order dated April 11, 2022 still remains outstanding.

10. The Department claims that since the initial deposit had been made in anticipation of a claim for excess cenvat credit availed of, such deposit must be understood to have been made on account of duty and, accordingly, the bar under Section 11B of the Act would apply. The second ground urged by the Department is that in similar circumstances, the Delhi High Court has awarded interest at the rate of 6 per cent per annum and

notifications that were relevant for the purpose of assessing the quantum of interest also provided for interest at or about the rate of 6 per cent per annum.

11. The Tribunal has given adequate reasons in both the orders impugned, including the order by which the Department's application for correction or modification was rejected. According to the Tribunal, the deposit was made at a time when no quantified claim had been made on the assessee. On such basis, the Tribunal found that the deposit had not been made on account of any duty or interest which would attract the implied bar under Section 11B of the Act. It was a possible view taken on the set of facts that presented themselves before the Tribunal and, in this appellate jurisdiction, such interpretation does not call for any interference. Further, as to the quantum of interest awarded, the Tribunal, which is a specialised body dealing in matters pertaining to excise duty, took into account the previous judgments of the Supreme Court, High Courts and the Tribunal itself to justify that the rate of 12 per cent per annum would apply in the facts of the present case. Again, since there is some basis to the award of interest by the Appellate Tribunal, the same does not call for any interdiction.

12. A further contention has been raised by the Department, possibly, in the light of the discussion on such aspect in the immediate previous order of this Court of July 11, 2023, that at any rate, interest on interest would not be payable. However, there is no question of going into such area at this stage since it may not be relevant. Suffice it to say that since interest is a mode of compensation, it may not always pass muster to delay the payment that is due and claim that notwithstanding the reasons for the delay or the extent of delay, no interest on interest can ever be payable. Be that as it may.

13. Accordingly, the judgment and orders impugned dated April 11, 2022 and October 28, 2022 are allowed to hold the field as they do not call for any interference.

14. MC (Central Excise Ap.) No.1 of 2023 is disposed of.

15. Central Excise Ap.No.4 of 2023 is dismissed.

16. After this order is pronounced, the assessee says that if a direction is issued to the Department for immediate repayment of the amount due from the date of deposit, no claim for interest on interest will be made.

17. Without going into the question as to whether any claim for interest on interest can be legally pursued, the Department would do well to make

the payment of the interest due within four weeks from date. If the payment is made within such time, there will be no further claim of the assessee in respect of this matter. Otherwise, the assessee will be entitled to pursue any further remedy available in accordance with law.

18. There will, however, be no order as to costs.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
[J.B.Pardiwala, Ilesh J. Vora, J.J.]

R/Special Civil Application No. 21534 of 2019
C/SCA/21534/2019

M/s Rajkamal Builder Infrastructure
Through Director Mahendra H Patel ... Petitioner

vs

Union Of India on 23 March, 2021 ... Respondent

Date of Judgment: 23.03.2021

WHETHER THE INTEREST CHARGED ON DELAYED PAYMENT OF TAX, DEHORS SECTION 50 OF THE CGST ACT? THE PAYMENT OF TAX HAVING BEEN MADE AFTER DEBITING FROM THE ELECTRONIC CASH LEDGER.

Held: DRC 01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax. If there is any amount of interest payable on tax and which had remained unpaid, the same has to be recovered under the provisions of Section 79. The conclusion that the notice should have been issued in Form GST DRC 07. The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax. In view of the aforesaid, the Form GST DRC 01 could be said to have been issued without any authority of law. The impugned order issued in GST DRC 01 is hereby ordered to be quashed and set aside.

Present for The Petitioner : Mr. Avinash Poddar

Present for The Respondents : Mr Trupesh Kathiriya, Agp,
Mr Ankit Shah, Mr Utkarsh R Sharma

ORAL JUDGMENT
(Per : Honourable Mr. Justice J.B.pardiwala)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

"a) to issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction holding the Form GST DRC 01 issued to the petitioner as without authority of law and liable to be quashed.

b) To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction holding the interest on delayed payment of tax to be charged on gross liability is ultra vires and de hors to section 50 of the CGST Act and / or ultra vires to the constitution of India.

c) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased to direct the respondent.

(i) From resorting to any coercive measure against the petitioner.

(ii) To stay the proceedings of Form GST DRC 01.

d) To issue order/s, direction/s, writ/s or any other relief/s as this Honourable Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

e) To award costs of and incidental to this application be paid by the respondent."

2. A Coordinate Bench of this Court passed the following order dated 5th December 2019 at the time of issuance of the notice:

"1. The learned advocate for the petitioner has tendered draft amendment. The amendment is allowed in terms of the draft. The same shall be carried out forthwith.

2. Mr. Avinash Poddar, learned advocate for the petitioner, invited the attention of the court to the impugned show cause notice dated 19.07.2019 issued in Form GST DRC 01 under Rule 142(1) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as "the Rules") to point out that the notice has been issued in relation to section 50 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act"). Reference was made to rule 142 of the Rules to point out that the same no where contemplates issuance of notice thereunder in respect of section 50 of the Act. It was submitted that therefore, the impugned show cause notice has been issued without any authority of law.

3. Having regard to the submissions advanced by the learned advocate for the petitioner, issue Notice, returnable on 26.12.2019.

By way of ad− interim relief, further proceedings pursuant to the impugned notice dated 19.07.2019 (Annexure−D to the petition) are hereby stayed.

Direct service is permitted."

3 We have heard Dr. Avinash Poddar, the learned counsel appearing for the writ applicant, Mr. Utkarsh Sharma, the learned Standing Counsel appearing for the Union of India and Mr. Trupesh Kathiriya, the learned A.G.P. appearing for the State respondent.

4 Two questions fall for the consideration of this Court:

[i] Whether interest under Section 50 of the Central Goods and Service Tax Act, 2017 (for short, "the CGST Act, 2017") is to be levied on the net tax liability or on the gross tax liability?

[ii] Whether issuance of DRC 01 under Section 50 of the CGST Act, 2017 is legal and proper?

5 The following amendment has been proposed in Section 50 of the CGST Act, 2017 vide clause 103 of the Finance Bill, 2021.

"103. In section 50 of the Central Goods and Services Tax Act, in sub− section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:− "Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger."

6 Thus, from the above, it is clear that the interest under Section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability. In such circumstances, the demand raised by the respondent is not in accordance with law.

7 So far as the second question is concerned, it appears that the respondent No.3 has issued Form GST DRC 01 under Section 50 of the CGST Act, 2017. Section 50 of the CGST Act, 2017 reads thus:

"50. Interest on delayed payment of tax. − (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the

rules made thereunder, 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.

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

(2) The interest under sub−section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub−section (10) of section 42 or undue or excess reduction in output tax liability under sub−section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty−four per cent., as may be notified by the Government on the recommendations of the Council."

8 Rule 142(1)(a) of the Central Goods and Service Tax Rules, 2017 (for short, "the CGST Rules, 2017") reads thus:

"142. Notice and order for demand of amounts payable under the Act. − (1) The proper officer shall serve, along with the −

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC−01."

9 Thus, the plain reading of the aforesaid rules indicates that Form GST DRC 01 can be served by the proper officer along with the notice issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130 and that too, electronically as a summary of notice.

10 We do not find reference of any notice under Section 50 so far as Rule 142(1)(a) of the CGST Rules is concerned. In such circumstances, DRC 01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax.

11 The aforesaid leads us to consider the question that if the amount towards interest on delayed payment of tax is to be recovered, then what is the Form in which the notice is to be issued?

12 In the aforesaid context, we may refer to Section 75(12) of the Act. It reads thus: “75. General provisions relating to determination of tax.

... ...

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self−assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.”

13 Thus, the aforesaid provisions make it abundantly clear that notwithstanding anything contained in section 73 or Section 74, if there is any amount of interest payable on tax and which had remained unpaid, the same has to be recovered under the provisions of Section 79.

14 Section 79 is with respect to recovery of tax. Section 79 provides for the modes of recovery.

15 We shall now look into Rule 142 of the CGST Rules. Rule 142(5) reads as under:

“142. Notice and order for demand of amounts payable under the Act.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC−07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

16 Rule 142 makes it clear that the order referred in sub−rule (5) shall be treated as the notice for recovery.

17 From the aforesaid, we have reached to the conclusion that the notice should have been issued in Form GST DRC 07. The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax.

18 In view of the aforesaid, the Form GST DRC 01 could be said to have been issued without any authority of law.

19 In the result, this writ application succeeds and is hereby allowed. The impugned order issued in GST DRC 01 is hereby ordered to be quashed and set aside. We reserve the liberty for the respondents to initiate fresh proceedings against the writ applicant in accordance with law.

20 With the above, this writ application stands disposed of.

IN THE HIGH COURT OF ANDHRA PRADESH AT ANDHRA PRADESH
[U.Durga Prasad Rao & Venkata Jyothirmai Pratapa, J.J.]

Writ Petition No. 15490 of 2023

M/S. S A Iron and Metal
Rep. by its Proprietor Mr.Shaik Samiuddin ... Petitioner

Vs.

THE ASSISTANT COMMISSIONER (ST),
Andhra Pradesh & Ors. Respondents

Date of Order: 19.07.2023

WHETHER AN APPEAL CAN BE REJECTED / DISMISSED AS BEING BEYOND LIMITATION, WHEN THE APPELLANT WAS PREVENTED BY UNFORESEEN AND SEVERE FINANCIAL CRISES FACED BY HIS BUSINESS?

Held: Section 107 (6) which is vivid on the point of deposit of 10% of the disputed tax which is mandatory at the time of filing of the appeal. When the bank account of the petitioner is freezed by the authorities, it is a relevant fact to consider the delay since the pre-deposit of 10% disputed tax at the time of filing of the appeal is mandatory. The view taken by the learned Commissioner appears to be forcing the horse to run after tying the legs. The right of appeal which is created under statute is a substantive right of the party that cannot be denied by taking pedantic view. We are not convinced with the reasons assigned by the learned Commissioner in rejecting the appeal. Since, it is within the condonable period of limitation as the cause for the delay is suffice to entertain the appeal. On appreciation

of the language employed under Section 107 (4) and in the back drop the factual and legal background, we are of the view that the impugned order deserves to be set aside.

Present for The Petitioner : Mr. V Siddharth Reddy

Present for The Respondents : GP for Commercial Tax

ORDER
(Per Hon'ble Smt.Justice Venkata Jyothirmai Pratapa)

Petitioner prays for a Writ of Mandamus declaring the action of Respondent No.2 in rejecting the appeal through the impugned Order dated 03.06.2023 as illegal, arbitrary and contrary to the provisions of the Act and consequently, to set aside the same and pass such other orders may deem fit and proper in the circumstances of the case.

2. Heard Sri Vemireddy Bhaskar Reddy, learned counsel for the petitioner and the learned Government Pleader for Commercial Tax.

3. This matter is disposed of at the stage of admission as requested by Counsels on record.

Petitioner's case in nutshell :-

4. Petitioner is a registered dealer on the rolls of the Assistant Commissioner (ST) Chittor-I under the provisions of both CGST and SGST Act, 2017 and is engaged in the business of purchase and sale of iron scrap. On 21.01.2023, the Assistant Commissioner (ST) Regional GST Audit and Enforcement Wing conducted inspection in the business premises of the petitioner and ascertained taxable amount of Rs.05,48,29,347/- including Tax, Penalty and interest vide Orders under DRC-07.

(b) Petitioner challenging the correctness of the Order passed by the Assessing Authority carried the matter before respondent No.2-Additional Commissioner (ST) and the Appellant Authority, Tirupathi, Chittor District under Section 107 of the A.P. G.S.T Act, 2017 along with a request to condone delay of 25 days in preferring the appeal. As the petitioner's accounts were frozen by the Department, he could not mobilize the funds required for pre-deposit of 10% of the disputed tax for filing appeal, which is mandatory.

(c) The entire business transactions have come to a grinding halt due to the provisional attachment orders issued to the banks as well as

to the dealers to whom he has supplied goods and yet to receive the consideration.

(d) Respondent No.2 rejected the appeal on untenable grounds vide impugned Order dated 03.06.2023, since the Appellate Tribunal is yet to be constituted, petitioners approached this Court challenging the impugned order passed by the respondent No.2.

5. Learned counsel for the petitioner would submit that though the petitioner preferred appeal within condonable period of limitation, the Appellate Authority rejected the appeal without considering the genuine reason for the petitioner filing appeal with delay and passed the impugned Order, which is not tenable under law. Though it is the discretion of the appellate authority to condone the delay, discretion has to be exercised judiciously. The petitioner's bank accounts were frozen, notices issued to the dealers to whom he has supplied the goods and yet to receive the consideration. Learned Appellate Authority ought to have considered the reason for the delay since he was prevented by sufficient cause and entertained the appeal.

6. Per contra, learned Government Pleader would submit that the impugned Order is a reasoned Order. Learned authority opined that the reason for the delay is not convincing. The petitioner, without giving any details of the financial crisis his business faced, simply mentioned that he has faced unforeseen and severe financial crisis. The plea regarding the difficulties in securing the loan amount also far from truth. Respondent No.2 rightly rejected the appeal and therefore, prays for dismissal of the petition.

7. Having heard the submission of both counsel, now the points that would emerge for determination are:

i. Whether the petitioner was prevented by sufficient cause from presenting the appeal within the statutory period of limitation ?

ii. To what relief ?

8. To answer the points framed supra, a keen perusal of the relevant provisions under the GST Act, 2017 would serve the purpose.

Section 107 - Appeals to 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 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.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order,(subject to a maximum of

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

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

9. The word "sufficient cause" as appearing in Section 107(4) of CGST Act, 2017 for the purpose of seeking condonation of delay in filing the appeal before the Commissioner (Appeal) has been interpreted by the Hon'ble Apex Court in the light of Section 5 of Limitation Act relating to Land Acquisition Matter would guide the Court in deciding the point. In Collector, Land Acquisition Vs. Mst. Katiji [1]

While deciding application under Section 5 Limitation Act, "justice oriented approach" is required to be adopted. The expression 'sufficient cause' is adequately elastic to enable the courts to apply the law in a meaningful manner which subserve the ends of justice that being the life-purpose for the existence of the institution of Courts.

10. Hon'ble Apex Court laid down the following principle to be followed while dealing with an application seeking condonation of delay:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk."

11. Needless to say that the Commissioner (appeals) been creature of statute is not vested with the jurisdiction to condone the delay beyond the permissible period provided under the statute. The period upto which the prayer for condonation can be accepted is clearly mentioned under Section 107 (4).

12. In **Penuel Nexus Pvt.Limited Vs. Additional Commissioner Head Quarters (Appeals)[2] Kerala High Court. While interpreting Section 107(4) observed** "the Central Goods and Services Tax Act is a special statute and a self-contained code by itself, and Section 107 thereof is an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted".

13. While considering the application for condonation of delay, it is not the length of the delay, but cause for delay which would be paramount consideration. If the cause shown as indicated under Section 107(4) of the act, such delay deserves to be condoned irrespective of the length of the delay. It does not mean that the learned Commissioner (Appeals) can condone the delay beyond the condonable period that is one month after expiry of three months after statutory period of three months.

14. However, if the cause shown is not within the proximity of case or contrary to facts or irrespective deliberate proof of material facts, the length of delay even if short cannot be accepted. It all depends on facts and circumstances of each case. They could not be in straight jacket formula prescribed for considering for the cause for delay.

15. Coming to the facts of the present case, the petitioner filed appeal with a delay of 25 days after expiry of three months of statutory period of limitation for filing appeal before Commissioner. The reasons assigned for the delay are as follows :

a) The delay was caused due to an unforeseen and severe financial crisis that his business has been facing.

b) His bank account was freezed by the Assistant commissioner (ST), Regional GST Audit & Enforcement Office, Tirupati and his Input Tax Credit was also blocked. Hence he was unable to pay the 10% of disputed tax as pre-deposit which is required to file the appeal.

c) He made several efforts to obtain the loan from the financial institutions. He has finally obtained loan from his business associate with which he paid 10% of disputed tax as pre-deposit.

16. As seen from the order impugned, the learned Commissioner opined that the reasons are not convincing. Pertinent to say that, the learned Commissioner never denied about freezing of bank account of the petitioner and about issuing of notices to the purchasers who are yet to pay consideration to the petitioner.

17. In this context it is necessary to refer Section 107 (6) which is vivid on the point of deposit of 10% of the disputed tax which is mandatory at the time of filing of the appeal. When the bank account of the petitioner is freezed by the authorities, it is a relevant fact to consider the delay since the pre-deposit of 10% disputed tax at the time of filing of the appeal is mandatory. The view taken by the learned Commissioner appears to be forcing the horse to run after tying the legs. The right of appeal which is created under statute is a substantive right of the party that cannot be denied by taking pedantic view. We are not convinced with the reasons assigned by the learned Commissioner in rejecting the appeal. Since, it is within the condonable period of limitation as the cause for the delay is suffice to entertain the appeal. On appreciation of the language employed under Section 107 (4) and in the back drop the factual and legal background, we are of the view that the impugned order deserves to be set aside.

18. In the result, the Writ Petition is allowed. The impugned order passed by respondent No.2 dated 03.06.2023 is set aside. Respondent No.2 is directed to restore the appeal and dispose of the matter according to law. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

[Bechu Kurian Thomas, J.]

W.P.(C) No.26732/24

Nishad K.U., Aged 42 Years,
Prop. M/S. Woodtunes Enterprises, Kuppiyan House ... Petitioner

Vs.

The Joint Commissioner, Central Tax and Central Excise, ... Respondent

Date of Order: 17.12.2024

WHETHER REFUSING TO ALLOW CROSS EXAMINATION OF THE PARTIES ON THE BASIS OF WHOM INPUT TAX CREDIT WAS DISALLOWED AMOUNT(S) TO NONOBSERVANCE OF PRINCIPLES OF NATURAL JUSTICE?

Held: Yes, Court emphasized that denial of cross-examination renders an order a nullity when such statements form a substantive basis of adjudication.

Present for Petitioner	:	By Advs. Sri. S. Jaikumar, Smt. Maria Ancy V.J., Sri. Abhijith Harindran
Present for Respondent	:	Sri. R. Harishankar, Sri. Sreelal N. Warrier, SC, GST Intelligence

JUDGMENT

Petitioner is a registered taxpayer under the laws relating to Goods and Services Tax. He challenges an order imposing a penalty of more than Rs.9.40 Crores, under section 74(9) of the Central Goods & Services Tax Act, 2017 (for short 'CGST Act') apart from a further amount of Rs.9.40 Crores under section 122(1) of the State Goods & Services Tax Act, 2017 (for short 'SGST Act') and consequential interest and other penalties. Though an appeal is available to the petitioner under section 107 of the CGST/SGST Act, the jurisdiction under Article 226 of the Constitution of India has been invoked, alleging that the principles of natural justice have been violated while issuing the impugned order.

2. Petitioner is the proprietor of a plywood business by name 'M/s. Wood Tunes Enterprises'. As per Ext.P1 show cause notice, petitioner was called upon to explain why the penalty proposed therein ought not to be imposed for alleged willful misstatements and suppression of facts with intent to evade payment of GST. It was stated therein that the statements of 20 different persons were taken, indicating that the petitioner had indulged in fake registrations and suppression of sales for the purpose of deriving undue benefit from the input tax credit.

3. In the reply submitted on 16.01.2024, apart from denying all the allegations, petitioner specifically requested for an opportunity for cross-examination of those persons from whom the statements were allegedly

[2] 2023 SCC Online Ker 4243

obtained and also stated that those statements were all retracted and were even obtained by coercion. In the meantime, on 31.01.2024 petitioner was heard and later, by a communication dated 07.02.2024 petitioner's request for cross-examination was refused. Immediately, petitioner filed Ext.P5 additional reply producing three affidavits of retractions filed by persons who had allegedly given statements and requested to withdraw the proceedings initiated and again requested to provide an opportunity for cross-examination. Disregarding the request for cross-examination, the first respondent proceeded to pass the final order dated 29-05-2024 produced as Ext.P8, imposing a huge liability on the petitioner. Petitioner challenges the said order.

4. A counter affidavit has been filed by respondents 1 to 4 stating that petitioner had indulged in a fraudulent activity by utilising the Aadhar Card details and PAN Card details of other persons who are referred to as 'goalies' in local trade parlance. It is alleged that petitioner had misused the invoices and e-way bills to facilitate clandestine supply of plywood in the name of goalies who were mere name lenders in the transaction and that those persons were serviced by other goalies, thereby creating a carousel of input tax credits across several States. Subsequent to the information, the Directorate General of GST Intelligence searched the office and residential premises of the petitioner and gathered documentary evidence and statements of his accomplices from which the adjudicating authority came to the conclusion that the petitioner had indulged in serious fraud. The respondents also stated that even though show-cause notices were issued in 2022, till 31.01.2024, there was no reply notice and when a personal hearing was granted on 31.01.2024, a reply notice was filed, requesting for cross-examination of the individuals who were named in the reply notice. After referring to various details it is stated that the request for cross-examination was only for the purpose of protracting the proceedings and there was no purpose in the said demand.

5. I have heard Sri. Jaikumar S. learned counsel for the petitioner and Sri. R. Harishankar, learned Standing Counsel for the respondents.

6. The only issue that requires consideration is whether the impugned order ought to be interfered with under Article 226 of the Constitution of India when the remedy of an appeal is available under section 107 of the Act.

7. On a reading of section 107(11) of the Act, it is evident that the Appellate Authority does not possess the power to remand the case, if in case any anomaly is detected in the impugned order, or even when there is any violation of the principles of natural justice. The Appellate

Authority can only confirm, modify or annul the order appealed against. The aforesaid provision has specifically curtailed the right of the appellate authority to remand the case. Hence, in cases of violation of principles of natural justice, resorting to the remedy under Article 226 of the Constitution of India is legally justified.

8. Petitioner contends that there is a failure to abide by the principles of natural justice by not granting an opportunity to cross-examine the persons from whom statements have been recorded by the tax authorities. In this context, it is necessary to observe that as per section 75(4) of the Act, an opportunity for cross-examination of the witnesses is not specifically mentioned and instead only an opportunity of hearing alone is required to be given.

9. Normally when a statement of a third party is relied upon in an adjudication proceedings, and a request for cross-examination is made, unless it is found that the request is frivolous or it is impossible to procure the presence of the person, such cross-examination ought to be permitted. Cross- examination is the mode in which the veracity of the alleged statement can be tested. Fairness demands that the reliability and credibility of the statement of a third party be tested upon cross-examination. This is all the more so when there is a request for cross-examination. As long as the request is not impractical or facetious, the grant of such an opportunity is rudimentary. The frivolous nature of the request for cross-examination is dependent upon the nature and circumstances of the person who is sought to be cross-examined. If the statements obtained during the course of an investigation are relied upon to issue a show cause notice and if a request is made to grant an opportunity for cross-examination, those statements can be relied upon against a party only if an opportunity as requested is granted, unless, of course, the person is unavailable due to death or otherwise.

10. In the instant case, statements of about 20 persons have been relied upon to pass an order imposing a penalty upon the petitioner. The request put forth by the petitioner in the reply notice dated 16.01.2024 for cross-examination of the witnesses was refused on 07.02.2024. Once again the petitioner made a request as per Ext.P5 final reply notice pointing out that failure to grant an opportunity for cross-examination amounts to a violation of the principles of natural justice. It was also requested to accept the affidavits produced by him along with the final reply notice if in case the cross- examination is not permitted. Without granting an opportunity to cross- examine the persons who gave statements against the petitioner, the impugned order was issued imposing huge penalties and other fines on the petitioner.

11. The Adjudicating Authority in the impugned order has mentioned that cross-examination is not required to be granted to the petitioner as the same will not in any way affect the bonafides of evidence collected in the form of statements of those witnesses already on record. After referring to various judgments and after making the observations, the Adjudicating Authority came to the conclusion that there was no merit in the demand for cross-examination. The following observations in the impugned order are relevant :

> "43.8 In the instant case, I find that in all the statements it has been specifically stated that they were being given voluntarily and the averments therein were true and correct. Any retraction in the future through cross examination or otherwise will fail due to the long delay, as has been consistently held by the various Courts in decisions on delayed retractions. Therefore, in my considered opinion any cross examination of these persons will not, in any way, affect the bonafides of evidence already on record. After all, the decision as to whose statements are to be recorded for establishing the facts of a case is the prerogative of the investigating agency and it is upto the adjudicating authority to weigh such evidence as brought forth, which may or may not include statements, and decide whether any demand would sustain or not."

12. The aforesaid observations indicate that the Adjudicating Authority went on a wrong tangent in assuming that cross-examination will not affect the credibility of the statement. Such a foregone conclusion is legally impermissible as it reflects a predilection. The Adjudicating Authority cannot presuppose or presume what could be the subject matter of the cross-examination, or what benefit would be derived by the person proceeded against, through such cross- examination.

13. In Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II (2016) 15 SCC 785 the Supreme Court while dealing with the challenge against a penalty imposed under the Central Excise Act, 1944 held that refusing cross-examination of witnesses whose statements were made the basis of the impugned order was a serious flaw which makes the order itself a nullity as it amounted to violation of the principles of natural justice. In the said case, similar to the case on hand, statements of two witnesses were recorded during the investigation which were relied upon in the show cause notice and in the order of adjudication to impose a penalty, after refusing to grant an opportunity of cross-examination. The following observations in the said judgment are relevant.

> "6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements

of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them."

14. In an earlier decision of the Supreme Court in State of Kerala v. K.T. Shaduli Yusuff Grocery Dealer etc. [(1977) 2 SCC 777], while considering a question arising under the Kerala General Sales Tax Act, 1963 it was observed that even though the tax proceedings are quasi-judicial in nature and the Sales Tax authorities are not strictly bound by the rules of evidence, still, they are bound by the principles of natural justice. It was held that when circumstances clearly justify the grant of an opportunity for cross-examination, especially when the statements become an integral part of the materials on the basis of which the order by the Taxing Authority is passed, an opportunity to rebut the same should be granted to the assessee.

15. In the decision of the High Court of Calcutta in Roshan Sharma v. Assistant Commissioner of Revenue, State Tax, West Bengal and Others (M.A.T. No.854 of 2024) which arose under the CGST Act, the court held that despite the specific request for cross-examination of all witnesses who had given statements to the Adjudicating Authority, refusal to grant such an opportunity led the court to remand the case for fresh consideration.

16. Yet again in Mohammed Fariz and Co. v. Commissioner of Customs (2019 (1) KLT 229) this Court observed that when a person is called upon

to answer accusations made against him, it is his right to defend himself reasonably and it will not in any way prejudice the department, if the request for cross-examination is allowed. The court went on to hold that waiting till the adjudication process is over and then deciding upon whether any prejudice would be caused to the appellant for not affording him an opportunity to cross- examine the witnesses whose statements were relied on is not legally proper. The court also observed that if the party is permitted to cross-examine the witnesses at an earlier stage, it would only help the department to arrive at the right conclusion as to whether the statements of those witnesses, who had withstood the rigour of cross-examination, are to be relied upon in the adjudication process.

17. In the instant case, as mentioned earlier, statements of 20 witnesses were relied upon by the Adjudicating Authority for the purpose of entering findings against the petitioner and consequentially imposing penalty. The basic requirement of the rule of law is to grant an opportunity of hearing to the person against whom proceedings have been initiated. When statements of third parties are relied upon, it is one of the fundamental requirements that the party against whom such statements have been relied upon is granted an opportunity to question the person who gave such statements. This requirement flows from the opportunity of hearing required to be given as per section 75(4) of the CGST Act. Unilateral statements behind the back of a person cannot under any circumstances be justified under the rule of law, even if the proceedings are quasi judicial in nature.

18. Considering the nature of the order issued against the petitioner which is impugned in this writ petition, this Court is of the view that failure to grant an opportunity to the petitioner for cross-examination and relying upon the statements of persons to impose penalty have violated the principles of natural justice.

19. The decisions referred to in the impugned order regarding the justification for not granting an opportunity for cross-examination are all cases where the facts justified such denial. In the instant case, the circumstances compel this Court to observe that an opportunity for cross-examination was a necessity. This Court is also compelled to observe that failure to grant an opportunity to cross-examine the person whose statements were relied upon is in effect delaying the whole proceeding.

20. In the result, the impugned order dated 29-05-2024 is set aside and the first respondent is directed to consider the matter afresh, after granting an opportunity for cross-examination of the persons whose statements had been taken during the investigation. Appropriate orders thereon shall be passed in accordance with law, as expeditiously as possible, at any

rate, within a period of six months from the date of receipt of a copy of this judgment.

The writ petition is allowed.

Sd/-

BECHU KURIAN THOMAS JUDGE vps APPENDIX OF WP(C) 26732/2024 PETITIONER'S/S' EXHIBITS

Exhibit P1	TRUE COPY OF SCN NO-14/2022-23 (GST) DATED 28.04.2022 ISSUED BY 2ND RESPONDENT.
Exhibit P2	TRUE COPY OF THE INTERIM REPLY DATED 16.01.2024 SUBMITTED BEFORE THE 3RD RESPONDENT.
Exhibit P3	TRUE COPY OF RETRACTIONS STATEMENT OF THE PETITIONER DATED 23.08.2018 AND 10.05.2019 SUBMITTED BEFORE THE 2ND RESPONDENT.
Exhibit P4	TRUE COPY OF THE COMMUNICATION FROM THE 1ST RESPONDENT DATED 07.02.2024.
Exhibit P5	TRUE COPY OF THE FINAL REPLY DATED 11.03.2024 SUBMITTED BEFORE THE 3RD RESPONDENT.
Exhibit P6	TRUE COPIES OF AFFIDAVITS OF THE RETRACTIONS STATEMENT SUBMITTED BEFORE THE 3RD RESPONDENT DATED 11.03.2024
Exhibit P7	TRUE COPY OF THE SCN NO. 14/2023-24/GST(AC)/ DIV DATED 09.10.2023 ISSUED BY THE ASSISTANT COMMISSIONER, KOLLAM DIVISION.
Exhibit P8	TRUE COPY OF THE ORDER-IN-ORIGINAL NO.48/2023-24/GST(JC) DATED 29.05.2024 ISSUED BY THE 1ST RESPONDENT.
Exhibit P9	TRUE COPY OF THE EXTRACTED RELEVANT GST PROVISIONS
Exhibit P10	TRUE COPY OF CIRCULAR NO.171/03/2022-GST DATED 06.05.2022 ISSUED BY THE 4TH RESPONDENT.
Exhibit P11	TRUE COPY OF CIRCULAR NO. 1053/02/2017-CX DATED 10.03.2017 ISSUED BY THE 4TH RESPONDENT.

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

[Piyush Agrawal, J.]

WRIT TAX No. - 680 OF 2024

M/S RS Industrial Solutions. ... Petitioner

Vs.

Additional Commissioner Grade 2 and Another ... Respondent

Date of Order: 02.05.2024

WHETHER PENALTY CAN BE IMPOSED FOR NON-FILING OF PART-B OF THE E-WAY BILL?

Held: In view of M/s Roli Enterprises, when there is a technical breach, there was no requirement of levying a penalty u/s 129(3) of the CGST Act.

Present for the Petitioner : Sh. Aditya Pandey

Present for the Respondent : C.S.C.

Order

Hon'ble Piyush Agrawal, J.

1. Heard Sri Aditya Pandey learned counsel for the petitioner and Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated 29.2.2024 passed in appeal. The original order imposing the penalty was passed on 22.5.2023.

3. The basis of the original order and the order passed in appeal for imposing penalty was that Part-B of the e-way bill was not filled up.

4. Learned counsel for the petitioner submits that the issue in hand has already been covered by the judgment and order dated January 16, 2024 passed in Writ-Tax No.937 of 2022 (M/s Roli Enterprises vs. State of U.P. and others) in which it has held that non filling of Part-B of the e-way bill, without any proof of intention to evade tax, would not lead to imposition of penalty.

5. Learned Additional Chief Standing Counsel does not dispute the said fact and submits that this writ petition may be disposed of at the admission stage without calling counter affidavit.

6. In the present case, the facts are quite similar to one in M/s Roli Enterprises' case (supra) and I see no reason why this Court should take a different view of the matter, as the invoice itself contained the details of the vehicle and the error committed by the petitioner was of a technical nature only and without any intention to evade tax. Once this fact has been substantiated, there was no requirement to levy penalty under Section 129(3) of the Act.

7. In light of the above, the orders dated 22.5.2023 and 29.2.2024 are quashed and set-aside. The writ petition is allowed. Consequential reliefs to follow.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
[Ritu Bahri And Rakesh Thapilyal, CJ, J]

Special Appeal No.100 of 2024

Subhash Singh ... Petitioner

Vs.

Deputy Commissioner, State Goods and Service Tax ... Respondent

Date of Order: 03.05.2024

WHETHER ITC CAN BE DENIED TO THE APPELLANT COMPANY, WHERE HE HAD RIGHTLY PAID, THE AMOUNT WHICH WAS REFLECTED IN HIS INVOICES AND E-WAY BILLS, CAN THE PURCHASING DEALER BE MADE TO BEAR THE CONSEQUENCE OF DENYING THE ITC?

Held: No, it was the duty of the suppliers to further file their returns, which they have not done, the order is being modified that appellant will deposit 10% of the amount.

Present for the Petitioner : Mr. Rohit Arora, learned counsel

Present for the Respondent : Ms. Puja Banga, learned standing counsel

JUDGMENT
(per Hon'ble The Chief Justice Ms. Ritu Bahri)

Notice of motion.

2. Ms. Puja Banga, learned Standing Counsel, accepts notice on behalf of the State.

3. The appellant in the present case is engaged in retail and wholesale business of iron scrap and waste with its principal place of business, District Udham Singh Nagar, Uttarakhand. A copy of the registration of the appellant is Annexure no. 11.

4. The appellant had purchased goods with proper invoices, and made proper payments through banking channels along with applicable GST. The details of the invoices and the payment of the GST have been recorded in his books of accounts. The supplier of the appellant M/s Dev Bhoomi Spat had received GST from the appellant when they had supplied their goods to the appellant's company, and the appellant in this backdrop had rightly availed the input tax credit for the tax period April 2021 to March 2022. He had paid GST and it was reflected in invoices and E-way bills. If the appellant's suppliers committed a default, can the purchasing dealer be made to bear the consequences of denying the ITC.

5. The short question for consideration in the present special appeal is that the appellant had purchased the goods from the suppliers through proper invoices, and has made proper payments through banking channel along with applicable GST. If the suppliers have not filed their returns, then proceedings under section 74 of the Goods and Service Tax, 2017, cannot be initiated against the appellant for availing the benefit of ITC in a fraudulent manner. Learned counsel for the appellant further stated that demand of Rs.79,41,598/- was raised by the respondent vide intimation dated 30.01.2023, which was decreased to Rs.46,84,278/- in a show cause notice dated 17.03.2023, and further decrease to Rs.19,47,801/- in the impugned order dated 22.06.2023

6. A short point for consideration in the present special appeal is that the appellant is the supplier, and he has neither paid the tax nor has filed the returns. However, the invoices of sale made to the suppliers are with the appellant, and on the basis of the invoices the payments were made. This is his main ground of the appeal.

7. Keeping in view the provisions of section 107 (6) (d) of the Uttarakhand Goods and Services Tax Act 2017, the order dated 07.03.2024, Annexure no.SA1, of the appeal, is being modified that since the appellant has produced all the invoices from the suppliers, and it was the duty of the suppliers to further file their returns, which they have not done, the order is being modified that appellant will deposit 10% of the amount, which is being demanded by the respondents.

8. The order is modified, and the appeal is disposed of.

Seeks to amend Notification No. 02/2017-CT dated 19th June, 2017 to assign district of Kotputli-Behror to CGST Alwar Commissionerate

NOTIFICATION
No. 11/2024-Central Tax

New Delhi, the 30th May, 2024

G.S.R.....(E).– In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 02/2017-Central Tax, dated the 19th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification, in Table II, –

(i) at serial number 7, under column (3), for the the words “Neem ka Thana and Jhunjhunu and Behror, Bansur, Neemrana, Mandan and Narayanpur tehsils of district”, the words “Neem ka Thana, Jhunjunu and” shall be substituted;

(ii) at serial number 49, under column (3), the words “and Kotputli, Viratnagar and Shahpura tehsils of district Kotputli-Behror” shall be omitted.

[F. No. CBIC-20016/18/2023-GST]
(Raghavendra Pal Singh)
Director

Note:– The principal notification No. 02/2017- Central Tax, dated the 19th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017 and was last amended vide Notification No. 10/2024-Central Tax, dated the 29th May, 2024, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 296(E), dated the 29th May, 2024.

Seeks to make amendments (Amendment, 2024)
to the CGST Rules, 2017.

NOTIFICATION
No. 12/2024 – Central Tax

New Delhi, the 10th July, 2024

G.S.R... (E). –In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement.** –(1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2024.

(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), with effect from a date to be notified, in rule 8, in sub-rule (4A), after the first proviso, the following proviso shall be inserted, namely: -

> "Provided further that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has not opted for authentication of Aadhaar number, shall be followed by taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centers notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after successful verification as laid down under this proviso."

3. In the said rules, in rule 21, –

(i) in clause (f), after the words, letters and figures "FORM GSTR-1", the letters, words and figures ", as amended in FORM GSTR-1A if any," shall be inserted;

(ii) after clause (g), the following clause shall be inserted, namely: -

"(ga) violates the provisions of third or fourth proviso to sub-rule (1) of rule 23; or".

4. In the said rules, in rule 21A, in sub-rule (2A), in clause (a), –

(i) after the words, letters and figures "furnished in FORM GSTR-1 ", the letters, words and figures", as amended in FORM GSTR-1A if any, " shall be inserted;

(ii) after the words, letters and figures "in their FORM GSTR-1", the words, letters and figures "or in FORM GSTR-1A of the previous tax period, if any" shall be inserted.

5. In the said rules, in rule 28, with effect from the 26th day of October, 2023, –

(i) in sub-rule (2), –

(a) after the words "who is a related person", the words "located in India" shall be inserted;

(b) after the words "amount of such guarantee offered", the words "per annum" shall be inserted.

(ii) after sub-rule (2), the following proviso shall be inserted, namely,–

"Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services."

6. In the said rules, in rule 36, in sub-rule (4), in clause (a), after the words, letters and figures "FORM GSTR- 1", the letters, words and figures ", as amended in FORM GSTR-1A if any," shall be inserted.

7. In the said rules, in rule 37A, after the words, letters and figures "FORM GSTR-1", the letters, words and figures ", as amended in FORM GSTR-1A if any," shall be inserted.

8. In the said rules, with effect from a date to be notified, in rule 39, –

(i) for sub-rule (1), the following sub-rule shall be substituted, namely:—

"(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely:—

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter VIII of these rules;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevantperiod;

(f) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) to one of the recipients “R1”, whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipients who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, “C1”, to be calculated by applying the following formula -

C 1 = (t 1 / T) x C

where,

"C" is the amount of credit to be distributed,

"t1 " is the turnover, as referred to in clause (d) and (e), of person R1 during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of clause (d) and (e);

(g) the Input Service Distributor shall, in accordance with the provisions of clause (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(h) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d) and (e);

(i) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(j) the input tax credit on account of central tax and State tax or Union territory tax shall–

(i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;

(ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, 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 as referred to in clause (d) and (e);

(k) the Input Service Distributor shall issue an Input Service Distributor invoice, as provided in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

(l) the Input Service Distributor shall issue an Input Service Distributor credit note, as provided in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

(m) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be calculated in the manner provided in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;

(n) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR-6**; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.";

(ii) after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of section 9, a registered person, having the same PAN and State code as an Input Service

Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule(1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).";

(iii) in sub-rule (2), for the words and brackets "clause (j) ", the words and brackets "clause (n)" shall be substituted;

(iv) in sub-rule (3), for the words and brackets "clause (h) ", the words and brackets "clause (l) " shall be substituted;

(v) after sub-rule (3), the following explanation shall be inserted, namely: –

"Explanation. — For the purpose of this rule, –

(i) the term "relevant period " shall be—

(a) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(ii) the expression "recipient of credit " means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(iii) the term "turnover"', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.".

9. In the said rules, in rule 40, in sub-rule (1), in cause (e), after the words, letters and figures “FORM GSTR-1”, the words, letters and figures “and in FORM GSTR-1A, if any,” shall be inserted;

10. In the said rules, in rule 48, in sub-rule (3), after the words, letters and figures “FORM GSTR-1 ”, the words, letters and figures “or in FORM GSTR-1A, if any ” shall be inserted;

11. In the said rules, in rule 59, –

(i) after sub-rule (1), the following proviso shall be inserted, namely:-

“Provided that the said person may, after furnishing the details of outward supplies of goods or service or both in FORM GSTR-1 for a tax period but before filing of return in FORM GSTR-3B for the said tax period, at his own option, amend or furnish additional details of outward supplies of goods or services or both in FORM GSTR-1A for the said tax period electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.”;

(ii) in sub-rule (4), with effect from 1st day of August, 2024, for the words “two and a half lakh rupees ” wherever they occur, the words “one lakh rupees ” shall be substituted;

(iii) after sub-rule (4), the following sub-rule shall be inserted, namely:–

“(4A) The additional details or the amendments of the details of outward supplies of goods or services or both furnished in FORM GSTR-1A may, as per the requirement of the registered person, include the –

(a) invoice wise details of -

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than one lakh rupees made to the unregistered persons;

(b) consolidated details of -

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto one lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously. ".

12. In the said rules, in rule 60, –

(i) in sub-rule (1), after the words, letters and figures "FORM GSTR-1", the words, letters and figures "or FORM GSTR-1A" shall be inserted;

(ii) in sub-rule (7), after clause (ii), the following clause shall be inserted, namely: –

"(iia) the additional details or amendments in details of outward supplies furnished by his supplier in FORM GSTR-1A filed between the day immediately after the due date of furnishing of FORM GSTR- 1 for the previous tax period to the due date of furnishing of FORM GSTR-1 for the current tax period;".

13. In the said rules, in rule 62, after sub-rule (1), the following proviso shall be inserted, namely: –

"Provided that the return in FORM GSTR-4 for a financial year from FY 2024-25 onwards shall be required to be furnished by the registered person till the thirtieth day of June following the end of such financial year.".

14. In the said rules, in rule 78, after the words, letters and figures "supplier in FORM GSTR-1", the letters, words and figures ", as amended in FORM GSTR-1A if any," shall be inserted.

15. In the said rules, in rule 88B, after sub-rule (1), the following proviso shall be inserted, namely: –

"Provided that where any amount has been credited in the Electronic Cash Ledger as per provisions of sub-section (1) of section 49 on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.".

16. In the said rules, in rule 88C, in sub-rule (1), after the words, letters and figures “FORM GSTR-1 ”, the letters, words and figures “, as amended in FORM GSTR-1A if any, ” shall be inserted.

17. In the said rules, in rule 89, –

(i) after sub-rule (1A), the following sub-rule shall be inserted, namely:–

“(1B) Any person, claiming refund of additional integrated tax paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of integrated tax paid at the time of export of such goods has already been sanctioned as per rule 96, may file an application for such refund of additional integrated tax paid, electronically in FORM GST RFD-01 through the common portal, subject to the provisions of rule 10B, before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of section 54:

Provided that the said application for refund can, in cases where the relevant date as per clause (a) of Explanation (2) of section 54 of the Act was before the date on which this sub-rule comes into force, be filed before the expiry of two years from the date on which this sub-rule comes into force.”;

(ii) in sub-rule (2), after clause (ba), the following shall be inserted, namely: –

“(bb) a statement containing the number and date of export invoices along with copy of such invoices, the number and date of shipping bills or bills of export along with copy of such shipping bills or bills of export, the number and date of Bank Realisation Certificate or foreign inward remittance certificate in respect of such shipping bills or bills of export along with copy of such Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, the details of refund already sanctioned under sub-rule (3) of rule 96, the number and date of relevant supplementary invoices or debit notes issued subsequent to the upward revision in prices along with copy of such supplementary invoices or debit notes, the details of payment of additional amount of integrated tax, in respect of which such refund is claimed, along with proof of payment of such additional amount of integrated tax and interest paid thereon, the number and date of foreign inward remittance certificate issued

by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received in respect of upward revision in price of exports along with copy of such foreign inward remittance certificate, along with a certificate issued by a practicing chartered accountant or a cost accountant to the effect that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to exports and copy of contract or other documents, as applicable, indicating requirement for the revision in price of exported goods and the price revision thereof, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;

(bc) a reconciliation statement, reconciling the value of supplies declared in supplementary invoices, debit notes or credit notes issued along with relevant details of Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;".

18. In the said rules, after rule 95, the following rule shall be inserted, namely: –

"95B. Refund of tax paid on inward supplies of goods received by Canteen Stores Department. – (1) Notwithstanding anything contained in rule 95, a Canteen Stores Department under the Ministry of Defence, which is eligible to claim the refund of fifty per cent. of the applicable central tax paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the Canteen Stores Department or to the authorised customers of the Canteen Stores Department as per notification issued under section 55, shall apply for refund in FORM GST RFD-10A once in every quarter, electronically on the common portal.

(2) Such application for refund of tax paid on inward supplies of goods filed in FORM GST RFD-10A shall be dealt in a manner similar to that of application for refund filed in FORM GST RFD-01 in accordance with the provisions of rule 89.

(3) The refund of tax paid by the applicant shall be available, if-

(a) the inward supplies of goods were received from a registered person against a tax invoice and details of such supplies

have been furnished by the said registered person in his details of outward supply in FORM GSTR-1 and the said supplier has furnished his return in FORM GSTR-3B for the concerned tax period;

(b) name and Goods and Services Tax Identification Number of the applicant is mentioned in the tax invoice; and

(c) goods have been received by Canteen Stores Department for the purpose of subsequent supply to the Unit Run Canteens of the Canteen Stores Department or to the authorised customers of the Canteen Stores Department. ".

19. In the said rules, in rule 96, —

(i) in sub-rule (1),–

(a) in the proviso to clause (b), after the words, letters and figures "FORM GSTR-1 ", the letters, words and figures ", as amended in FORM GSTR-1A if any," shall be inserted;

(b) after clause (c), in the long line, the following proviso shall be inserted, namely: –

"Provided that the exporter of goods may file an application electronically in FORM GST RFD-01 through the common portal for refund of additional integrated tax paid on account of upward revision in price of goods subsequent to export of such goods, and on which the amount of integrated tax paid at the time of export of such goods has already been refunded in accordance with provisions of sub-rule (3) of this rule, and such application shall be dealt with in accordance with the provisions of rule 89.";

(ii) in sub-rule (2), after the words, letters and figures "contained in FORM GSTR-1", the letters, words and figures ", as amended in FORM GSTR-1A if any, " shall be inserted.

20. In the said rules, in rule 96A, —

(i) in sub-rule (1), for clause (b), the following shall be substituted, namely:-

"(b) fifteen days after the expiry of one year, or the period as allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) including any extension of such period as permitted by

the Reserve Bank of India, whichever is later, from the date of issue of the invoice for export, or such further period as may be allowed by the Commissioner, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.";

(ii) in sub-rule (2), after the words, letters and figures "contained in FORM GSTR-1", the letters, words and figures ", as amended in FORM GSTR-1A if any," shall be inserted.

21. In the said rules, for rule (110), the following rule shall be substituted, namely: -

"110 Appeal to the Appellate Tribunal.– (1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 shall be filed in FORM GST APL-05, along with the relevant documents, electronically and provisional acknowledgement shall be issued to the appellant immediately:

Provided that an appeal to the Appellate Tribunal may be filed manually in FORM GST APL- 05, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112, if any, shall be filed electronically in FORM GST APL-06:

Provided that the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-05 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-05, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

Explanation.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees and a minimum of five thousand rupees:

Provided that the fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112. ".

22. In the said rules, for rule 111, the following rule shall be substituted, namely: -

"111 Application to the Appellate Tribunal**.–** (1) An application to the Appellate Tribunal under sub- section (3) of section 112 shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately:

Provided that an application to the Appellate Authority may be filed manually in FORM GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112, if any, shall be filed electronically in FORM GST APL-06:

Provided that the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-07 and a final acknowledgment, indicating appeal number shall be issued in Form GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-07, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

Explanation 1.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Explanation 2. "For the purposes of rule 110 and 111, 'Registrar' shall mean a Registrar appointed by the Government for this purpose, and shall include Joint Registrar, Deputy Registrar and Assistant Registrar."

23. In the said rules, after rule 113, the following rule shall be inserted, namely: -

"113A Withdrawal of Appeal or Application filed before the Appellate Tribunal**:-**The appellant may, at any time before the issuance of the order under sub-section (1) of section 113, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, as the case may be, by filing an application in FORM GST APL-05/07W:

Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal or the application, as the case may be, would be subject to the approval of the Appellate Tribunal and such application for withdrawal of the appeal or application, shall be decided by the Appellate Tribunal within fifteen days of filing of such application:

Provided further that any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub- section (3) of section 112, as the case may be. "

24. In the said rules, with effect from a date to be notified, in rule 138, in sub-rule (3), after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that an unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the fourth proviso to sub-rule (1) or an unregistered person opting to generate e- way bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal in FORM GST ENR-03 either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person.".

25. In the said rules, in rule 142,—

(i) in sub-rule (2), for the words, letters and figures“he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC– 04 ”, the words, letters and figures “he shall inform the proper officer of such payment in FORM GST DRC-03 and an acknowledgement, in FORM GST DRC– 04 shall be made available to the person through the common portal electronically.” shall be substituted;

(ii) in sub-rule (2A), after the words, letters and figures “FORM GST DRC-01A”, the words, letters and figures “, and thereafter the proper officer may issue an intimation in Part-C of FORM GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person ” shall be inserted;

(iii) after sub-rule (2A), the following sub-rule shall be inserted, namely:-

“(2B)Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, has been paid by the said person through an intimation in FORM GST DRC-03 under sub-rule (2), instead of crediting the said amount in the electronic liability register in FORM GST PMT –01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC-03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT–01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03:

Provided that where an order in FORM GST DRC-05 has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in FORM GST DRC-03, an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.”.

26. In the said rules, in rule 163, in sub-rule (1), in clause (c), after the words, letters and figures “FORM GSTR- 1”, the letters, words and figures “, as amended in FORM GSTR-1A if any,” shall be inserted.

27. In the said rules, with effect from a date to be notified, after the FORM GST ENR-02, the following Form shall be inserted, namely: -

"FORM GST ENR-03
[See rule 138(3)]
Application for Enrolment
[only for un-registered persons]

1. Name of the State
2. (a) Name as per PAN
   (b) Trade Name, if any
   (c) PAN
   (d) Aadhaar, if applicable (optional)
3. Type of enrolment
   (i) Unregistered supplier of goods (ii) Unregistered recipient of goods
   (iii) Both (i) & (ii)
4. Contact Information (the email address and mobile number will be used for authentication) Email Address
   Mobile Number
5. Consent
   I on behalf of the holder of Aadhaar number <pre-filled based on Aadhaar number provided in the form> give consent to —Goods and Services Tax Network " to obtain my details from UIDAI for the purpose of authentication. "Goods and Services Tax Network" has informed me that identity information would only be used for validating identity of the Aadhaar holder and will be shared with Central Identities Data Repository only for the purpose of authentication.
6. List of documents uploaded
7. Verification
   I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place: Signature
Date: Name of Authorised Signatory

For Office Use:

Enrolment no Date- ";

28. In the said rules, with effect from 1st day of August, 2024, in FORM GSTR-1,–

(i) in serial number 5, in the heading, for the figures, letters and words "Rs. 2.5 lakh", the figures, letters and words "Rs. 1 lakh " shall be substituted;

(ii) in serial number 7, in the Table, in serial number 7B, in the heading, for the figures, letters and words “Rs. 2.5 lakh ”, the figures, letters and words “Rs. 1 lakh” shall be substituted;

(iii) in serial number B. Table specific instructions, in the table, in third column, against serial number 3, for the figures, letters and words —Rs. 2.50 lakh ”, the figures, letters and words “Rs. 1 lakh” shall be substituted.

29. In the said rules, after FORM GSTR-1, the following Form shall be inserted, namely:

“FORM GSTR-1A

[See proviso to rule 59(1)]

Amendment of outward supplies of goods or services for current tax period

[Financial Year]					
[Tax Period]					

1.		GSTIN																	
2.	(a)	Legal name of the registered person																	
	(b)	Trade name, if any																	
3.	(a)	ARN	<Auto>																
	(b)	Date of ARN	<Auto>																

4. **Taxable outward supplies made to registered persons (including UIN-holders) other than supplies covered by Table 6**

(Amount in Rs. for all Tables)

GSTIN/ UIN	Invoice details			Rate	Taxable value	Amount				Place of Supply (Name of State/UT)
	No.	Date	Value			Inte-grated Tax	Central Tax	State/ UT Tax	Cess	
1	2	3	4	5	6	7	8	9	10	11
4A. Supplies other than those [attracting reverse charge (including supplies made through e-commerce operator attracting TCS)]										
4B. Supplies attracting tax on reverse charge basis										

5. **Taxable outward inter-State supplies to un-registered persons where the invoice value is more than Rs 1 lakh**

Place of Supply (State/UT)	Invoice details			Rate	Taxable Value	Amount	
	No.	Date	Value			Integrated Tax	Cess
1	2	3	4	5	6	7	8
5. Outward supplies (including supplies made through e-commerce operator, rate wise)							

6. **Zero rated supplies and Deemed Exports**

GSTIN of recipi-ent	Invoice details			Shippi ng bill/ Bill of export		Integrated Tax			Central Tax			State / UT Tax			Cess
	No.	Date	Val-ue	No.	Date	Rate	Tax-able Value	Amt.	Rate	Tax-able Value	Amt.	Rate	Tax-able Value	Amt.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
6A. Exports															
6B. Supplies made to SEZ unit or SEZ Developer															
6C. Deemed exports															

7. **Taxable supplies (Net of debit notes and credit notes) to unregistered persons other than the supplies covered in Table 5**

Rate of tax	Total Taxable value	Amount			
		Integrated	Central	State Tax/UT Tax	Cess
1	2	3	4	5	6
7A. Intra-State supplies					
Consolidated rate wise outward supplies [including supplies made through e-commerce operator attracting TCS]					

7B. Inter-State Supplies where invoice value is upto Rs 1 Lakh [Rate wise]–Consolidated rate wise outward supplies [including supplies made through e-commerce operator attracting TCS]						
Place of Supply (Name of State)						

8. **Nil rated, exempted and non-GST outward supplies**

Description	Nil Rated Supplies	Exempted (Other than Nil rated/ non- GST supply)	Non-GST supplies
1	2	3	4
8A. Inter-State supplies to registered persons			
8B. Intra- State supplies to registered persons			
8C. Inter-State supplies to unregistered persons			
8D. Intra-State supplies to unregistered persons			

9. **Amendments to taxable outward supply details furnished in FORM- GSTR-1 for the current tax periods in Table 4, 5 and 6 [including debit and credit notes issued during current period and amendments thereof]**

Details of original document			Revised details of document or details of original Debit or Credit Notes					Rate	Tax-able Value	Amount				Place of sup-ply
GS-TIN	Doc. No.	Doc. Date	GS TIN	Document		Shipping bill		Val-ue			Inte grated Tax	Central Tax	State/ UT Tax	Cess	
				No	Date	No.	Da te								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
9A. Amendment of invoice/Shipping bill details furnished															
9B. Debit Notes/Credit Notes [original]															
9C. Debit Notes/Credit Notes [Amended]															

10. **Amendments to taxable outward supplies to unregistered persons furnished in FORM GSTR-1 for current tax periods in Table 7**

Rate of tax	Total Taxable value	Amount			
		Integrated Tax	Central Tax	State/UT Tax UT Tax	Cess
1	2	3	4	5	6
Tax period for which the details are being revised		current tax period should be auto populated here)			
10A. Intra-State Supplies[including supplies made through e-commerce operator attracting TCS] [Rate wise]					
10B. Inter-State Supplies[including supplies made through e-commerce operator attracting TCS] [Rate wise]					
Place of Supply (Name of State)					

11. **Consolidated Statement of Advances Received/Advance adjusted in the current tax period/ Amendments of information furnished in current tax period [(Net of refund vouchers, if any)]**

Rate	Gross Advance Received/adjusted	Place of supply (Name of State /UT)	Amount			
			Integrated Tax	Central Tax	State/UT Tax UT Tax	Cess
1	2	3	4	5	6	7
I Information for the current tax period						
11A. Advance amount received in the tax period for which invoice has not been issued (tax amount to be added to output tax liability)						
11A (1). Intra-State supplies(Rate Wise)						
11A (2). Inter-State Supplies(Rate Wise)						
11B. Advance amount received in earlier tax period and adjusted against the supplies being shown in this tax period in Table Nos. 4, 5, 6 and 7						
11B (1). Intra-State Supplies (Rate Wise)						
11B (2). Inter-State Supplies(Rate Wise)						
II Amendment of information furnished in Table No. 11[1] in GSTR-1 statement for current tax period [Furnish revised information]						
Month		Amendment relating to information furnished in S. No.(select)			11A (1)	11A (2)	11B (1)	11B (2)

12. **HSN-wise summary of outward supplies**

Sr. No.	HSN	Description	UQC	Total Quantity	Rate of Tax	Total Taxable Value	Amount			
							Integrated Tax	Central Tax	State/ UT Tax	Cess
1	2	3	4	5	6	7	8	9	10	11

13. **Documents issued during the tax period**

Sr. No.	Nature of document	Sr. No.		Total number	Cancelled	Net issued
		From	To			
1	2	3	4	5	6	7
1	Invoices for outward supply					
2	Invoices for inward supply from unregistered person					

3	Revised Invoice					
4	Debit Note					
5	Credit Note					
6	Receipt voucher					
7	Payment Voucher					
8	Refund voucher					
9	Delivery Challan for job work					
10	Delivery Challan for supply on approval					
11	Delivery Challan in case of liquid gas					
12	Delivery Challan in cases other than by way of supply (excluding at S no. 9 to 11)					

20. **Details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under section 52 of the Act or liable to pay tax u/s 9(5) [Supplier to report]**

Nature of supply	GSTIN of e-commerce operator	Net value of supplies	Tax amount			
			Integrated tax	Central tax	State / UT tax	Cess
1	2	3	4	5	6	7
(a) Supplies on which e- commerce operator is liable to collect tax u/s 52						
(b) Supplies on which e- commerce operator is liable to pay tax u/s 9(5)						

14A. Amendment to details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under section 52 of the Act or liable to pay tax u/s 9(5) [Supplier to report]

Nature of supply	Original details		Revised details	Net value of supplies	Tax amount			
	Month / Quarter	GSTIN of e-commerc e-operator	GSTIN of e-com-merce operator		Inte-grated tax	Central tax	State / UT tax	Cess
1	2	3	4	5	6	7	8	9
(a) Supplies on which e-com-merce operator is liable to collect tax u/s 52								
(b) Supplies on which e-com-merce operator is liable to pay tax u/s 9(5)								

15. **Details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report]**

Type of supplier	Type of recipient	GSTIN of supplier	GSTIN of recipient	Document no.	Document date	Rate	Value of supplies made	Tax amount				Place of supply
								Integrated tax	Central tax	State / UT tax	Cess	
1	2	3	4	5	6	7	8	9	10	11	12	13
Registered	Registered											
	Unregistered											
Unregistered	Registered											
	Unregistered											

15A (I). Amendment to details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for registered recipients]

Type of supplier	Original details				Revised details				Rate	Value of supplies made	Tax amount				Place of supply
	GSTIN of supplier	GSTIN of recipient	Doc. no.	Doc. Date	GSTIN of supplier	GSTIN of recipient	Doc. no.	Doc. Date			Integrated tax	Central tax	State / UT tax	Cess	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Registered															
Unregistered															

15A (II). Amendment to details of the supplies made through e- commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for unregistered recipients]

Type of supplier	Original details		Revised details	Rate	Value of supplies made	Tax amount				Place of supply
	GSTIN of supplier	Tax period	GSTIN of supplier			Integrated tax	Central tax	State / UT tax	Cess	
1	2	3	4	5	6	7	8	9	10	11
Registered										
Unregistered										

Instructions for filing of GSTR-1A:

1. It is an additional facility provided to add any particulars of current tax period missed out in reporting in FORM GSTR-1 of current tax period or amend any particulars already declared FORM GSTR-1 of current tax period (including those declared in IFF, for the first and second months of a quarter, if any,for quarterly taxpayers)The form is an optional form without levy of late fees.

2. The FORM will be available on the portal after due date of filing of FORM GSTR -1 or the actual date of filing of FORM GSTR -1 ,whichever is later, till filing of corresponding FORM GSTR-3B of the same tax period. Similarly, for quarterly taxpayers, the FORM GSTR-1A shall be opened quarterly after filing of the FORM GSTR-1 (Quarterly) or the due date of filing of FORM GSTR -1 (Quaterly),whichever is later, till filing of FORM GSTR-3B of the same tax period.

3. The particulars declared in FORM GSTR-1A along with particulars declared in FORM GSTR-1 shall be made available in FORM GSTR-3B. In case of taxpayers opting for filing of quarterly returns the same shall be made available in FORM GSTR-3B (Quarterly) along with particular furnished in FORM GSTR-1 and IFF of Month M1 and M2 (if filed).

4. Amendment of a document which is related to change of Recipient's GSTIN shall not be allowed in GSTR-1A.

5. In addition to the GSTR-2B already generated, GSTR-2B shall also consist of all the supplies declared by the respective suppliers in GSTR-1A. However, supplies declared or amended in FORM GSTR-1A shall be made available in the next open FORM GSTR-2B. For example,

   (i) a supplier issues two invoices INV1 and INV2 in the month of January 2023. Then he furnished the details of the invoice INV1 on 8th Feb 2023 in FORM GSTR-1. However, he misses one invoice INV2 and furnishes the details of the same in FORM GSTR-1A on 15th Feb 2023. In this case, INV1 will go to the FORM GSTR-2B of the recipient for the month of January made available on 14th Feb 2023. Further, INV2 will be made available in FORM GSTR-2B of the recipient for the month of February made available on 14th March 2023.

   (ii) a supplier issues two invoices INV3 and INV4 in the month of January 2023. Then he furnished the details of the invoice INV3 on 15th Feb 2023 in FORM GSTR-1. However, he declared INV 4 in FORM GSTR-1A on 16th Feb 2023. In this case, both INV3 and INV4 will be made available in FORM GSTR-2B of the recipient for the month of February made available on 14th March 2023.

6. Instructions for specific tables:-

Table No.	Instructions
4A, 4B, 5, 6, 9B (for registered recipients)	• Taxpayers may declare additional details of invoices/documents for the current tax period other than those already declared in FORM GSTR-1.
7	• Taxpayers may declare additional details of invoices/ documents for the current tax period other than those already declared in FORM GSTR-1. • In case a POS with any combination of rate has already been declared in FORM GSTR-1, then a new rate cannot be added through Table 7 and the taxpayer will have to use amendment facility in Table 10 for the same.
8,	• Taxpayers may declare additional details of Nil rated, Exempted and Non-GST supplies for the current tax period other than those already declared in FORM GSTR-1.
9A and 9C	• Amendment of values reported in table 4A, 4B, 5, 6A, 6B 6C and 9B in IFF, for the first and second months of a quarter, if any, and FORM GSTR-1 of the current tax period.
12	• HSN details as per additional/amendments details reported in FORM GSTR 1A shall be declared here. In case of any downward amendment, entry can be made with the minus sign for the differential part.
11A(1) & 11A(2), 11B(1) & 11B(2)	• Taxpayers may declare details of advances received or adjusted for the current tax period other than those already declared in FORM GSTR-1. • In case a POS with any combination of rate has already been declared in FORM GSTR-1, then a new rate cannot be added through these tables and the taxpayer will have to use amendment Table 11(II) as the case may be.

14	• Taxpayers may declare additional details of supplies made through e-commerce operator for the current tax period
15	• ECO Taxpayers may declare additional details of supplies for unregistered recipients (rate wise) for the current tax period other than those already declared in FORM GSTR-1.
10, 11(II), 14A, 15A(I), 15A(II)	• Taxpayers may amend details already declared in FORM GSTR-1 of the current period. ".

30. In the said rules, in FORM GSTR-2A,–

(i) for the brackets, letters, words and figures "(From GSTR1, GSTR5, GSTR-6, GSTR-7, GSTR-8, import of goods and inward supplies of goods received from SEZ units / developers)", the brackets, letters, words and figures "(From GSTR1, 1A, GSTR5, GSTR-6, GSTR-7, GSTR-8, import of goods and inward supplies of goods received from SEZ units / developers)" shall be substituted;

(ii) in Part A, –

(a) for the figures, letters and words "GSTR-1/5 period" wherever they occur, the figures, letters and words "GSTR-1/1A/5 period" shall be substituted;

(b) for the figures, letters and words "GSTR-1/5 filing date" wherever they occur, the figures, letters and words "GSTR-1/1A/5 filing date" shall be substituted;

(iii) under the heading Instructions, –

(a) in paragraph 2, for the figures, letters and words "FORMS GSTR-1, 5, 6, 7 and 8", the figures, letters and words "FORMS GSTR-1, 1A, 5, 6, 7 and 8" shall be substituted;

(b) in paragraph 4, in the Table, –

(A) against serial number 3, in second column, –

(I) in serial number (i), for the figures, letters and words "FORM GSTR-1 and 5", the figures, letters and words "FORM GSTR-1, 1A and 5" shall be substituted;

(II) in serial number (iii), for the figures, letters and words "FORM GSTR- 1/5", the figures, letters and words "FORM GSTR-1/ 1A and 5" shall be substituted;

(III) in serial number (iv), for the figures, letters and words "FORM GSTR-1", the figures, letters and words "FORM GSTR-1/1A" shall be substituted;

(B) against serial number 4, in second column, in serial number (i), for the figures, letters and words "FORM GSTR-1 and 5", the figures, letters and words "FORM GSTR-1, 1A and 5" shall be substituted;

(C) against serial number 5, in second column, –

(I) in serial number (i), for the figures, letters and words "FORM GSTR-1 and 5", the figures, letters and words "FORM GSTR-1, 1A and 5" shall be substituted;

(II) in serial number (v),–

(1) for the figures, letters and words "FORM GSTR-1/5", the figures, letters and words "FORM GSTR-1/ 1A and 5" shall be substituted;

(2) for the figures, letters and words "filing of FORM GSTR-1", the figures, letters and words "filing of FORM GSTR-1/1A" shall be substituted;

(D) against serial number 6, in second column, in serial number (i), for the figures, letters and words "FORM GSTR-1 and 5", the figures, letters and words "FORM GSTR-1, 1A and 5" shall be substituted.

31. In the said rules, for FORM GSTR-2B, the following Form shall be substituted, namely:–

"FORM GSTR-2B
[See rule 60(7)]
Auto-drafted ITC Statement
(From FORM GSTR-1/IFF including E-Commerce supplies, GSTR-1A, GSTR-5, GSTR-6 and Import data received from ICEGATE)

Financial Year	
Month	

1. GSTIN	
2(a). Legal name of the registered person	
2(b). Trade name, if any	
2(c). Date of generation	

3. ITC Available Summary

(Amount in ₹ for all tables)

S. No.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
Credit which may be availed under FORM GSTR-3B							
Part A	**ITC Available - Credit may be claimed in relevant headings in GSTR-3B**						
I	All other ITC - Supplies from registered persons other than reverse charge	4(A)(5)					Net input tax credit may be availed under Table 4(A)(5) of FORM GSTR-3B.
Details	B2B - Invoices						
	B2B - Debit notes						
	ECO - Documents						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
	ECO - Documents (Amendment)						
II	Inward Supplies from ISD	4(A)(4)					Net input tax credit may be availed under Table 4(A)(4) of FORM GSTR-3B.
Details	ISD – Invoices						
	ISD - Invoices (Amendment)						
III	Inward Supplies liable for reverse charge	3.1(d) 4(A)(3)					These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. Net input tax credit may be availed under Table A(3) of FORM GSTR-3B on payment of tax.
Details	B2B – Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)	4(A)(1)					

IV	Import of Goods						Net input tax credit may be availed under Table 4(A)(1) of FORM GSTR-3B.
Details	IMPG - Import of goods from overseas						
	IMPG (Amendment)						
	IMGSEZ - Import of goods from SEZ						
	IMGSEZ (Amendment)						
Part B ITC Available – Credit Notes should be net-off against relevant available headings in GSTR-3B							
I	Others	4(A)					Credit Notes shall be net-off against relevant ITC available tables [Table 4A (3,4,5)]. Liabil-ity against Credit Notes (Reverse Charge) shall be net-off in Table 3.1(d).
Details	B2B - Credit notes	4(A)(5)					
	B2B - Credit notes (Amendment)	4(A)(5)					
	B2B - Credit notes (Reverse charge)	3.1(d) 4(A)(3)					
	B2B - Credit notes (Reverse charge) (Amendment)	3.1(d) 4(A)(3)					
	ISD - Credit notes	4(A)(4)					
	ISD - Credit notes (Amendment)	4(A)(4)					

4. ITC Not Available Summary

(Amount in ₹ in all sections)

S. No.	Heading	GST R-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/ UT tax (₹)	Cess (₹)	Advisory
Credit which may not be availed under FORM GSTR-3B							
Part A ITC Not Available							
I	All other ITC - Supplies from registered persons other than reverse charge	4(D)(2)					Such credit shall not be taken and has to be reported in table 4(D)(2) of FORM GSTR-3B.

Details	B2B – Invoices						
	B2B - Debit notes						
	ECO – Documents						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
II	ECO - Documents (Amendment)						
	Inward Supplies from ISD	4(D)(2)					Such credit shall not be taken and has to be reported in table 4(D)(2) of FORM GSTR-3B
Details	ISD – Invoices	3.1(d) 4(D)(2)					
	ISD - Invoices (Amendment)						
III	Inward Supplies liable for reverse charge						These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax.
Details	B2B – Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B -Debit notes (Amendment)						
Part B ITC Not Available – Credit notes should be net-off against relevant ITC available headings in GSTR-3B							
I	Others	4(A)					Credit Notes should be net- off against relevant ITC avail- able tables [Table 4A(3,4,5)].
Details	B2B - Credit notes	4(A)(5)					
	B2B - Credit notes (Amendment)	4(A)(5)					
	B2B - Credit notes (Reverse charge)	4(A)(3)					
	B2B - Credit notes (Reverse charge) (Amendment)	4(A)(3)					
	ISD - Credit notes	4(A)(4)					
	ISD - Credit notes (Amendment)	4(A)(4)					

5. ITC Reversal Summary (Rule 37A)

(Amount in ₹ in all sections)

S. No.	Heading	GST R-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/ UT tax (₹)	Cess (₹)	Advisory
Credit which may be reversed under FORM GSTR-3B							
Part A ITC Reversed - Others							
I	ITC Reversal on account of Rule 37A	4(B)(2)					Such credit shall be reversed and has to be reported in table 4(B)(2) of FORM GSTR-3B.
Details	B2B – Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						

Instructions:

1. Terms Used :-

a. ITC – Input tax credit

b. B2B – Business to Business

c. ISD – Input service distributor

d. IMPG – Import of goods

e. IMPGSEZ – Import of goods from SEZ

f. ECO – E-Commerce Operator

2. **Important Advisory:**

a) FORM GSTR-2B is a statement which has been generated on the basis of the information furnished by your suppliers or by ECOs in their respective FORMS GSTR-1/IFF, 1A, 5 and 6. It is a static statement and will be made available once a month. The documents filed by the Supplier in any FORMS GSTR-1/IFF, 5 and 6 would reflect in the next open FORM GSTR-2B of the recipient irrespective of supplier‘s date of filing. Taxpayers are advised to refer FORM GSTR-2B for availing credit in FORM GSTR-3B. However, in case of additional details, they may refer to their respective FORM GSTR-2A (which is updated on near real time basis) for more details.

b) In addition, the supplies declared or amended in FORM GSTR-1A shall be made available in the next open FORM GSTR-2B.

c) Input tax credit shall be indicated to be non-available in the following scenarios: -

i. Invoice or debit note for supply of goods or services or both where the recipient is not entitled to input tax credit as per the provisions of sub-section (4) of Section 16 of CGST Act, 2017.

ii. Invoice or debit note where the Supplier (GSTIN) and place of supply are in the same State while recipient is in another State.

However, there may be other scenarios for which input tax credit may not be available to the taxpayers and the same has not been generated by the system. Taxpayers should self-assess and reverse such credit in their FORM GSTR-3B.

3. It may be noted that FORM GSTR-2B will consist of all the GSTR-1/IFFs,5s and 6s being filed by your respective supplier or by ECOs. Generally, this date will be between filing date of GSTR- 1(Monthly/ Quarterly)/IFF for previous month (M-1) to filing date of GSTR-1(Monthly/ Quarterly)/IFF for the current month (M). For example, GSTR-2B for the month of February will consist of all the documents filed by suppliers in their GSTR-1/IFF, 5 and 6 from 00:00 hours on 12th February to 23:59 hours on 11th March. It may be noted that for import of goods, the data is being updated on real time basis, therefore, imports made in the month (month for which GSTR-2B is being generated for) shall be made available. The dates for which the relevant data has been extracted is available under the "View Advisory" tab on the online portal.

4. It also contains information on imports of goods from the ICEGATE system including data on imports from Special Economic Zones Units / Developers.

5. It may be noted that reverse charge credit on import of services is not part of this statement and will be continued to be entered by taxpayers in Table 4(A)(2) of FORM GSTR-3B.

6. Table 3 captures the summary of ITC available as on the date of generation of GSTR-2B. It is divided into following two parts:

A. Part A captures the summary of credit that may be availed in relevant tables of FORM GSTR-3B.

B. Part B captures the summary of credit that shall be net-off from relevant table of FORM GSTR- 3B.

7. Table 4 captures the summary of ITC not available as on the date of generation of GSTR-2B. Credit available in this table shall not be availed as credit in FORM GSTR-3B but to be reported as ineligible ITC in Table 4(D)(2) of FORM GSTR-3B. However, the liability to pay tax on reverse charge basis and the liability to net-off credit on receipt of credit notes continues for such supplies.

8. Table 5 captures the summary of ITC to be reversed under Rule 37A on or before 30th November following the end of financial year in which the ITC in respect of such invoice or debit note has been availed and corresponding FORM GSTR-3B has not been furnished by the supplier. Credit auto populated in this table shall be reversed in FORM GSTR-3B but should be reported as ITC reversed in Table 4(B)(2) of FORM GSTR-3B. Table 5 shall be made available only in FORM GSTR 2B of the September of the next financial year (made available in October).

9. Taxpayers are advised to ensure that the data generated in FORM GSTR-2B is reconciled with their own records and books of accounts. Taxpayers shall ensure that

a. No credit shall be taken twice for any document under any circumstances.

b. Credit shall be reversed wherever necessary.

c. Tax on reverse charge basis shall be paid in cash.

10. Details of invoices, credit notes, debit notes, ISD invoices, ISD credit and debit notes, bill of entries etc. will also be made available online and through download facility.

11. There may be scenarios where a percentage of the applicable rate of tax rate may be notified by the Government. A separate column will be provided for invoices / documents where such rate is applicable.

12. Table wise instructions:

Table No. and Heading	Instructions
ITC Available Summary	
Table 3 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	i. This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliers or by ECOsin their FORM GSTR-1/IFF, GSTR-1A andGSTR- 5. ii. This table displays only the supplies on which input tax credit is available. iii. Negative credit, if any may arise due to amendment in B2B - Invoices and B2B - Debit notes. Such credit shall be net-off in Table 4A(5) of FORM GSTR-3B.
Table 3 Part A Section II Inward Supplies from ISD	i. This section consists of the details of supplies, which have been declared and filed by an input service distributor in their FORM GSTR-6. ii. This table displays only the supplies on which ITC is available.
	iii. Negative credit, if any, may arise due to amendment in ISD Amendments – Invoices. Such credit shall be net-off in table 4A(4) of FORM GSTR-3B.
Table 3 Part A Section III Inward Supplies liable for reverse charge	i. This section consists of the details of supplies on which tax is to be paid on reverse charge basis, which have been declared and filed by your suppliers in their FORM GSTR-1/IFF and GSTR- 1A.

	ii. This table provides only the supplies on which ITC is available. iii. These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. Credit may be availed under Table 4(A)(3) of FORM GSTR-3B on payment of tax. iv. Negative credit, if any, may arise due to amendment in B2B - Invoices (Reverse Charge) and B2B - Debit notes (Reverse Charge). Such credit shall be net-off in Table 4(A)(3) of FORM GSTR-3B.
Table 3 Part A Section IV Import of Goods	i. This section provides the details of IGST paid by you on import of goods from overseas and SEZ units / developers on bill of entry and amendment thereof. These details are updated on near real time basis from the ICEGATE system. ii. This table shall consist of data on the imports made by you (GSTIN) in the month for which GSTR-2B is being generated for. iii. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit. iv. The table also provides if the Bill of entry was amended. v. Information is provided in the tables based on data received from ICEGATE.
Table 3 Part B Section I Others	i. This section consists of the details of credit notes received and amendment thereof which have been declared and filed by your suppliers in their FORM GSTR-1/IFF, GSTR-1Aand GSTR-5. ii. These credit notes shall be net-off from relevant ITC available Tables [Table 4A(3,4,5)] of FORM GSTR-3B. Liability against Credit Notes (Reverse Charge) shall be net-off in Table 3.1(d) of FORM GSTR-3B.
ITC Not Available Summary	
Table 4 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	i. This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliersor by ECOs in their FORM GSTR-1/IFF, GSTR-1Aand GSTR-5. ii. This table provides only the supplies on which ITC is not available. iii. Such credit shall not be taken in FORM GSTR-3B. However, such credit shall be reported as ineligible ITC in Table 4D(2) of FORMGSTR-3B.

Table 4 Part A Section II Inward Supplies from ISD	i. This section consists of details of the supplies, which have been declared and filed by an input service distributor in their FORM GSTR-6. ii. This table provides only the supplies on which ITC is not available. iii. Such credit shall not be taken in FORM GSTR-3B. However, such credit shall be reported as ineligible ITC in Table 4D(2) of FORMGSTR-3B.
Table 4 Part A Section III Inward Supplies liable for reverse charge	i. This section consists of the details of supplies liable for reverse charge, which have been declared and filed by your suppliers in their FORM GSTR-1/IFF and GSTR-1A. ii. This table provides only the supplies on which ITC is not available. iii. These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. However, credit will not be available on such supplies. iv. Such credit shall be reported as ineligible ITC in Table 4D(2) of FORMGSTR-3B.
Table 4 Part B Section I Others	i. This section consists details of the credit notes received and amendment thereof which have been declared and filed by your suppliers in their FORM GSTR-1/IFF, GSTR-1A and GSTR-5. ii. This table provides only the credit notes on which ITC is not available. iii. Such credit notes shall be net-off from relevant ITC available tables [Table 4A(3,4,5)] of FORMGSTR-3B.
Table 5 Part A Section I ITC Reversal on account of Rule 37A	i. This table shall be made available only in FORM GSTR 2B of the September (made available in October). ii. The table shall contain details of Input Tax Credit required to be reversed in respect of invoices or debit notes of previous financial year as per Rule 37A. iii. Credit auto populated in this table shall be reversed in FORM GSTR-3B and is to be reported in Table 4(B)(2) of FORM GSTR-3B. ".

32. In the said rules, with effect from date to be notified, in FORM GSTR-3B, -

(a) For Table 6.1, the following Table shall be substituted;

Description	Tax payable	Adjustment of negative liability of previous tax period	Net Tax Payable (2-3)	Tax paid through ITC				Tax paid in cash	Interest paid in cash	Late fee paid in cash
				Integrated tax	Central tax	State/ UT tax	Cess			
1	2	3	4	5	6	7	8	9	10	11
(A) Other than (i) reverse charge and (ii) supplies made u/s 9(5)										
Integrated tax	<Auto>	<Auto>	<Auto>							
Central tax	<Auto>	<Auto>	<Auto>							
State/UT tax	<Auto>	<Auto>	<Auto>							
Cess	<Auto>	<Auto>	<Auto>							
(B) Reverse charge and supplies made u/s 9(5)										
Integrated tax	<Auto>	<Auto>	<Auto>							
Central tax	<Auto>	<Auto>	<Auto>							
State/UT tax	<Auto>	<Auto>	<Auto>							
Cess	<Auto>	<Auto>	<Auto>							

(c) Table 6.2 shall be omitted.

33. In the said rules, in FORM GSTR-4, in Instructions, at Sr.No. 2, after the words “end of such financial year”, the words and letters “for the financial year upto FY 2023-24. Further, the details in FORM GSTR-4, for every financial year or part thereof, should be furnished till the thirtieth day of June following the end of such financial year for the financial year 2024-25 onwards.” shall be inserted.

34. In the said rules, in Form GSTR-4A, for the brackets, letters, words and figures “(Auto-drafted from GSTR-1, GSTR-5 and GSTR-7)”, the brackets, letters, words and figures “(Auto-drafted from GSTR-1, GSTR-1A, GSTR-5 and GSTR-7)” shall be substituted.

35. In the said rules, with effect from 1st day of August, 2024, in Form GSTR-5,–

(i) in serial number 6, in the heading, for the figures, letters and words “Rs. 2.5 lakh”, the figures, letters and words “Rs. 1 lakh” shall be substituted;

(ii) in serial number 7, in the table, in clause (7B), in the heading, for the figures, letters and words “Rs. 2.5 Lakh”, the figure, letter and word “Rs. 1 lakh” shall be substituted;

(iii) under the heading Instructions,–

(a) in serial number 7, in clause (ii), for the figures and letters "Rs. 2,50,000", the figures and letters "Rs. 1,00,000" shall be substituted.

(b) in serial number 8, in clause (ii), for the figures, letters and words "Rupees 2.5 lakhs", the figure, letter and word "Rs. 1 lakh" shall be substituted.

(c) in serial number 9, for the figures, letters and words "Rs 250000/-", the figure and letter "Rs. 100000/-" shall be substituted.

36. In the said rules, in Form GSTR-6A, for the brackets, letters, words and figures "(Auto-drafted from GSTR- 1, GSTR-5 and GSTR-7)", the brackets, letters, words and figures "(Auto-drafted from GSTR-1, GSTR-1A, GSTR-5 and GSTR-7)" shall be substituted.

37. In the said rules, with effect from a date to be notified, in Form GSTR-7,–

(i) for Table 3, the following Table shall be substituted, namely;-

"

GSTIN of deductee	Invoice/ document details			Amount paid to deductee liable for TDS	Amount of tax deducted at source		
	No.	Date	Value		Integrated tax	Central tax	State/UT tax
1	2	3	4	5	6	7	8

";

(ii) for Table 4, the following Table shall be substituted, namely;-

"

Original details						Revised details							
Month	GSTIN of deductee	Invoice/ document details			Amount paid to deductee liable for TDS	GSTIN of deductee	Invoice/ document details			Amount paid to deductee liable for TDS	Amount of tax deducted at source		
		No.	Date	Value			No.	Date	value		Integrated tax	Central tax	State / UT tax
1	2	3	4	5	6	7	8	9	10	11	12	13	14

";

(iii) in Instructions, –

(a) for instruction at serial number 2, the following instruction shall be substituted, namely:-"2. Table 3 to capture invoice/ document wise details of tax deducted.";

(b) after instruction at serial number 4, the following instruction shallbe inserted, namely:-

"5. The amount liable for TDS in column 5 of Table 3 and column 6 and column 11 of Table 4, shall be the amount excluding the Central tax, State tax/ Union territory tax, Integrated tax and cess, indicated in the invoice.".

38. In the said rules, in FORM GSTR-8, –

(i) under the heading Instructions, in paragraph 7, for the letters, words and figures "GSTR-1", the letters, words and figures "(GSTR-1 or GSTR-1A)" shall be substituted;

(ii) in FORM GSTR-8, with effect from a date to be notified, –

(a) for serial number 3, the following shall be substituted, namely:-

"3. Details of supplies made through e-commerce operator

(Amount in Rs. for all Tables)

GSTIN of the supplier	Details of supplies made which attract TCS			Amount of tax collected at source			Place of Supply (POS)
	Gross value of supplies made	Value of supplies returned	Net amount liable for TCS	Integrated Tax	Central Tax	State /UT Tax	
1	2	3	4	5	6	7	8
3A. Supplies made to registered persons							
3B. Supplies made to unregistered persons							

";

(b) for serial number 4, the following shall be substituted, namely:-

—4. Amendments to details of supplies in respect of any earlier statement

Original details		Revised details							
Month	**GSTIN of supplier**	**GSTIN of supplier**	**Details of supplies made which attract TCS**			**Amount of tax collected at source**			**Place of Supply (POS)**
			Gross value of supplies made	**Value of supply returned**	**Net amount liable for TCS**	**Integrated Tax**	**Central Tax**	**State/UT Tax**	
1	2	3	4	5	6	7	8	9	10
4A. Supplies made to registered persons									
4B. Supplies made to unregistered persons									

";

39. In the said rules, in FORM GSTR-9, —

(A) in the Table, -

(i) in Pt. II, -

(a) in Sl no 4,

(I) after the entry relating to serial number G, the following serial number and entry relating thereto shall be inserted, namely: -

"G1	Supplies on which e-commerce operator is required to pay tax as per section 9(5) (including amendments, if any) [E-commerce operator to report]				;	"

(II) against serial number H, -for the letters and word "Sub-total (A to G above)", the letters, figures and word "Sub-total (A to G1 above)" shall be substituted. ";

(b) in Sl no 5,

(I) after the entry relating to serial number C, the following serial number and entry relating thereto shall be inserted, namely: -

"

C1	Supplies on which tax is to be paid by e-commerce operators as per section 9(5) [Supplier to report]					

";

(II) against serial number N, for the letter, figures and words “Total Turnover (including advances) (4N + 5M - 4G above)”, the letters, figures and word “Total Turnover (including advances) (4N + 5M - 4G - 4G1 above) ” shall be substituted. ”;

(B) under the heading Instructions, -

(i) in paragraph 4, -

(a) after the word, letters and figures “or FY 2022-23”, the word, letters and figures “or FY 2023-24” shall be inserted;

(b) in the Table –

(I) after the figures, letters and words “FORM GSTR-1” wherever they occur, the figures, letters and words “as amended by FORM GSTR-1A, if any” shall be inserted;

(II) after the entry relating to serial number 4G, the following serial number and entry relating thereto shall be inserted, namely: -

4G1	Aggregate values of all the supplies (net of amendments) on which tax is to be paid by the e- commerce operators under section 9(5) is to be reported by e-commerce operator. Table 15 and 15A of FORM GSTR-1 may be referred for filling up these details.

(III) after the entry relating to serial number 5C, the following serial number and entry relating thereto shall be inserted, namely: -

5C1	Aggregate values of supplies (net of amendments) made by suppliers through e-commerce operators on which e-commerce operators are liable to pay taxes under section 9(5) is required to be reported here by supplier. Table 14(b) and 14A(b) of FORM GSTR-1 may be referred for filling up these details.

(IV) in second column, against serial numbers 5D, 5E and 5F, the following entries shall be inserted at the end, namely: –

‘For FY 2023-24, the registered person shall report Non-GST supply (5F) separately and

shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the “exempted” row only.’;

(V) in second column, against serial numbers 5H, 5I, 5J and 5K, for the figures and word “2021-22 and 2022-23”, the figures and word “2021-22, 2022-23 and 2023-24” shall be substituted;

(VI) in second column, against serial number 5N, after the letters and word “on reverse charge basis.”, the letters, figures and word “and supplies on which e- commerce operators are required to pay taxes under section 9(5).” shall be inserted. ”;

(ii) in paragraph 5, in the Table, in second column, -

(a) against serial numbers 6B, 6C, 6D and 6E, for the letters and figures “FY 2019- 20, 2020-21, 2021-22 and 2022-23”, the letters, figures and word “FY 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24” shall respectively be substituted;

(b) against serial numbers 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, for the figures and word “2021-22 and 2022-23”, the figures and word “2021-22, 2022-23 and 2023- 24” shall be substituted;

(c) against serial number 8A, -

(I) after the words “received from SEZs”, the words “and supplies received from E-commerce operators” shall be inserted,

(II) after the words “corresponding suppliers”, the words “including e-commerce operators” shall be inserted and

(III) the following entry shall be inserted at the end, namely: -

“However, for FY 2023-24 onwards, the total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs) pertaining to the financial year for which the return is being

furnished and reflected in table 3(I) of FORM GSTR-2B shall be auto-populated in this table."

(iii) in paragraph 7, -

(a) after the words and figures "filed upto 30th November, 2023. ", the following entry shall be inserted, namely: -

"For FY 2023-24, Part V consists of particulars of transactions for the previous financial year but paid in the FORM GSTR-3B of April, 2024 to October, 2024 filed upto 30th November, 2024.";

(b) in the Table, in second column, -

(I) against serial numbers 10 & 11, the following entry shall be inserted at the end, namely: -

"For FY 2023-24, details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of FORM GSTR-1 of April, 2024 to October, 2024 filed upto 30th November, 2024 shall be declared here. ";

(II) against serial number 12, -

i. after the words, letters, figures and brackets "upto 30th November, 2023 shall be declared here. Table 4(B) of FORM GSTR-3B may be used for filling up these details.", the following entry shall be inserted, namely: -

"For FY 2023-24, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April, 2024 to October, 2024 filed upto 30th November, 2024 shall be declared here. Table 4(B) of FORM GSTR-3B may be used for filling up these details.";

ii. for the figures and word "2021-22 and 2022-23", the figures and word "2021-22, 2022-23 and 2023-24" shall be substituted;

(c) against serial number 13, -

(I) after the words, letters and figures "reclaimed in FY 2023-24, the details of such ITC reclaimed shall be

furnished in the annual return for FY 2023-24,", the following entry shall be inserted, namely: -

"For FY 2023-24, details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April, 2024 to October, 2024 filed upto 30th November, 2024 shall be declared here. Table 4(A) of FORM GSTR- 3B may be used for filling up these details. However, any ITC which was reversed in the FY 2023-24 as per second proviso to sub- section (2) of section 16 but was reclaimed in FY 2024-25, the details of such ITC reclaimed shall be furnished in the annual return for FY 2024-25.";

(II) for the figures and word "2021-22 and 2022-23", the figures and word "2021-22, 2022-23 and 2023-24 " shall be substituted;

(iv) in paragraph 8, in the Table, in second column, -

(a) against serial numbers, -

(I) 15A, 15B, 15C and 15D,

(II) 15E, 15F and 15G, (III)16A,

(IV) 16B and

(V) 16C;

for the figures and word "2021-22 and 2022-23" wherever they occur, the letters, figures and word "2021-22, 2022-23 and 2023-24" shall be substituted.";

(b) against serial number 17 & 18,

(I) for the figures and word "2021-22 and 2022-23", the letters, figures and word "2021-22, 2022-23 and 2023-24" shall be substituted.";

(II) after the figures, letters and words "FORM GSTR-1", the figures, letters and words "as amended by FORM GSTR-1A, if any" shall be inserted.

40. In the said rules, in FORM GSTR-9C,-

(i) under the heading Instructions, -

(a) in paragraph 4, in the Table, in second column, for the figures and word,-

i. "2021-22 and 2022-23", wherever they occur, the figures and word "2021-22, 2022-23 and 2023-24" shall be substituted, and

ii. '2020-21 and 2021-22", wherever they occur, the figures and word "2020-21, 2021-22, 2022-23 and 2023-24" shall be substituted;

(b) in paragraph 6, in the Table, in second column, against serial number 14, for the figures and word "2021-22 and 2022-23", the figures and word "2021-22, 2022-23 and 2023-24" shall be substituted.

41. In the said rules, in FORM RFD-01,–

(i) under the heading Instructions, in paragraph 10, for the figures, letters and words "GSTR-1 and GSTR-2", the figures, letters and words "GSTR-1 as amended by GSTR-1A, if any" shall be substituted;

(ii) after Statement-8, the following shall be inserted, namely:-

—Statement 9A [rule 89(2)(bb)]

Refund Type: Additional integrated tax paid on upward revision in price of goods subsequent to export

Export Invoice			Shipping Bill			Export remittance details			Refund details		Post export price increase								
											Supplementary invoices/debit note & IGSTpayment details						Additional export remittance details		
No.	Date	Total value of Invoice	Port of export Code	No.	Date	BRC/ FIRC No.	Date	Remittance amt.	Amt.	Date of sanction	No.	Date	Total value of supplementary invoice	Paid in FORM GSTR- 3B return period	Total additional IGSTpaid	Interest paid on IGST amount	BRC/ FIRC No.	Date	Additional remittance amount
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)

Statement 9B [rule 89(2)(bc)]
Refund Type: Details of debit/ credit notes/ supplementary invoice issued for export of goods

S. No.	Type of document (Debit Note/ Credit Note/ supplementary invoice)	Debit Note / Credit Note / supplementary invoice	Date of document	Document Declared in GSTR-1 for the month	Tax liability paid/ITC claimed in respect of document declared in GSTR-3B for the month	BRC/ foreign inward remittance certificate No.	Date of BRC/ foreign inward remittance certificate	Whether refund claimed for shipping bill under Rule 96 (Y/N)	Details of such shipping Bill No.	Date of such shipping bill	Port of export code
(1)		(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
											".

42. In the said rules, after FORM RFD-10, the following Form shall be inserted, namely: -

"FORM GST RFD-10A
(See Rule 95B) Application for refund by
Canteen Stores Department (CSD)

1. GSTIN :
2. Name:
3. Address :
4. Tax Period (Quarter) : From <DD/MM/YY>To <DD/MM/YY>
5. Amount of Refund Claim :<INR><In Words>
6. Details of inward supplies of goods received:

GSTIN of the Supplier	Type of the Document	Invoice details / Debit Notes / Credit Notes			Rate	Taxable Value	Amount of Tax		
	Invoices/ Credit Notes/ Debit notes	No.	Date	Value			Integrated Tax	Central Tax	State Tax
1	2	3	4	5	6	7	8	9	10

7. Total refund applied for:

Central Tax	State/UT Tax	Integrated Tax	Total
<Total>	<Total>	<Total>	<Total>

9. Details of Bank Account:
   a. Bank Account Number
   b. Bank Account Type
   c. Name of the Bank
   d. Name of the Account Holder
   e. Address of Bank Branch
   f. IFSC
   g. MICR
10. Attachment of the documents along with the refund application:
11. Verification

I as an authorised representative of << Name of Canteen Stores Department>> hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom. I further declare that all the goods, in respect of which the refund is being claimed, have been received by us for

the purpose of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD and that no refund has been claimed earlier against any of the invoices against which refund has been claimed in this application.

Date: Signature of Authorised Signatory:

Place: Name:

Designation / Status.".

43. In the said rules, for the header of FORM GST APL-02, the following header shall be substituted, namely: -

"[See Rules 108(3), 109(2), 110(1) and 111(1)]".

44. In the said rules, after FORM GST APL-05, the following Form shall be inserted, namely: -

"FORM GST APL-05/07 W
[See rule 113A]

Application for Withdrawal of Appeal /Application filed before the Appellate Tribunal

1. GSTIN:
2. Name of Business (Legal) (in case appeal is filed under sub-section (1) of section 112)
3. Name and designation of the appellant (in case appeal is filed under sub-section (3) of section 112):
4. Order No.& Date:
5. ARN of the Appeal & Date:
6. Reasons for Withdrawal:
    i. Acceptance of order of the First Appellate Authority.
    ii. Acceptance of order of an Appellate Tribunal/ Court on similar subject matter
    iii. Need to file appeal/application again after rectification of mistakes/omission in the filed appeal/application
    iv. Amount involved in appeal is less than the monetary limit fixed for Appeal as per provisions of sub-section (2) of section 112
    v. Amount involved in the application is less than the monetary limit fixed for application as per the provisions of sub-section (1) of section 120
    vi. Any other reason
7. Declaration (applicable in case appeal is filed under sub-section (1) of section 112):

I/We <Taxpayer Name> hereby solemnly affirm and declare that the information given herein is true and correct to the best of my/ our knowledge and belief and nothing has been concealed therefrom.

Place: Signature

Date: Name of Applicant /Applicant Officer

Designation/ Status ".

45. In the said rules, for the FORM GST DRC-01A, the following Form shall be substituted, namely:-

"FORM GST DRC-01A

Intimation of tax ascertained as being payable under section 73(5)/74(5)
[See Rule 142 (1A), (2A)]

Part A

No.: Date:

Case ID No.

To

GSTIN .....

Name .....

Address .....

Case Proceeding Reference No - Intimation of liability under section 73(5)/section 74(5)

Please refer to the above proceedings. In this regard, the amount of tax/interest/penalty payable by you under section 73(5) / 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

Act	Period	Tax	Interest	Penalty	Total
CGST Act					
SGST/UTGST Act					
IGST Act					
Cess					
Total					

The grounds and quantification are attached / given below:

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest in full by ....., failing which Show Cause Notice will be issued under section 73(1).

OR

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest and penalty under section 74(5) by ....., failing which Show Cause Notice will be issued under section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by ..... in Part B of this Form.

Signature .....
Name .....
Designation.....

Jurisdiction .....
Address .....

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Part B

Reply to the communication for payment before issue of Show Cause Notice
[See Rule 142 (2A)]

Reference No. of Intimation:

Date:

Please refer to Intimation ID…… in respect of Case ID……vide which the liability of tax payable as ascertained under section 73(5) / 74(5) was intimated.

In this regard,

A. this is to inform that the said liability is discharged partially/ fully to the extent of Rs. …… through ……..……and the submissions regarding remaining liability are attached / given below:

OR

B. the said liability is not acceptable and the submissions in this regard are attached / given below:

Signature of Authorised Signatory

Name…… Designation / Status ……

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Part C

[See Rule 142(2A)]

Reference No. of Intimation: Date:

To

GSTIN……

Name……

Address……

Acceptance of submission and/or payment made in reply to intimation made in Part-A of FORM GST DRC- 01A

This has reference to the communication issued in **Part-A of FORM GST DRC-01A** vide reference

no. ..... dated ....., the payment made through **FORM GST DRC-03** vide reference no. ..... dated.....-.The said payment made by you has been found satisfactory and hence accepted.

OR

This has reference to the reply furnished vide reference no. ..... dated .... in response to the communication issued in **Part-A of Form GST DRC-01A** vide reference no. ..... dated ..... along with the payment made through **FORM GST DRC-03** vide reference no. ..... dated .... The said submission and the payment made by you has been found satisfactory and hence accepted.

OR

This has reference to the reply furnished vide reference no. ..... dated ..... in response to the communication issued in **Part-A of Form GST DRC-01A** vide reference no... ..... dated ..... The said reply has been found satisfactory and hence accepted.

Signature .....

Name .....

Designation.....

Jurisdiction .....

Address .....

Upload Attachment

46. In the said rules, in **FORM GST DRC-01B,**–

(i) in Part A, in serial number 1, –

(a) after the words, letters and figures “furnished by you in FORM GSTR-1 ”, the words, letters and figures “as amended in FORM GSTR-1A, if any,” shall be inserted;

(b) in the table, for the figures, letters and words “FORM GSTR-1/ IFF”, the figures, letters and words “FORM GSTR-1/GSTR-1A/ IFF” shall be substituted;

(ii) in Part B, in serial number B, in the table, for the figures, letters and words “FORM GSTR-1/IFF” wherever they occur, the figures, letters and words “FORM GSTR-1/GSTR-1A/IFF” shall be substituted.

47. In the said rules, in **FORM GST DRC-03**,–

(i) in Table,

(a) for entry at serial number (3A), the following entry shall be substituted, namely;-

"

3A	Shipping bill details of erroneous IGST refund (to be enabled only if the specified categories chosen in drop down menu)	(i) Shipping Bill/ Bill of Export No. & Date: (ii) Amount of IGST paid on export of goods: (iii) Notification No. used for procuring inputs at concessional rate or exemption (in cases of contravention of sub-rule 10 of Rule 96): (iv) Date of notification: (v) Amount of refund received: (vi) Amount of erroneous refund to be deposited: (vii) Date of credit of refund in Bank Account: ";

(b) for the entry at serial number (5), the following entry shall be substituted, namely,–

"5.	Details of i. Audit ii. Inspection or investigation iii. After issuance of SCN/ Statement but before issuance of the order iv. Scrutiny, v. Intimation of tax ascertained through FORM GST DRC-01A, vi. Payment made in response to FORM GST DRC -01 B, vii. Payment made in response to FORM GST DRC -01 C, viii. Deposit of Erroneous Refund of unutilized ITC, ix. Non-receipt of foreign remittance in respect of refund of unutilized ITC on export of goods under Rule 96B x. Others (specify)	Reference No./ARN	Date of issue/filing

48. In the said rules, after FORM GST DRC-03, the following Form shall be inserted, namely:—

"FORM GST DRC- 03A
[See rules 142(2B)]

Application for adjustment of the amount paid through FORM GST DRC-03 against the order of demand

1.	GSTIN	
2.	Legal name	< Auto>
3.	Trade name, if any	< Auto>

4.	ARN of DRC-03A	< Auto>
5.	Date of filing DRC-03A	< Auto>
6.	ARN of the DRC-03 through which payment made	
7.	Date of filing of DRC-03	<Auto>
8.	Amount paid through DRC-03	< Auto>

(Amount in Rs.)

Sr. No.	Tax Period	Act	Place of Supply (POS)	Tax/ Cess	Interest	Penalty	Fee	Others	Total
1	2	3	4	5	6	7	8	9	10
<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
Total	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>

9.	Reference no. of the order of demand against which payment was intended to be made (including rectification / appeal order)	
10.	Date of issue of the order	<Auto>
11.	Amount of demand	<Auto>

(Amount in Rs.)

Sr. No.	Tax Period	Act	Place of Supply (POS)	Tax/ Cess	Interest	Penalty	Fee	Others	Total
1	2	3	4	5	6	7	8	9	10
<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
Total	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>

12.	UNDERTAKING I hereby undertake that the payment made vide the FORM GST DRC-03 with unique ARN number mentioned

13.	**Verification-** I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Date ……..

Signature of Authorized Signatory

Name

Designation / Status ".

49. In the said rules, for FORM GST DRC-04, the following Form shall be substituted, namely:-

"FORM GST DRC – 04
[See rule 142(2) & 142(3)]

Reference No: Date:

To

..... GSTIN/ID

..... Name

..... Address

Tax Period ..... F.Y. .....

ARN - Date –

Acknowledgement of payment made voluntarily.

The payment made by you vide application referred to above is hereby acknowledged to the extent of the amount paid.

This is a system generated acknowledgement and does not require signature.".

F. No. CBIC-20006/21/2024-GST]
(Raghavendra Pal Singh)
Director

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 were last amended, vide notification No. 52/2023 -Central Tax, dated the 26th October 2023, vide number G.S.R. 798 (E), dated the 26th October 2023.

Seeks to rescind Notification no. 27/2022-Central Tax dated 26.12.2022.

NOTIFICATION
No. 13/2024 – Central Tax

New Delhi, the 10th July, 2024

G.S.R. .....(E).— In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central Government, on the recommendations of the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 27/2022-Central Tax, dated the 26th December, 2022 published vide number G.S.R 903(E), in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 26th

December, 2022, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force from the date of its publication in Official Gazette.

[F.No.CBIC-20006/21/2024-GST]
(Raghavendra Pal Singh)
Director

Seeks to exempt the registered person whose aggregate turnover in FY 2023-24 is upto Rs. two crores, from filing annual return for the said financial year.

NOTIFICATION
No. 14/2024 – Central Tax

New Delhi, the 10th July, 2024

G.S.R. .....(E).— In exercise of the powers conferred by the first proviso to section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby exempts the registered person whose aggregate turnover in the financial year 2023-24 is up to two crore rupees, from filing annual return for the said financial year.

[F. No. CBIC-20006/21/2024-GST]
(Raghavendra Pal Singh)
Director

Seeks to amend Notification No. 52/2018-Central Tax, dated 20.09.2018

NOTIFICATION
No. 15/2024- Central Tax

New Delhi, dated the 10th July, 2024

G.S.R.…(E).—In exercise of the powers conferred by sub-section (1) of section 52 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 amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue)

No. 52/2018-Central Tax, dated the 20th September, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 900(E), dated the 20th September, 2018, namely:-

In the said notification, for the words “half per cent.”, the figure and word “0.25 per cent.” shall be substituted.

2. This notification shall come into force from the date of its publication in official gazette.

[F.No.CBIC-20006/21/2024-GST]
(Raghavendra Pal Singh)
Director

Seeks to notify section 11 to 13 of Finance Act (No.1) 2024

NOTIFICATION
No. 16/2024–Central Tax

New Delhi, dated the 6th August, 2024

S.O. …..(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2024 (8 of 2024), the Central Government hereby appoints, —

(a) the 1st day of October, 2024, as the date on which the provisions of sections 13 of the said Act shall come into force;

(b) the 1st day of April, 2025, as the date on which the provisions of sections 11 and 12 of the said Act shall come into force.

[F.No. CBIC-20006/20/2023-GST]
(Raghavendra Pal Singh)
Director

Seeks to notify the provisions of Finance (No. 2) Act, 2024

NOTIFICATION
No. 17/2024–Central Tax

New Delhi, dated the 27th September, 2024.

S.O. …..(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance (No. 2) Act, 2024 (15 of 2024), the Central Government hereby appoints. —

(a) the date of publication of this notification in the Official Gazette, as the date on which the provisions of sections 118, 142, 148 and 150 of the said Act shall come into force; and

(b) the 1st day of November, 2024, as the date on which the provisions of sections 114 to 117, 119 to 141, 143 to 147, 149 and 151 to 157 of the said Act shall come into force.

[No.CBIC-20006/20/2023-GST]
(Raushan Kumar)
Under Secretary

Seeks to notify Principal Bench of GST Appellate Tribunal to hear cases of anti-profiteering

Notification
No. 18/2024 – Central Tax

New Delhi, dated the 30th September, 2024

S.O…...(E).- In exercise of the powers conferred by sub-section (2) of section 171 read with sub-section (1) and second proviso to sub-section (5) of section 109 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 Goods and Services Tax Council, hereby empowers the Principal Bench of the Appellate Tribunal, constituted under subsection (3) of section 109 of the said Act, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by that registered person.

2. This notification shall come into force with effect from the 1st day of October, 2024.

[No. CBIC-20016/25/2024-GST]
(Raghavendra Pal Singh)
Director.

Notification under Section 171 of CGST Act to provide for the sunset date

Notification
No. 19/2024 – Central Tax

New Delhi, dated the 30th September, 2024

S.O……(E).- In exercise of the powers conferred by proviso to sub-section (2) of section 171 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Goods and Services Tax Council, hereby appoints the 1st day of April,

2025 as the date from which the Authority referred to in the said section shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by that registered person.

2. This notification shall come into force on the date of its publication in the Official Gazette.

[No. CBIC-20016/25/2024-GST]
(Raghavendra Pal Singh)
Director.

Seeks to make amendments (Second Amendment 2024) to the CGST Rules, 2017

NOTIFICATION
No. 20/2024 – Central Tax

New Delhi, the 8th October, 2024

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, 2024.

(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 36, in sub-rule (3), after the words “suppression of facts”, the words and figures “under section 74” shall be inserted.

3. In the said rules, in rule 46, with effect from 1st day of November, 2024,–

(a) after clause (s), the second proviso shall be omitted;

(b) in the third proviso, for the words “Provided also that in the case of”, the words “Provided further that in the case of” shall be substituted;

4. In the said rules, after rule 47, the following rule shall be inserted with effect from the 1st day of November, 2024, namely:-

"47A. Time limit for issuing tax invoice in cases where recipient is required to issue invoice.– Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, he shall issue the said invoice within a period of thirty days from the date of receipt of the said supply of goods or services, or both, as the case may be.".

5. In the said rules, , in rule 66, in sub-rule (1), after the word, letters and figure "FORM GSTR-7", the words ", on or before the tenth day of the month succeeding the calendar month," shall be inserted with effect from the 1st day of November, 2024.

6. In the said rules, in rule 86, in sub-rule (4B), in clause (b), the words, brackets and figures "in contravention of sub-rule (10) of rule 96," shall be omitted.

7. In the said rules, in rule 88B, in sub-rule (1), after the word and figures "or section 74", the words, figures and letter "or section 74A" shall be inserted with effect from the 1st day of November, 2024.

8. In the said rules, in rule 88D, in sub-rule (3), after the words and figures "or section 74", the words, figures and letter "or section 74A" shall be inserted with effect from the 1st day of November, 2024.

9. In the said rules, in rule 89,–

(a) in sub-rule (4),–

(i) in clause (B), the words, brackets, figures and letters "other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both" shall be omitted;

(ii) in clause (C), the words, brackets, figures and letters ", other than the turnover of supplies in respect of which refund is claimed under sub- rules (4A) or (4B) or both" shall be omitted;

(iii) in clause (E), for the long line beginning with the word "excluding" and ending with the words "during the relevant

period", the words "excluding the value of exempt supplies other than zero-rated supplies during the relevant period" shall be substituted;

(b) sub-rules (4A) and (4B) shall be omitted;

(c) in sub-rule (5), in the *Explanation*, in clause (a), the words, brackets, figures and letters " other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both" shall be omitted.

10. In the said rules, in rule 96, sub-rule (10) shall be omitted.

11. In the said rules, in rule 96B, in sub-rule (1), for the words and figures "section 73 or 74" the words, figures and letters "section 73 or section 74 or section 74A" shall be substituted with effect from the 1st day of November, 2024.

12. In the said rules, in rule 121, for the words and figures "proceedings under section 73 or, as the case may be, section 74", the words, figures and letter "proceedings under section 73 or section 74 or section 74A, as the case may be," shall be substituted with effect from 1st day of November, 2024.

13. In the said rules, in rule 142 with effect from the 1st day of November, 2024,—

(a) in sub-rule (1),—

(i) in clause (a), after the words and figures "or section 74", the words, figures and letter "or section 74A" shall be inserted;

(ii) in clause (b), after the words and figures "of section 74", the words, brackets, figures and letter "or sub-section (3) of section 74A" shall be inserted;

(b) in sub-rule(1A), after the words and figures "of section 74", the words, brackets, figures and letter "or sub-section (1) of section 74A" shall be inserted;

(c) in sub-rule (2), for the words, brackets and figures "or, as the case may be, tax, interest and penalty in accordance with the provisions of subsection (5) of section 74", the words, brackets, figures and letters "or clause (i) of sub-section (8) of section 74A,

as the case may be, or tax, interest and penalty in accordance with the provisions of subsection (5) of section 74 or clause (i) of sub-section (9) of section 74A" shall be substituted;

(d) in sub-rule (2B), after the words and figures "or section 74", the words, figures and letter "or section 74A" shall be inserted;

(e) for sub-rule (3), the following sub-rule shall be substituted, namely:—

"(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or under clause (ii) of sub-section (8) of section 74A, as the case may be, or tax, interest and penalty under sub-section (8) of section 74 or under clause (ii) of sub-section (9) of section 74A, as the case may be, within the period specified therein, or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub- section (3) of that Section but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an intimation in FORM GST DRC-05 concluding the proceedings in respect of the said notice.";

(f) in sub-rule (4), after the words and figures "of section 74", the words, brackets, figures and letters "or sub-section (6) of section 74A" shall be inserted.

(g) in sub-rule (5), after the words and figures "or section 74", the words, figure and letters "or section 74A" shall be inserted.

14. In the said rules, after rule 163, the following rule shall be inserted with effect from the 1st day of November, 2024, namely: -

"164. Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73.–

(1) Any person who is eligible for waiver of interest, or penalty, or both in respect of a notice or a statement mentioned in clause (a) of sub-section (1) of section 128A, may file an application electronically in **FORM GST SPL-01** on the common portal, providing the details of the said notice or

the statement, as the case may be, along with the details of the payments made in **FORM GST DRC-03** towards the tax demanded.

(2) Any person who is eligible for waiver of interest, or penalty, or both, in respect of orders mentioned in clauses (b) and (c) of sub-section (1) of section 128A, may file an application electronically in **FORM GST SPL 02** on the common portal, providing the details of the said order, along with the details of the payments made towards the tax demanded:

Provided that the payment towards such tax demanded shall be made only by crediting the amount in the electronic liability register against the debit entry created by the said order:

Provided further that if the payment towards such tax demanded has been made through **FORM GST DRC-03**, an application in **FORM GST DRC-03A**, as prescribed in sub-rule (2B) of rule 142, shall be filed by the said person for credit of the said amount in the Electronic Liability Register against the debit entry created for the said demand, before filing the application in **FORM GST SPL 02**.

(3) Where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially on account of erroneous refund and partially for other reasons, an application under sub-rule (1) or sub-rule (2) may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section.

(4) Where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially for the period mentioned in the said sub-section and partially for the period other than that mentioned in the said sub-section, an application under sub-rule (1) or sub- rule (2) may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section.

(5) The amount payable under sub-rule (1) or sub-rule (2) shall be the amount that remains payable, after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of section 16, from the amount payable in terms of the

notice or statement or order under section 73, as the case may be.

(6) Any person who wishes to file an application under sub-rule (1) or sub-rule (2), may do so within a period of three months from the date notified under sub-section (1) of section 128A:

Provided that where an application in **FORM GST SPL-02** is to be filed in cases referred to in the first proviso to sub-section (1) of section 128A, the time limit for filing the said application shall be six months from the date of communication of the order of the proper officer redetermining such tax under section 73.

(7) The application under sub-rule (1) or sub-rule (2) shall be accompanied by documents evidencing withdrawal of appeal or writ petition, if any, filed before any Appellate Authority, or Tribunal or Court, as the case may be, to establish that the applicant is eligible for the waiver of interest or penalty or both, in terms of section 128A:

Provided that where the applicant has filed an application for withdrawal of an appeal or writ petition filed before the Appellate Authority or Appellate Tribunal or a court, as the case may be, but the order for withdrawal has not been issued by the concerned authority till the date of filing of the application under sub-rule (1) or sub-rule (2), the applicant shall upload the copy of such application or document filed for withdrawal of the said appeal or writ petition along with the application under sub-rule (1) or sub-rule (2), and shall upload the copy of the order for withdrawal of the said appeal or writ petition on the common portal, within one month of the issuance of the said order for withdrawal by the concerned authority.

(8) Where the proper officer is of the view that the application made in **FORM GST SPL-01** or **FORM GST SPL-02** is liable to be rejected as not being eligible for waiver of interest, or penalty, or both, as per section 128A, he shall issue a notice on the common portal to the applicant in **FORM GST SPL-03** within three months from the date of receipt of the said application and shall also give the applicant an opportunity of being heard.

(9) On receiving the notice under sub-rule (8), the applicant may file a reply to the said notice on the common portal in **FORM GST SPL-04**, within a period of one month from the date of receipt of the said notice.

(10) If the proper officer is satisfied that the applicant is eligible for waiver of interest and penalty as per section 128A, he shall issue an order in **FORM GST SPL-05** on the common portal accepting the said application and concluding the proceedings under section 128A.

(11) In cases where the order in **FORM GST SPL-05** is issued by the proper officer under sub-rule (10).–

(a) in respect of an application filed in **FORM GST SPL-01** pertaining to a notice or statement referred to in clause (a) of sub-section (1) of section 128A, the summary of order in **FORM GST DRC-07** as per sub-rule (5) of rule 142 shall not be required to be issued by the proper officer, in respect of the said notice or statement;

(b) in respect of an application filed in **FORM GST SPL-02** pertaining to an order referred to in clause (b) or clause (c) of sub-section (1) of section 128A, the liability created in the part II of Electronic Liability Register, shall be modified accordingly.

(12) If the proper officer is not satisfied with the reply of the applicant, the proper officer shall issue an order in **FORM GST SPL-07** rejecting the said application.

(13) (a) In cases where notice in **FORM GST SPL-03** has not been issued, the proper officer shall issue the order under sub-rule (10) within a period of three months from the date of receipt of the application in **FORM GST SPL-01** or **FORM GST SPL-02**, as the case may be.

(b) In cases where notice in **FORM GST SPL-03** has been issued, the proper officer shall issue the order in sub-rule (10) or sub-rule (12) within a period of three months from the date of receipt of reply of the applicant in FORM GST SPL-04, or within a period of four months from the date of issuance of notice in **FORM GST SPL-03** where no reply is received from the applicant.

Explanation.– For the purposes of this sub-rule, in cases referred to in the proviso to sub-rule (7), the time period from the date of filing of the application under sub-rule (1) or sub-rule (2) till the date of submission of the order for withdrawal of the appeal or the writ, as the case may be, shall not be included while calculating the time period under clause (a) or clause (b) of this sub-rule.

(14) If no order is issued by the proper officer within the time limit specified in sub-rule (13), then the application in **FORM GST SPL-01** or **FORM GST SPL-02**, as the case may be, shall be deemed to be approved and the proceedings shall be deemed to be concluded.

(15) (a) In cases where no appeal is filed against the order in FORM GST SPL-07 within the time period specified in sub-section (1) of section 107, the original appeal, if any, filed by the applicant against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, and withdrawn for filing the application in **FORM GST SPL-02** in accordance with sub-section (3) of section 128A, shall be restored.

(b) In cases where an appeal is filed against the order in FORM GST SPL-07 for rejection of application for waiver of interest, or penalty, or both, if—

(i) the appellate authority has held that the proper officer has wrongly rejected the application for waiver of interest, or penalty, or both, in **FORM GST SPL-07**, the said appellate authority shall pass an order in **FORM GST SPL-06** on the common portal accepting the said application and concluding the proceedings under section 128A; or

(ii) the appellate authority has held that the proper officer has rightly rejected the application for waiver of interest, or penalty, or both, in **FORM GST SPL-07**, the original appeal, if any, filed by the applicant against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, and withdrawn for filing the application in **FORM GST SPL-02** in accordance with sub-section (3) of section 128A, shall be restored, subject to condition that the applicant files an undertaking electronically on

the portal in **FORM GST SPL-08**, within a period of three months from the date of issuance of the order by the appellate authority in **FORM GST APL-04**, that he has neither filed nor intends to file any appeal against the said order of the Appellate Authority.

(16) In cases where the taxpayer is required to pay an additional amount of tax liability as per the second proviso to sub-section (1) of section 128A, and such additional payment is not made within the time limit specified in the said proviso, the waiver of interest, or penalty, or both, under the said section as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, if any, shall become void.

(17) In cases where the taxpayer is required to pay any amount of interest, or penalty, or both, in respect of any demand pertaining to erroneous refund or on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, and the details of such amount have been mentioned in FORM GST SPL-05 or FORM GST SPL-06, the applicant shall pay the said amount of interest, or penalty, or both, within a period of three months from the date of issuance of the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, and where the said amount is not paid within the said time period, the waiver of interest, or penalty, or both, under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void.

Explanation.– For the purposes of this rule, the proper officer for issuance of order under this rule,–

(a) in cases where the application for waiver of interest, or penalty, or both is made with respect to a notice or statement mentioned in clause (a) of sub-section (1) of section 128A, shall be the proper officer for issuance of order as per section 73; and

(b) in cases where the application for waiver of interest, or penalty, or both, is made with respect to an order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, shall be the proper officer referred to in section 79 of the Act.".

15. In the said rules, for FORM GST REG-20, the following form shall be substituted, namely: -

"Form GST REG-20
[See rule 22(4)]

Reference No.- ZA260821000033A
Date: DD/MM/YYYY

To

<Taxpayer Name>
<Taxpayer Address>
GSTIN/ UIN: <GSTIN number>

Show Cause Notice No.: <SCN number> Date: DD/MM/YYYY

Order for Dropping the Proceedings for Cancellation of Registration

This has reference to your reply filed vide ARN dated in response to the show cause notice referred to above. Upon consideration of your reply and/or submissions made during hearing, the proceedings initiated for cancellation of registration stands vacated for the following reasons:

<<text>>
Or

This is in reference to Notice issued in REG-31 vide Reference Number <SCN number> dated DD/MM/YYYY for contravention of provisions of rule 10A of the Central Goods Services Tax Act, 2017 (12 of 2017).

Since you have furnished the valid details of bank account on the common portal in the system, the proceedings initiated for cancellation of registration are hereby dropped.

Or

This is in reference to Notice issued in REG-31 vide Reference Number <SCN number> dated DD/MM/YYYY, for contravention of the provisions of clause (b) or clause (c) of sub-section (2) of section 29 of the Central Goods ServicesTax Act, 2017 (12 of 2017). Since you have filed all the pending returns which were due on the date of issue of the aforesaid notice, and have made payment of self-assessed tax, the proceedings initiated for cancellation of registration are hereby dropped.

Suspension of the registration stands revoked with effect from DD/MM/YYYY

Signature
< Name of the Officer>

Designation
Jurisdiction Place:
Date:".

16. In the said rules, in FORM GST REG-31, after paragraph 6, the following shall be inserted, namely: -

"OR

SUSPENSION DUE TO VIOLATION OF RULE 10A

1. It has been noticed that as per the provisions of rule 10A, requiring you to furnish the details of bank account within thirty days from the grant of registration, you have not furnished the valid details of bank account within thirty days from the date of grant of registration.

2. The discrepancies or anomalies *prima facie* indicate contravention of the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) and the rules made thereunder, such that if not explained satisfactorily, shall make your registration liable to be cancelled.

3. Considering that the above discrepancies or anomalies are grave and pose a serious threat to interest of revenue, as an immediate measure, your registration stands suspended, with effect from the date of this communication, in terms of rule 21A.

4. Accordingly, you are requested to furnish the valid details of bank account on the common portal or submit a reply to the jurisdictional tax officer within thirty days from the receipt of this notice, providing explanation to the above stated discrepancy or anomaly or contravention. Any possible misuse of your credentials on GST common portal, by any person, in any manner, may also be specifically brought to the notice of jurisdictional officer.

5. The suspension of registration shall be lifted after you furnish the valid details of bank account on the common portal within stipulated time.

6. You may please note that your registration may be cancelled in case you fail to furnish the valid details of bank account on the common portal within stipulated time or fail to furnish a reply within the stipulated time.

OR

1. It has been noticed that as per the provisions of rule 10A, requiring you to furnish the details of bank account within thirty days from the grant of registration. The information regarding bank account details furnished by you are not matching with the details available with bank.

2. These discrepancies or anomalies *prima facie* indicate contravention of the provisions of the Central Goods and Services Tax Act, 2017(12 of 2017) and the rules made thereunder, such that if not explained satisfactorily, shall make your registration liable to be cancelled.

3. Considering that the above discrepancies or anomalies are grave and pose a serious threat to interest of revenue, as an immediate measure, your registration stands suspended, with effect from the date of this communication, in terms of rule 21A.

4. Accordingly, you are requested to furnish the valid details of bank account on the common portal or submit a reply to the jurisdictional tax officer within thirty days from the receipt of this notice, providing explanation to the above stated discrepancy or anomaly or contravention. Any possible misuse of your credentials on GST common portal, by any person, in any manner, may also be specifically brought to the notice of jurisdictional officer.

5. The suspension of registration shall be lifted after you furnish the valid details of bank account on the common portal within stipulated time.

6. You may please note that your registration may be cancelled in case you fail to furnish the valid details of bank account on the common portal within stipulated time or fail to furnish a reply within the stipulated time.

OR

SUSPENSION DUE TO VIOLATION OF RULE 21

1. It has been noticed that as per the provisions of clause (h) or clause (i) of rule 21, requiring you to file return under sub-section (1) of section 39, have not furnished for a continuous period of six months or for a continuous period of two quarters.

2. These discrepancies or anomalies *prima facie* indicate contravention of the provisions of the Central Goods and Services Tax Act, 2017(12 of 2017) and the rules made thereunder, such that if not explained satisfactorily, shall make your registration liable to be cancelled.

3. Considering that the above discrepancies or anomalies are grave and pose a serious threat to interest of revenue, as an immediate measure, your registration stands suspended, with effect from the date of this communication, in terms of sub-rule (2A) of rule 21A.

4. Accordingly, you are requested to file return under sub-section (1) of section 39 on the common portal or submit a reply to the jurisdictional tax officer within thirty days from the receipt of this notice, providing explanation to the above stated discrepancy or anomaly or contravention. Any possible misuse of your credentials on GST common portal, by any person, in any manner, may also be specifically brought to the notice of jurisdictional officer.

5. The suspension of registration shall be lifted after you file the returns under sub-section (1) of section 39 on the common portal.

6. You may please note that your registration may be cancelled in case you fail to file returns under sub- section (1) of section 39 on the common portal within stipulated date or fail to furnish a reply within the stipulated time."

17. In the said rules, in FORM GSTR-9, in the table, in Pt. III, in serial number 8, for serial number A and the entries relating thereto, the following serial number and entries shall be substituted, namely: -

"A	ITC as per GSTR-2B (table 3 thereof)	<Auto>	<Auto>	<Auto>	<Auto>".

18. In the said rules, in FORM GST APL-01, with effect from the 1st day of November, 2024.–

(a) in entry number 15,–

(i) in clause (a), in the Table, in the first column relating to "Particulars", in item (b) relating to "pre-deposit", for the brackets, letters, words and figures "(b) Pre- deposit(10% of disputed tax /cess but not exceeding Rs. 25 crore each in respect of CGST, SGST or cess or not exceeding Rs.50 crore in respect of IGST and Rs. 25 crore in respect of cess)", the brackets, letters, words, and figures "(b) Pre- deposit (10% of disputed tax /cess but not exceeding Rs. 20 crore each in respect of CGST, SGST, cess, and not exceeding Rs. 40 crore in respect of IGST)" shall be substituted;

(ii) in clause (b), in the opening portion, for the brackets, words, figures and letters " (pre-deposit 10% of disputed tax and cess but not exceeding Rs. 25 crore each in respect of CGST, SGST or cess or not exceeding Rs.50 crore in respect of IGST and Rs. 25 crore in respect ofcess)", the brackets, words, figures and letters "(pre- deposit 10% of disputed tax and cess but not exceeding Rs. 20 crore each in respect of CGST, SGST, cess, and not exceeding Rs. 40 crore in respect of IGST)" shall be substituted.

19. In the said rules, in FORM GST APL-05, with effect from the 1st day of November, 2024,–

(a) in entry number 14,–

(i) in clause (a), in the Table, in the first column relating to "Particulars", in item (b) relating to "pre-deposit", for the brackets, letter, words and figures "(b) Pre- deposit(20% of disputed tax /cess but not exceeding Rs. 50 crore each inrespect of CGST, SGST or cess or not exceeding Rs.100 crore in respect of IGST and Rs. 50 crore in respect of cess)", the brackets, letters, words and figures "(b) Pre- deposit (10% of disputed tax /cess but not exceeding Rs. 20 crore each in respect of CGST, SGST, cess, and not exceeding Rs. 40 crore in respect of IGST)" shall be substituted;

(ii) in clause (b), for the opening portion, the following shall be substituted, namely: -

"(b) Details of payment of admitted amount and pre-deposit of 10% of the disputed tax and cess but not exceeding Rs. 20 crore each in respect of CGST, SGST, cess and not exceeding Rs. 40 crore in respect of IGST.".

20. In the said rules, in FORM GST INS-01, in paragraph (C), for the words and figures "section 179, 181, 191 and 418 of the Indian Penal Code", the words, figures and brackets "section 214, 216, 227 and sub-section (3) of section 318 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023)" shall be substituted.

21. In the said rules, in FORM GST DRC-01A, with effect from the 1st day of November, 2024, —

(a) in the heading, after the figures and brackets "73(5)/74(5)", the figures, letters, and brackets "/74A (8)/ 74A (9)" shall be inserted;

(b) in PART A , —

(i) in the subject, after the words, figures and brackets "section 73(5)/section 74(5)", the figures, letters and brackets "/74A (8)/ 74A(9)" shall be inserted;

(ii) in the first paragraph, after the words, figures and brackets "under section 73(5) / 74(5)", the figures, letters and brackets "/74A (8)/ 74A(9)" shall be inserted;

(iii) after the fourth paragraph, the following shall be inserted, namely: —

"OR

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest in full by ……., failing which Show Cause Notice will be issued under sub-section (1) of section 74A read with clause (i) of sub-section (5) of the said section.

"OR

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest and penalty in full by ……., failing which Show Cause Notice will be issued under sub-section (1) of Section 74A read with clause (ii) of sub-section (5) of the said section."

(c) in PART B, in the first paragraph, after the words, figures and brackets "under section 73(5) / 74(5)", the figures, letters and brackets "/74A (8)/ 74A (9)" shall be inserted.

22. In the said rules, after FORM SBY-06, the following forms shall be inserted with effect from the 1st day of November, 2024, namely: -

"'FORM GST SPL – 01
[See rule 164(1)]

Application for waiver of interest or penalty or both under section 128A in respect of a notice or a statement mentioned in clause (a) of sub-section (1) of the said section

Reference No. Date:

Table 1

S. No.	Particulars		
1	a	GSTIN/Temporary ID/UIN	
	b	Legal Name of the Business (As mentioned in PAN No.)	
	c	Mobile Number	
	d	Email Address	
	e	Address	
	f	Jurisdiction	

Table 2

2	S. No.	Details of the notice	
	1	Notice / Statement No	
	2	Date of issuance of notice/ statement	
	3	Section under which notice/ statement is issued	Drop down
	4	Whether any writ petition is filed against the notice/ statement before High Court/ Supreme Court	Drop down
	5	If Yes in '4', whether the order for withdrawal of writ petition is issued?	Drop down
	6	Whether notice/ statement involves demand of erroneous refunds	Drop down

Table 3

3	Financial Year	Amount demanded in notice/statement (A)							Out of amount mentioned in (A), demand pertaining only to ITC which has been denied solely on account of contravention of section 16(4) and not on any other grounds, and which has now become eligible as per section 16(5) or section 16(6), if any. (B)				
		IGST	CGST	SGST	CESS	Total Tax including Cess	Interest	Penalty	IGST	CGST	SGST	CESS	Total Tax including Cess
	1	2	3	4	5	6	7	8	9	10	11	12	13
	TOTAL												

(Amount in Rs.)

Table 4

4	Amount paid through DRC -03					
	Payment Reference No.	**IGST**	**CGST**	**SGST**	**CESS**	**Total Tax including Cess**
	1	**2**	**3**	**4**	**5**	**6**
		<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
		<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
		<Auto>	<Auto>	<Auto>	<Auto>	<Auto>

Table 5

5	**Declaration:** 1. I undertake that, I have not filed any writ petition against the said notice/ statement. OR I undertake that though I had filed a writ petition against the said notice/ statement, I have withdrawn the said writ petition or filed an application for withdrawal of the same and have attached the copy of withdrawal order or the application filed for withdrawal, with this application. 2. Further, I understand and agree that no appeal shall be filed against the order concluding demand proceedings, issued under section 128A, in any forum in the future. 3. I declare that all information provided by me is accurate and truthful. I understand that any incorrect declaration or suppression of facts will render this application void and may lead to recovery proceedings for the outstanding dues along with applicable interest and penalties.

Table 6

6	**Verification:** I_____ (name of the authorised signatory), hereby declare that the information provided above is true and correct to the best of my knowledge and belief. I understand that any incorrect declaration or suppression of facts will render my application void and all benefits under Section 128A will be withdrawn.

Table 7

7	**Upload required documents**	
	Self-certified copy of notice/ statement	
	Proof of payment made through FORM GST DRC 03	
	Proof of withdrawal of writ petition or application filed for withdrawal of writ petition (if the order for withdrawal has not been issued) (where applicable)	
	Any other document (please specify)	

Signature of authorised signatory
Name/Designation
Email address
Mobile No.

Instructions:

1. In entries 1 to 6 of Table 2, the details of the notice/ statement against which the application under section 128A is filed needs to be filled in by the applicant.
2. In case the notice/ statement is available on the common portal, Application Reference Nnumber of the same needs to be filled. If the same is not available on the portal, the reference number of the manually issued notice/ statement needs to be filled.
3. In entry 3 of Table 2, the applicant has to choose the option ‘section 73’ from the dropdown, if the notice/ statement is issued under section 73 at the first instance, and the option ‘section 74 read with Section 75(2)’ in case the notice was initially issued under section 74 and was later deemed to be issued under section 73, based on the order of the Appellate Authority/ Appellate Tribunal or Court as per section 75(2).
4. In Table 3A, columns 2 to 8 will be auto filled, in case the notice/ statement is available on

the common portal. If the same is not available on the portal, the details of the same are to be manually filled by the applicant.

5. While calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, applicant is required to ensure that such amount is deducted only where Input Tax Credit has been denied solely on account of contravention of section 16(4) and not on any other grounds.

FORM GST SPL-02

[See rule 164(2)]

Application for waiver of interest or penalty or both under section 128A, in respect of an order mentioned in clause (b) or clause (c) of sub-section (1) of the said section

Reference No.

Table 1

S. No.	Particulars		Remarks
1	a	GSTIN/Temporary ID/UIN	
	b	Legal Name of the Business (As mentioned in PAN No.)	<Auto>
	c	Mobile Number	<Auto>
	d	Email Address	<Auto>
	e	Address	<Auto>
	f	Jurisdiction	<Auto>

Table 2

2.	S. No.	Details of the demand order	
	1	Demand Order No	
	2	Date of issuance of order	
	3	Section under which order is issued	Drop down
	4	Whether any appeal or writ petition is filed against order before the Appellate Authority/ Appellate Tribunal/ High Court/ Supreme Court	Drop down
	5	If Yes in '4', whether the order for withdrawal of appeal or writ petition is issued ?	Drop down
	6	Whether demand order involves demand of erroneous refunds	Drop down

Table 3

(Amount in Rs.)

3	Financial Yearl	Amount demanded in the order (A)							Out of the amount mentioned in (A), demand pertaining only to ITC which has been denied solely on account of contravention of section 16(4) and not on any other grounds, and which has now become eligible as per section 16(5) or section 16(6) (B)				
		IGST	CGST	SGST	CESS	Total Tax including Cess	Interest	Penalty	IGST	CGST	SGST	CESS	Total Tax including Cess
	1	2	3	4	5	6	7	8	9	10	11	12	13
	TOTAL												

Table 4

4	Amount paid through payment Facility against demand order mentioned in Table 3 [including those paid through FORM GST DRC-03 and later adjusted through filing an application in FORM GST DRC - 03A]							
	Credit entry Reference No.	**Reference number of FORM GST DRC- 03 (where applicable)**	**Reference number of FORM GST DRC- 03A (where applicable)**	**IGST**	**CGST**	**SGST**	**CESS**	**Total Tax including Cess**
	1	2	3	4	5	6	7	8
				<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
				<Auto>	<Auto>	<Auto>	<Auto>	<Auto>
	Total			<Auto>	<Auto>	<Auto>	<Auto>	<Auto>

Table 5

5	**Declaration:** 1. I undertake that, I have not filed any appeal or writ petition against the said order. OR I undertake that though I had filed an appeal / writ petition against the said order, I have withdrawn the said appeal/ writ petition (or) I have filed an application for withdrawal of the same and have attached the copy of withdrawal order or the application filed for withdrawal, with this application. 2. Further, I understand and agree that no appeal shall be filed against the order concluding demand proceedings, issued under section 128A in any forum in the future. 3. I also undertake that on issue of an order concluding demand proceedings issued under section 128A, no writ shall be filed against the order mentioned in Table 2 of this form. 4. If an application is filed/ has been filed by the department against the order mentioned in Table 2 or if any proceedings are initiated under sub-section (1) of section 108 against the said order, and the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, issues an order enhancing my tax liability, I undertake to pay the additional amount of tax payable within three months from the date of the said order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, as per second proviso to sub-section (1) of section 128A. 5. I declare that all information provided by me is accurate and truthful. I understand that any incorrect declaration or suppression of facts will render this application void and lead to recovery proceedings for the outstanding dues along with applicable interest and penalties.

Table 6

6	**Verification:** I_____ (name of the authorised signatory), hereby declare that the information provided above is true and correct to the best of my knowledge and belief. I understand that any incorrect declaration or suppression of facts will render this application void and the benefits provided under section 128A will not be valid.

Table 7

7	**Upload required documents**	
	Self-certified copy of the order	

	Proof of withdrawal of appeal / writ petition or application filed for withdrawal of appeal/ writ petition (if the order for withdrawal has not been issued) (where applicable)	
	Proof of payment made towards demand / paid through FORM GST DRC-03 and adjusted through FORM GST DRC-03A.	
	Any other document (please specify)	

Signature of authorized signatory

Name/Designation……..

Email address…….

Mobile No…….

Instructions:

1. In columns 1 to 6 of Table 2, the details of the order against which the application under section 128A is filed needs to be filled in by the applicant.
2. In case the order is available on the common portal, ARN number of the same needs to be filled. If the same is not available on the portal, the order number of the manually issued order needs to be filled.
3. In Table 3, columns 2 to 8 will be auto filled, in case the order is available on the common portal. If the same is not available on the portal, the details of the same are to be manually filled in by the applicant.
4. Similarly, the reference number of the credit entry (made in ELR- Part II) needs to be filled in column 1 of Table 4. In case the payment intended to be made towards the said demand order was originally paid through FORM GST DRC-03, and later adjusted through filing an application in FORM GST DRC - 03A, the reference numbers of the same are to be filled in columns 2 and 3, and the rest of the columns will be auto-filled.
5. While calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, applicant is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of section 16(4) and not on any other grounds.

FORM GST SPL -03

Notice in response to an application filed under Section 128A

[*See rule 164(8)]*

Date:

Reference No.:

To

GSTIN of applicant ……

Legal Name of applicant ……

Address of applicant ……

Reference No. of FORM GST SPL -01 or FORM GST SPL -02 …… dated ……

Subject: Notice in response to application filed under section 128A-regarding

1. Whereas, you have submitted an application under section 128A, declaring your outstanding dues and seeking waiver of interest and penalty in the FORM GST SPL-01/ FORM GST SPL-02 bearing reference no……dated ……..

2. Upon verification of your application and the details provided therein, your application is liable to be rejected for the following reasons:

   - [Reason 1]
   - [Reason 2]

OR/ AND

In this regard, it appears that the amount of tax is short paid by you as given below:

Demand details (A)							Demand paid through FORM GST DRC 03 (in case of notice/ statement) or by crediting electronic liability register in case of orders					Out of amount mentioned in (A), demand pertaining only to ITC which has been denied solely on account of contravention of section 16(4) and not on any other grounds, and which has now become eligible as per section 16(5) or section 16(6), if any.					Demand Short Paid				
Notice id/ Order id No.	Financial Period	IGST	CGST	SGST	CESS	Total Tax including Cess	IGST	CGST	SGST	CESS	Total Tax includin g Cess	IGS T	CGS T	SGST	CESS	Total Tax including Cess	IGST	CGST	SGST	CESS	Total Tax including Cess
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
	Drop down																				
	Drop down																				

3. You are hereby required to show cause, along with necessary documents in FORM GST SPL-04, to support your claim, as to why your application no…….. dated …….. should not be rejected.

4. You are also granted an opportunity for a personal hearing on [date and time] at [venue]. You may appear in person or through an authorized representative to present your case.

[Signature]
[Name of the Tax Officer]
[Designation]
[Jurisdiction]
[Address]

Upload Attachment

FORM GST SPL-04
[*See rule 164(9)]*

Reply to notice issued under rule 164(8)

Date:

Reference No:

To

Proper Officer .....
Jurisdiction .....

Legal Name of the applicant .....
Address of applicant .....

Reference No of FORM GST SPL-03: ……..... Dated ….....

Subject: Reply to the notice issued in respect of application filed under section 128A.

Sir/Madam,

This is in reference to the notice issued in FORM GST SPL-03 *vide* no …… dated from your office.

The reply is as under:

Enclosures:

The following documents in respect of payment proof or additional submissions are enclosed for your reference:

- Document 1: [Taxpayer's Document 1]
- Document 2: [Taxpayer's Document 2]
- Document 3: [Taxpayer's Document 3]

Verification:

I _____ hereby solemnly affirm and declare that the information given hereinabove are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

[Signature of Authorised Signatory]
[Name of the of authorised signatory]
[Designation/Status]
[Date]

FORM GST SPL -05
[See rule 164 (10)]

Order for conclusion of proceedings as per section 128A

Reference No. …… Date:.....

To,

GSTIN of applicant .....

Legal Name of applicant .....

Address of applicant .....

Reference No. of FORM GST SPL-01/ FORM GST SPL-02 …….. dated ……

Subject: Order for approval of application submitted under Section 128A

This has reference to your application with reference no. …… dated ….. furnishing details/ information and documents in support of your request for availing the benefit of waiver of interest or penalty or both under section 128A.

OR

This has reference to your application with reference no. …… dated ….. , and your reply in FORM GST SPL-04 with reference no. …… dated …… furnishing details/ information/ submission and documents in support of your request for availing the benefit of waiver of interest or penalty or both under section 128A .

OR

2. Upon verification of the details provided in your application and the reply, where applicable, waiver of interest or penalty or both under section 128A, is allowed as under:

3. Demand Notice/ Demand Order Details:

    a. Order No/ Notice No.:

    b. Date of order/ Notice:

Financial Year	Amount demanded in the notice/ statement/ order against which application under section 128A was filed (A)							Out of the amount mentioned in (A), demand pertaining only to ITC which has been denied solely on account of contraventi on of section 16(4) and not on any other grounds, and which has now become eligible as per section 16(5) or section 16(6)	Amount already paid towards the said notice/ statement / order							Amount of interest and penalty waived as per section 128A		Remaining amount of interest and penalty, payable, if any, by the applicant (in cases referred to in sub-rule (3) and sub-rule (4) of rule 164)	
	Place of Supply (PoS)	Act	Tax including cess	Interest	Penalty	Fee	Others	Tax including cess	Place of Supply (PoS)	Act	Tax including cess	Interest	Penalty	Fee	Others	Interest	Penalty	Interest	Penalty
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
		CGST								CGST									
		SGST								SGST									
		IGST								IGST									
		Cess								Cess									
	TOTAL								**TOTAL**										
		CGST								CGST									
		SGST								SGST									
		IGST								IGST									
		Cess								Cess									
	TOTAL								**TOTAL**										

[Signature]
[Name of the Tax Officer]
[Designation]
[Jurisdiction]
[Address]

Notes -

Any incorrect declaration or suppression of facts will render this approval void and may lead to recovery proceedings for the outstanding dues along with applicable interest and penalties.

FORM GST SPL -06

[See Rule 164 (15)(b)(i)]

Order for conclusion of proceedings as per section 128A

Reference No. …… Date:.....

To,

GSTIN of applicant .....

Legal Name of applicant .....

Address of applicant .....

Name of the authorised representative -

Reference No. of FORM GST SPL-01/ FORM GST SPL-02 …….. dated ……

Reference No. of FORM GST SPL-07 …… dated …….

Reference No. of FORM GST APL-01 …… dated …….

Subject: Order for approval of application submitted under section 128A

1. This has reference to your appeal with reference no. …… dated ….. furnishing details/ information/ prayer and documents in support of your request for availing the benefit of waiver of interest or penalty or both under section 128A.

2. Upon verification of the details provided in your application and the reply, where applicable, waiver of interest or penalty or both under section 128A, is allowed as under:

3. Demand Notice/ Demand Order Details:

    a. Order No/ Notice No.:

    b. Date of order/ Notice:

Financial Year	Amount demanded in the notice/ statement/ order against which application under section 128A was filed (A)							Out of the amount mentioned in (A), demand pertaining only to ITC which has been denied solely on account of contraventi on of section 16(4) and not on any other grounds, and which has now become eligible as per section 16(5) or section 16(6)	Amount already paid towards the said notice/ statement / order							Amount of interest and penalty waived as per section 128A		Remaining amount of interest and penalty, payable, if any, by the applicant (in cases referred to in sub-rule (3) and sub-rule (4) of rule 164)	
	Place of Supply (PoS)	Act	Tax including cess	Interest	Penalty	Fee	Others	Tax including cess	Place of Supply (PoS)	Act	Tax including cess	Interest	Penalty	Fee	Others	Interest	Penalty	Interest	Penalty
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
		CGST								CGST									
		SGST								SGST									
		IGST								IGST									
		Cess								Cess									
	TOTAL								**TOTAL**										
		CGST								CGST									
		SGST								SGST									
		IGST								IGST									
		Cess								Cess									
	TOTAL								**TOTAL**										

[Signature]
[Name of the Tax Officer]
[Designation]
[Jurisdiction]

Notes -

Any incorrect declaration or suppression of facts will render this approval void and may lead to recovery proceedings for the outstanding dues along with applicable interest and penalties.

FORM GST SPL -07
[See rule 164(12)]

Order for Rejection of Application submitted under section 128A

Reference No. …….. Date:

To,

GSTIN of applicant .....

Legal Name of applicant .....

Address of applicant .....

Reference is invited to:

Particulars	Reference No.	Dated
Application in FORM GST SPL -01/ FORM GST SPL-02		
Show Cause Notice in FORM GST SPL -03:		
Reply to the Show Cause Notice in FORM GST SPL -04:		

Subject: Order for Rejection of Application submitted under section 128A

This has reference to your application with reference no. …… dated ….. furnishing details/ information and documents in support of your request for availing the benefit of waiver of interest and penalty under section 128A. The notice referred to above was issued to you to explain the reasons as to why the said application should not be rejected, for which you had furnished reply dated ……/ no reply was furnished by you.

2. Introduction:

3. Submissions, if any:

4. Conclusion:

Based on the verification your application with reference no dated .....…… filed under section 128A, is hereby rejected.

5. Summary of rejection:

Order id/ SCN id	Reason for rejection
	<Drop Down> Options in <Drop Down> 1. Full payment not made 2. Payment made after the date notified in Section 128A. 3. Notice/ Order pertaining to sections other than section 73. 4. Appeal/ writ petition filed before Appellate Authority/ Appellate Tribunal/ High Court/ Supreme Court not withdrawn 5. Others, please specify.

[Signature] [Name of the Tax Officer] ……
[Designation]…….
[Office Name] ……..
[Contact Information]……

FORM GST SPL -08
[See rule 164(15)(b)(ii)]

Undertaking submitted under rule 164(15)(b)(ii)

Date: .....

Reference No:

1. Legal Name of the applicant……

2. Address of applicant ……

3. *GSTIN of the applicant:*

4. Reference No of FORM GST SPL-02: ……. dated …..

5. Reference No of FORM GST SPL-07: ……. dated …..

6. Reference No of FORM GST APL-04 passed with reference to FORM GST SPL-07 specified at serial number 5 above: ……. dated …..

7. Reference number of appeal filed originally but subsequently withdrawn …… dated …….

Subject: Undertaking submitted in respect of Rule 164(15)(b)(ii).

Sir/Madam,

I hereby undertake not to file an appeal against the order of the appellate authority bearing reference number …… dated …., as specified at serial number 6 above, and accordingly I pray for restoration of my appeal filed *vide* reference number …… dated …. as specified at serial number 7 above.

I _____ hereby solemnly affirm and declare that the information given hereinabove are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

[Signature of authorised signatory]

[Name of the of authorised signatory]

[Designation/Status]

[Date].".

[No. CBIC-20006/20/2023-GST]
(Raghavendra Pal Singh)

Director Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 610(E), dated the 19th June, 2017 No. 3/2017-Central Tax, dated the 19th June, 2017 and were last amended vide notification number G.S.R. 376 (E), dated the 10th July 2024 No. 12/2024 -Central Tax, dated the 10th July 2024.

Seeks to notify date under sub-section (1) of Section 128A of CGST Act.

Notification
No. 21/2024–Central Tax

New Delhi, the 8th October, 2024

S.O.....(E).–In exercise of the powers conferred by sub-section (1) of section 128A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (the said Act), the Central Government, on the recommendations of the Council, hereby notifies the respective date specified in Column (3) of the Table below, as the date upto which payment for the tax payable as per the notice, or statement, or the order referred to in clause (a) or clause (b) or clause (c) of the said section, as the case may be, can be made by the class of registered person specified in the corresponding entry in column (2) of the said Table, namely:–

Table

Sl. No.	Class of registered person	Date upto which payment for the tax payable as per the notice or statement or the order referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act, as the case may be, can be made for waiver of interest, or penalty, or both, under the said section.
(1)	(2)	(3)
1	Registered persons to whom a notice or statement or order, referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act, has been issued.	31.03.2025
2	Registered persons to whom a notice has been issued under sub-section (1) of section 74, in respect of the period referred to in sub-section (1) of section 128A of the said Act, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority, or Appellate Tribunal, or a court, in accordance with the provisions of sub-section (2) of section 75, for determination of the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73 of the said Act.	Date ending on completion of six months from the date of issuance of the order by the proper officer redetermining tax under section 73 of the said Act.

2. This notification shall come into effect from the 1st day of November, 2024.

[No. CBIC-20006/20/2023-GST]
(Raghavendra Pal Singh)
Director

Seeks to notify the special procedure under section 148 of the CGST Act for rectification of demand orders issued for contravention of section 16(4) of the said Act.

NOTIFICATION
No. 22/2024– CENTRAL TAX

New Delhi, dated the 8th October, 2024.

S.O (E).— In exercise of the powers conferred under the 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 following special procedure for rectification of order, to be followed by the class of registered persons (hereinafter referred to as the said person), against whom any order under section 73 or section 74 or section 107 or section 108 of the said Act has been issued confirming demand for wrong availment of input tax credit, on account of contravention of provisions of sub-section (4) of section 16 of the said Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the said Act, and where appeal against the said order has not been filed, namely:–

2. The said person shall file, electronically on the common portal, within a period of six months from the date of issuance of this notification, an application for rectification of an order issued under section 73 or section 74 or section 107 or section 108 of the said Act, as the case may be, confirming demand for wrong availment of input tax credit, on account of contravention of provisions of sub-section (4) of section 16 of the said Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the said Act, and where appeal against the said order has not been filed.

3. The said person shall, along with the said application, upload the information in the proforma in **Annexure A** of this notification.

4. The proper officer for carrying out rectification of the said order shall be the authority who had issued such order, and the said authority shall take a decision on the said application and issue the rectified order, as far as possible, within a period of three months from the date of the said application.

5. Where any rectification is required to be made in the order referred to in paragraph 1 and, the said authority has issued a rectified order thereof, then the said authority shall upload a summary of the rectified order electronically –

(i) in FORM GST DRC-08, in cases where rectification of an order issued under section 73 or section 74 of the said Act is made; and

(ii) in FORM GST APL-04, in cases where rectification of an order issued under section 107 or section 108 of the said Act is made.

6. The rectification is required to be made only in respect of demand of such input tax credit which has been alleged to be wrongly availed in contravention of provisions of sub-section (4) of section 16 of the said Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of the said section 16.

7. Where such rectification adversely affects the said person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Annexure A

Proforma to be uploaded by the registered person along with the application for rectification of order under special procedure for rectification of order notified under section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)

1. Basic Details:

(a) GSTIN:
(b) Legal Name:
(c) Trade Name, if any:
(d) Order in respect of which rectification application has been filed:
(1) Order Reference Number:
(2) Order Date:

2. Details of demand confirmed in the said order:

(Amount in Rs.)

Sr. No.	Financial Year	IGST	CGST	SGST	CESS	Total Tax including Cess	Interest	Penalty
1	2	3	4	5	6	7	8	9
	2017-18							
	2018-19							
	2019-20							
	2020-21							
	2021-22							
	2022-23							
	Total							

3. Out of the amount mentioned in the Table in serial number 2 above:

(a) the details of the demand confirmed in the said order, of the input tax credit wrongly availed on account of contravention of sub-section (4) of section 16, which is now eligible as per sub-section (5) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (the said Act):

(Amount in Rs.)

Sr. No.	Financial Year	IGST	CGST	SGST	CESS	Total Tax including Cess	Interest	Penalty
1	2	3	4	5	6	7	8	9
	2017-18							
	2018-19							
	2019-20							
	2020-21							
	Total							

and/or

(b) the details of the demand confirmed in the said order of the input tax credit wrongly availed on account of contravention of sub-section (4) of section 16, other than that mentioned in (a) above, which is now eligible as per sub-section (6) of section 16 of the said Act:

(Amount in Rs.)

Sr. No.	Financial Year	IGST	CGST	SGST	CESS	Total Tax including Cess	Interest	Penalty
1	2	3	4	5	6	7	8	9
	2017-18							
	2018-19							
	2019-20							
	2020-21							
	2021-22							
	2022-23							
	Total							

4.	**Declaration:** 1. I undertake that, no appeal under section 107 or section 112 of the said Act is pending against the order against which this rectification application is filed. 2. I declare that all information provided by me is accurate and truthful. I understand that any incorrect declaration or suppression of facts will render this application void and may lead to recovery proceedings for the outstanding dues along with applicable interest and penalties.

5	**Verification:** I_____ (name of the authorised signatory), hereby declare that the information provided above is true and correct to the best of my knowledge and belief. I understand that any incorrect declaration or suppression of facts will render my application void.

Signature of authorised signatory
Name/Designation
Email address
Mobile No.

[No. CBIC-20006/20/2023-GST]
(Raghavendra Pal Singh)
Director

Seeks to provide waiver of late fee for late filing of NIL FORM GSTR-7

NOTIFICATION
No. 23/2024–Central Tax

New Delhi, dated the 8th October, 2024.

S.O....(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), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R. 366(E), dated the 1 June, 2021 (No.22/2021-Central Tax), except as respects things done or omitted to be done before such supersession, the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable under section 47 of the said Act by any registered person, required to deduct tax at source under the provisions of section 51 of the said Act, for failure to furnish the return in FORM GSTR-7 for the month of June, 2021 onwards, by the due date, which is in excess of an amount of twenty-five rupees for every day during which such failure continues:

Provided that the total amount of late fee payable under section 47 of the said Act by such registered person for failure to furnish the return in FORM GSTR-7 for the month of June, 2021 onwards, by the due date, shall stand waived which is in excess of an amount of one thousand rupees:

Provided further that the total amount of late fee payable under section 47 of the said Act by the registered person, who fails to furnish the return in FORM GSTR-7 for a month by the due date, where the total amount of central tax deducted at source in the said month is nil, shall stand waived.

2. This notification shall come into force on the 1st day of November, 2024.

[No.CBIC-20006/20/2023-GST]
(Raghavendra Pal Singh)
Director

Seeks to amend Notification No. 5/2017-Central Tax dated 19.06.2017

NOTIFICATION
No. 24/2024-Central Tax

New Delhi, the 9th October, 2024.

G.S.R….(E).- In exercise of the powers conferred by sub-section (2) of section 23 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 amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 5/2017- Central Tax, published in the Gazette of India, Extraordinary, Part II, section 3, subsection (i) vide number G.S.R. 607(E), dated the 19th June, 2017, namely:-

In the said notification, after the opening paragraph, the following proviso shall be inserted, namely :-

"Provided that nothing contained in this notification shall apply to any person engaged in the supply of metal scrap, falling under Chapters 72 to 81 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975).".

2. This notification shall come into force with effect from the 10th day of October, 2024.

[F No. CBIC-190354/149/2024-TO(TRU-II)]
(Amreeta Titus)
Deputy Secretary

Note: The principal notification no. 5/2017- Central Tax was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R.607(E), dated the 19th June, 2017.

Seeks to amend Notification No. 50/2018-Central Tax dated 13.09.2018

NOTIFICATION
No. 25/2024-Central Tax

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (3) of section 1 read with section 51 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 further amendment in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 50/2018- Central Tax, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R 868 (E), dated 13th September, 2018, namely:–

In the said notification,

(i) after clause (c) and before the first proviso, the following clause shall be inserted,-

"(d) any registered person receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from other registered person";

(ii) for the third proviso, the following proviso shall be substituted, namely-

"Provided also that nothing in this notification shall apply to the supply of goods or services or both, which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of Section 51 of the said Act, except the person referred to in clause (d) of this notification."

2. This notification shall come into force with effect from the 10th day of October, 2024.

[F No. CBIC-190354/149/2024-TO(TRU-II)]
(Amreeta Titus)
Deputy Secretary

Note:- The principal notification no. 50/2018- Central Tax, was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R 868 (E), dated 13th September, 2018 and last amended vide notification no. 73/2018-Central Tax, number G.S.R 1250(E), dated 31st December, 2018.

Extension of due date for filing of return in FORM GSTR-3B for the month of October, 2024 for the persons registered in the state of Maharashtra and Jharkhand

NOTIFICATION
No. 26/2024–Central Tax

New Delhi, dated the 18th November, 2024

G.S.R…(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of October, 2024 till the twenty-first day of November, 2024, for the registered persons whose principal place of business is in the state of Maharashtra and Jharkhand and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

[F. No. CBIC-20001/8/2024-GST]
(Raghvendra Pal Singh)
Director

Seeks to amend Notification No. No. 02/2017-Central Tax, dated the 19th June, 2017

Notification
No.27/2024-Central Tax

New Delhi, the 25th November, 2024

G.S.R(E).– In exercise of the powers under section 3 read with section 5 of the Central Goods and Services TaxAct, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department

of Revenue) No. 02/2017-Central Tax, dated the 19thJune, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)*vide* number G.S.R. 609(E), dated the 19thJune, 2017,namely:-

In the said notification, for Table V, the following table shall be substituted, namely:–

"TABLEV

Powers of Additional Commissioner or Joint Commissioner of Central Tax for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence

Sl.No.	**Principal Commissioner or Commissioner of Central Tax**	**Powers (Exercisable throughout the territory of India)**
(1)	(2)	(3)
1.	Principal Commissioner Ahmedabad South	Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence under sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of Central Goods and Services Tax Act 2017.
2.	Principal Commissioner Bengaluru East	
3.	Principal Commissioner Bhopal	
4.	Principal Commissioner Bhubaneswar	
5.	Principal Commissioner Chandigarh	
6.	Commissioner Chennai South	
7.	Principal Commissioner Delhi North	
8.	Commissioner Delhi West	
9.	Commissioner Faridabad	
10.	Principal Commissioner Guwahati	
11.	Principal Commissioner Jaipur	
12.	Principal Commissioner Kolkata North	
13.	Principal Commissioner Lucknow	
14.	Principal Commissioner Meerut	
15.	Commissioner Nagpur-II	
16.	Commissioner Palghar	
17.	Commissioner Pune-II	
18.	Commissioner Rangareddy	
19.	Principal Commissioner Ranchi	
20.	Commissioner Surat	
21.	Commissioner Thane	
22.	Commissioner Thiruvantathapuram	
23.	Principal Commissioner Visakhapatnam	

[F. No. CBIC-20016/2/2022-GST]
(Raushan Kumar)
Under Secretary

Note:The principal notification No. 02/2017- Central Tax, dated the 19th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the 19th June, 2017 and last amended vide Notification No. 02/2022 – Central Tax, dated the 11th March, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 193(E), dated the 11th March, 2022.

Seeks to appoint common adjudicating authority for Show cause notices issued by DGGI.

NOTIFICATION
No.28/2024–CentralTax

New Delhi, the 27th November,2024.

S.O …(E).— In exercise of the powers conferred by section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Indirect Taxes and Customs, here by appoint officers mentioned in column (4) of the Table below for passing an order or decision in respect of notices mentioned in column (3) of the said Table, issued to the noticees mentioned in column(2) of the said Table, by the officers of Directorate General of Goods and Services Tax Intelligence under sections 73, 74, 122, 125 and 127 of Central Goods and Services Tax Act 2017, namely:—

S. No.	Name of Noticee and Address	Show Cause Notice Number, Date and Issuing Authority	Name of the Adjudicating Authority
(1)	(2)	(3)	(4)
1	Memo Technology Private Limited; 3D-282, Awas Vikas, Hanspuram, Naubasta, Kanpur (U.P.) - 208021 and others	DGGI/INV/GST/3110/2022/Gr-C/11181 to 11199 ; 02.09.2023 issued by Additional Director, DGGI, Delhi Zonal Unit, New Delhi	Joint Commissioner or Additional Commissioner, Central Good sand Services Tax and Central Excise Thane Commissionerate [holding the charge of Adjudication of DGGI cases].
	Shellify Info Technology Private Limited ; 3D-282, Awas Vikas, Hanspuram,Naubasta,Kanpur(U.P.)-208021 and others	DGGI/INV/GST/3110/2022/Gr-C/11181 to 11199 ; 02.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Rocketfy Technology Private Limited; 3D-282, Awas Vikas, Hanspuram, Naubasta,Kanpur(U.P.)- 208021 and others	DGGI/INV/GST/3110/2022/Gr-C/11181 to 11199; 02.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Grape Info Technology Private Limited; 3D-282, Awas Vikas, Hanspuram, Naubasta, Kanpur (U.P.) - 208021 and others	DGGI/INV/GST/3110/2022/Gr-C/11181 to 11199; 02.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	

2	Belz Tech Private Limited (2 7 A A J C B 4 1 3 9 P 2 Z 4) ShopNo.19,BuildingSai Darshan, Akruti Nirman, MIDC Marol, Pocket 10, Andheri, Maharashtra-400093; M/s. Belz Tech Private Ltd. (27AAJCB4139P1Z5) Shubh Grih, Sector-E,CA-1,FlatNo.007, Behind Shetron Factory, Mumbai Nashik Highway, Village Khativali West, Kalyan, Thane, Maharashtra-421601 and others	DGGI/INV/GST/3110/2022/Gr-C/11279 to 11286 ; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
3	Bytechat Business Solutions Pvt. Ltd.; Basement, Ground, BH 333, C/o Satya Pal Singh, Sector-12, Pratap Vihar, Ghaziabad, Uttar Pradesh 201009 and others	DGGI/INV/GST/3110/2022/Gr-C/11287 to 11292 ; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
4	Par Online Services Private Limited; 501, Raaj Chambers, Old Nagardas Road, Near Andheri Station Subway East, Andheri East, Mumbai Suburban, Maharashtra-400069 and others	DGGI/INV/GST/3110/2022/Gr-C/11293 to 11302 ; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Havefun Solutions Private Limited; 501, Raaj Chambers, Old Nagardas Road, Near Andheri Station Subway East, AndheriEast,Mumbai Suburban, Maharashtra- 400069 and others	DGGI/INV/GST/3110/2022/Gr-C/11293 to 11302 ; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
5	Surflour E-Commerce Private Limited ; Tajpur, Near Guru Ravidass Mandir, Post Office Khoja, Tehsil Nawanshehar, Indian Oil Petrol Pump, Tajpur, Shaheed Bhagat Singh Nagar, Punjab-144518and others	DGGI/INV/GST/3110/2022/Gr-C/11303 to 11310; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
6	Technopress Private Limited; Jawahar Marg, 1, Adinath Dadawadi, Station Road, Baghana, Neemuch, Madhya Pradesh-458441 and others	DGGI/INV/GST/3110/2022/Gr-C/11311 to 11327; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Yescom Gaming Solution Private Limited; 102/16, Luniyapura, Mhow, Indore, Madhya Pradesh- 453441 and others	DGGI/INV/GST/3110/2022/Gr-C/11311 to 11327; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Yescom Technology Private Limited ; 82, Adarsh Navin Nagar, 82, Shajapur, Madhya Pradesh-465001 and others	DGGI/INV/GST/3110/2022/Gr-C/11311 to 11327; 05.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
7	Libradeck Private Limited; 2nd Floor, Plot No. 42, Thirugana Sambandhar Street, Madipakkam, Chennai, Chengalpattu, Tamil Nadu-600091 and others	DGGI/INV/GST/3110/2022/Gr-C/11338 to 11344 ; 06.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	

8	Magical Paradise Tech Private Limited ; No 58, GM Arcade, 4th Floor,5th Block, JNC Road, Bangalore, Bengaluru Urban,Karnataka-560095 and others	DGGI/INV/GST/3110/2022/Gr-C/11345 to 11351 ; 06.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
9	Virtual Silver Technology Private Limited ; Second Floor, Flat Number 202, 66, Khasra Number 54/10, Jonapur, South Delhi, Delhi-110047 and others	DGGI/INV/GST/3110/2022/Gr-C/11352 to 11358 ; 06.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
10	Brizley Enterprises Private Limited ; Ground Floor, RZ-18-19, South Extn. Part-1, One Shop Uttam Nagar, New Delhi- 110059 and others	DGGI/INV/GST/3110/2022/Gr-C/11359 to 11365 ; 06.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
11	Lefin Infotech Pvt. Ltd.; C/o Bholanath Dey, Rameswarpalli, Bethuadahari, Jagadanandapur, Nadia, West Bengal -741126 and others	DGGI/INV/GST/3110/2022/Gr-C/11366 to 11372 ; 06.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
12	Kulpoon Business Solutions Private Limited; Ground Floor, B-8, Sector-92, Noida, Uttar Pradesh-201301 and others	DGGI/INV/GST/3110/2022/Gr-C/11373 to 11379 ; 06.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
13	MatamaalSolutio Private Limited; C/o Fayaz Ahmad Ganie, Mehjoor Nagar, Srinagar, Jammu& Kashmir-190015 and others	DGGI/INV/GST/3110/2022/Gr-C/11380 to 11386 ; 06.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
14	Baba Nanak Financial Services Limited ; Office No 201, 2nd Floor, Dada Techchand Bhuvan, Bakery Lane, Mumbai, Thane, Maharashtra-400603 and others	DGGI/INV/GST/3110/2022/Gr-C/11396 to 11402 ; 11.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
15	Agiledev Private Limited; Office No. 113 and 113/B,Plot-43,NBC Complex,Sector11,CBD Belapur, Navi Mumbai, Thane, Maharashtra-400614 and others	DGGI/INV/GST/3110/2022/Gr-C/11403 to 11411 ; 11.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Bitware Private Limited; Office No. 113 and113/B,Plot-43,NBC Complex,Sector11,CBD Belapur, Navi Mumbai, Thane, Maharashtra-400614 and others	DGGI/INV/GST/3110/2022/Gr-C/11403 to 11411 ; 11.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
16	Klazex Technologies Private Limited; Second Floor, 159/301/A, KP Towers, Arcot Road, Vadapalani, Chennai, Tamil Nadu-600026 and others	DGGI/INV/GST/3110/2022/Gr-C/11545 to 11551; 15.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
17	Leo Games Private Limited ; Basement, Old No. 150/8, New No. 2/9, CISIONS Complex, Montieth Road, Egmore, Chennai, Tamil Nadu- 600008 and others	DGGI/INV/GST/3110/2022/Gr-C11552 to 11558; 15.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	

18	Aasanvish Technology Private Limited ; ShopNo. 1, 15-88/2, Wadi-e- Huda, Pahadi Shareef Road, Hyderabad, Rangareddy, Telangana- 500005 and others	DGGI/INV/GST/3110/2022/Gr-C/11559 to 11565 ; 15.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
19	Esmaster E-Commerce Private Limited ; C/o Durgesh Nandani, Khasra No. 35, Mayavihar, Jamalpur Kalan, Haridwar, Uttarakhand-249404 and others	DGGI/INV/GST/3110/2022/Gr-C/11566 to 11572 ; 15.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
20	Frukzella Enterprises Private Limited ; B-15/9, Mahavir Chowk, Tilak Nagar,West Delhi,Delhi- 110018 and others	DGGI/INV/GST/3110/2022/Gr-C/11573 to 11581 ; 15.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Filfilly Tradex Private Limited; B-15/9, Mahavir Chowk, Tilak Nagar,WestDelhi,Delhi- 110018 and others	DGGI/INV/GST/3110/2022/Gr-C/11573 to 11581; 15.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Onery Tradex Private Limited; B-15/9, Mahavir Chowk, Tilak Nagar,West Delhi, Delhi- 110018 and others	DGGI/INV/GST/3110/2022/Gr-C/11573 to 11581 ; 15.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
21	Didatech Private Limited; First Floor, H-294, Plot 2A, Kehar Singh Estate, Saidulajab,Lane-2,Saket, South Delhi, Delhi- 110030 and others	DGGI/INV/GST/3110/2022/Gr-C/11582 to 11591 ; 16.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Spherisol Technology Private Limited; First Floor, H-294, Plot 2A, Kehar Singh Estate, Saidulajab,Lane-2,Saket, South Delhi, Delhi- 110030 and others	DGGI/INV/GST/3110/2022/Gr-C/11582 to 11591; 16.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
22	Lairee Trademart Pvt.Ltd.;B-19,A-2/42, Basement Gupta Palace, Rajouri Garden, Delhi- 110027 and others	DGGI/INV/GST/3110/2022/Gr-C/11592 to 11606 ; 16.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Rilino Trademart Private Limited; Ground Floor, Plot No. 110, Pocket-K, Sector-2, Bawana DSIDC City, Delhi-110039 and others	DGGI/INV/GST/3110/2022/Gr-C/11592 to 11606 ; 16.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Urrite Tradex Private Limited ; Ground Floor, WZ-63,ShopNo.1, Tagore Garden, Village Tatarpur, New Delhi- 110027 and others	DGGI/INV/GST/3110/2022/Gr-C/11592 to 11606 ; 16.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Sohmee Tradex Private Limited; Ground Floor, WZ-63,Shop No.1, Tagore Garden, Village Tatarpur, New Delhi- 110027 and others	DGGI/INV/GST/3110/2022/Gr-C/11592 to 11606; 16.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
23	Moppomobi Technologies Private Limited ; NA, D- 2,Gautam Buddha Nagar, Uttar Pradesh, 201301 and others	DGGI/INV/GST/3110/2022/Gr-C/11607 to 11612 ; 16.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	

24	Infonix Data Private Limited ; 1st Floor, No. 87, 4th Cross Street, Thirumalai Nagar, 1st Main Road Corner, Perungudi, Chennai, Kancheepuram,Tamil Nadu-600096 and others	DGGI/INV/GST/3110/2022/Gr-C/11782 to 11788 ; 26.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
25	Talenberry E-Commerce Pvt. Ltd.; Ground Floor, BH 333, Bhawrao Devras Colony, Sector-12, Pratap Vihar, Ghaziabad, Uttar Pradesh-201009 and others	DGGI/INV/GST/3110/2022/Gr-C/11789 to 11795 ; 26.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
26	Normetrics Business Solution Pvt. Ltd. ;Second floor, 66, Khasra No. 54/10, Jonapur, New Delhi,South Delhi,Delhi- 110047 and others	DGGI/INV/GST/3110/2022/Gr-C/11796 to 11804 ; 26.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Pioero Business Solution Private Limited; Second floor, 66, Khasra No. 54/10, Jonapur, New Delhi,South Delhi,Delhi- 110047 and others	DGGI/INV/GST/3110/2022/Gr-C/11796 to 11804 ; 26.09.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
27	LPD Ecommerce Private Limited ; 786, Desk No 11/1F,1st Floor,Nomads Properties Private Limited, 9th A Main Road, 1st Stage, Indiranagar, Bengaluru Urban,Karnataka-560038 and others	DGGI/INV/GST/3110/2022/Gr-C/11874 to 11880 ; 27.09.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	
28	Fox Digital Media Private Limited;2nd Floor,253- 254,Tower B-2, Spaze IT Park, Sohna Road, Gurugram, Haryana- 122001 and others	DGGI/INV/GST/3110/2022/Gr-C/11881 to 11887 ; 27.09.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	
29	Joymotion India Private Limited; First Floor Back Side, KH-27/1, Kapashera, Near Appu Ghar, Delhi, South West Delhi,Delhi-110037 and others	DGGI/INV/GST/3110/2022/Gr-C/12172 to 12178 ; 09.10.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	
30	Wildinfo Technology Private Limited; Rameswar Pally, Bethuadahari, Jagadanandapur, Nadia, West Bengal-741126 and others	DGGI/INV/GST/3110/2022/Gr-C/12165 to 12171; 09.10.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	
31	Greadax Business Solution Private Limited; BH-258, Sector-12, Pratap Vihar, Ghaziabad, UttarPradesh-201001 and others	DGGI/INV/GST/3110/2022/Gr-C12112 to 12132 ; 05.10.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	
	Mixsoft Business Solution Private Limited ; Room No 203, 2-A/3, Kundan Mansion, Asaf Ali Road, Central Delhi-110002 and others	DGGI/INV/GST/3110/2022/Gr-C12112 to 12132 ; 05.10.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	
	Obshine Business Solution Private Limited ; Ground Floor, H. No. 1/11393-B-1-C, Subhash Park, Shahdara, Delhi- 110032 and others	DGGI/INV/GST/3110/2022/Gr-C12112 to 12132 ; 05.10.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	
	Spinfluence Business Solutions Private Limited ; 98, Ahir Mohalla, Pole No. 272, Nangloi, West Delhi, Delhi-110041 and others	DGGI/INV/GST/3110/2022/Gr-C12112 to 12132 ; 05.10.2023 issued by the Additional Director DGGI, Delhi Zonal Unit, New Delhi	

32	TFG Technologies Private Limited; Level-4,Tower-A, Plot No. 70, 401 Res Cowork-04, Godrej Eternia, Industrial Area, Phase-1, Chandigarh-160002	DGGI/INV/GST/3110/2022/Gr-C12468 to 12474 ; 16.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
33	Dream Makers Technologies Private Limited; Cabin No. SF 203, H-213, Sector 63, Noida, Gautam Buddha Nagar, Uttar Pradesh-201301	DGGI/INV/GST/3110/2022/Gr-C12475 to 12481; 16.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
34	Ironfly ; First Floor, Plot No-WZ-39-B,KHNo- 177, Village Palam, Near Sector 25, Dwarka, New Delhi, South West Delhi, Delhi-110077 and others	DGGI/INV/GST/3110/2022/Gr-C/12523 to 12529; 20.10.2023 issued by the Deputy Director, DGGI, Delhi Zonal Unit, New Delhi	
35	Comdotpro Technology Private Limited ; Fourth Floor, 15, Pratap Nagar, Mayur Vihar Phase 1, New Delhi, South East Delhi,Delhi-110091 and others	DGGI/INV/GST/3110/2022/Gr-C/12743 to 12750; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
36	Aacelerate Fintech Private Limited; S/F, PlotNo.-B-244, Sector-7, Palam Extension, Dwarka, New Delhi-110045 and others	DGGI/INV/GST/3110/2022/Gr-C/12730 to 12742; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Boris Fintech Private Limited; Plot No.-B-244, Sector-7, Palam Extension, Dwarka, New Delhi-110045 and others	DGGI/INV/GST/3110/2022/Gr-C/12730 to 12742; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Januja Enterprise Private Limited;F-643-A,Palam Extension, Sector-7, Dwarka, New Delhi- 110077 and others	DGGI/INV/GST/3110/2022/Gr-C/12730 to 12742; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
37	Fun Game Tech Private Limited; No. 58, GM Arcade, 4th Floor, 5th Block Industrial Layout, JNC Road, Koramangala, Bengaluru Urban, Karnataka-560095 and others	DGGI/INV/GST/3110/2022/Gr-C/12773 to 12779 ; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
38	Pojun Network Technology Private Limited; C/o Shambhu Sharan Singh, Vill. Hanspura, Block-Haspura, Hanspura, Aurangabad, Bihar-824120	DGGI/INV/GST/3110/2022/Gr-C/12751 to 12764 ; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Saminfo Scientech Private Limited; Sonahathu, 96, Vill Bangali, Haspura, Aurangabad, Bihar-824115	DGGI/INV/GST/3110/2022/Gr-C/12751 to 12764 ; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
	Warix Infotech Private Limited; Bangali Bigha, 56, Haspura, Sonhathu Mandir, Aurangabad, Bihar-824115	DGGI/INV/GST/3110/2022/Gr-C/12751 to 12764 ; 27.10.2023 issued by the Additional Director, DGGI, Delhi Zonal Unit, New Delhi	
39	Shuijing Technology Private Limited ; Gurukripa School Ke Pass, No 01, Allahabad Road, Chitrakoot Dham, Chitrakoot, Uttar Pradesh- 210205 and others	DGGI/INV/GST/3110/2022/Gr-C/12516 to 12522 ; 20.10.2023 issued by the Sr. Intelligence Officer, DGGI, Delhi Zonal Unit, New Delhi	

40	Trendsbeat Technology Private Limited; 0, Tara Colony, Maheshwari Petrol Pump Ke Pichhe, Chomu, Jaipur, Rajasthan-303702 and others	DGGI/INV/GST/3110/2022/Gr-C/12509 to 12515 ; 20.10.2023 issued by the Sr. Intelligence Officer, DGGI, Delhi Zonal Unit, New Delhi	

[F. No. CBIC-20010/22/2024-GST]
(Raushan Kumar)
Under Secretary

Seeks to extend the due date for furnishing FORM GSTR-3B for the month of October, 2024 for registered persons whose principal place of business is in the State of Manipur

NOTIFICATION
No. 29/2024 – CENTRAL TAX

New Delhi, the 27th November, 2024

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of October, 2024 till the thirtieth day of November, 2024, for the registered persons whose principal place of business is in the State of Manipur and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall be deemed to have come into force with effect from the 20th day of November, 2024.

[F. No. CBIC-20001/9/2024-GST]
(Raushan Kumar)
Under Secretary

Seeks to extend the due date for furnishing FORM GSTR-3B for the month of October, 2024 for registered persons whose principal place of business is in the district of Murshidabad in the state of West Bengal.

NOTIFICATION
No. 30/2024 – CENTRAL TAX

New Delhi, the 10th December, 2024

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of

2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of October, 2024 till the eleventh day of December, 2024, for the registered persons whose principal place of business is in the district of Murshidabad in the state of West Bengal and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall be deemed to have come into force with effect from the 20th day of November, 2024.

[F. No. CBIC-20001/10/2024-GST]
(Raushan Kumar)
Under Secretary

[To be published in the Gazette of India, Extraordinary,
Part II, Section 3, Subsection(i)]
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

Notification No. 13/2020– Central Tax

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.

[F. No.20/06/03/2020-GST]
(Pramod Kumar)
Director, Government of India

F. No. GST/INV/Instructions/2023-24
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes and Customs)

New Delhi, the dated 30th March, 2024.

To

All Pr. Chief Commissioners/Chief Commissioners, CGST Zones
All Principal Director Generals/Director Generals under CBIC
All Pr. Commissioners/Commissioners, CX & CGST Commissionerates
Webmaster, CBIC

Madam/Sir,

Subject: Guidelines for CGST field formations in maintaining ease of doing business while engaging in investigation with regular taxpayers - reg.

The undersigned is directed to say that the matter of CGST field formations following a uniform procedure in undertaking enforcement activities, with or involving regular taxpayers, which incorporates aspects related to the ease of doing business, was considered by Board.

2. Keeping relevant aspects in view, the Board has desired that the following guidelines, henceforth, should be followed in the CGST Zones while engaging in investigation, subject to legal provisions or instructions issued on this behalf:

(a) Within the allocated jurisdiction of Commissionerate under notification No. 2/2017-Central Tax dated 19.06.2017, the (Pr.) Commissioner shall be responsible for developing and approving any intelligence, conducting search, and completing investigation in a case and the relevant subsequent action, including in the divisional formations, etc.

Any information or intelligence which pertains to another CGST field formation, that may have been generated /collected /received /recorded by such field formation (or even developed in the course of an investigation, including with respect to end-availer(s) of ITC), shall be forwarded by the (Pr.) Commissioner to the concerned CGST field formation or DGGI, as the case may be.

(b) Each investigation must be initiated only after the approval of the (Pr.) Commissioner, except in the following situations where the prior written approval of the zonal (Pr.) Chief Commissioner shall be required if investigation is to be initiated and action to be taken in a case falling under any of the following four categories, namely case involving –

i. matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time, whether in Central Excise or GST; or

ii. big industrial house and major multinational corporations; or

iii. sensitive matters or matters with national implications; or

iv. matters which are already before GST Council.

In all of above four categories of cases, the concerned CGST field formation should also collect details regarding the prevalent trade practices and nature of transactions carried out from the stakeholders. The implications / impact of such matter should be studied so as to have adequate justification for initiating investigation and taking action.

(c) The fact of initiation of inquiry, if any, already on same subject matter with respect to the same taxpayer/GSTIN by another investigating office or tax administration must be ascertained for purposes of obtaining approval to initiate investigation. The position must be placed before the authority who is to approve initiation of investigation.

(d) There may be a situation where it comes to the Commissionerate's notice that either the DGGI or the State GST department is also simultaneously undertaking record-based investigation of the same taxpayer on different subject matters. The (Pr.) Commissioner must engage in dialogue with the other investigating office(s) to

consider the feasibility of only one of the offices pursuing all these subject matters with respect to the taxpayer, and the other offices consolidating their material with that office. If this outcome is not feasible, the reasons therefor should be confirmed on file by such (Pr.) Commissioner.

(e) There may be the situation where the (Pr.) Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction, and the issue is relevant to some or all of that taxpayers' GSTINs registered (under the same PAN) in multiple jurisdictions. If the matter also falls in the charter of DGGI and is not such that DGGI avoids taking up (as it is more appropriately in the purview of return scrutiny or audit etc), then the (Pr.) Commissioner shall expeditiously make a self-contained reference to its zonal (Pr.) Chief Commissioner who shall request the Pr. DG, DGGI to take up the matter in accordance with DGGI guidelines.

(f) There may be the situation where the (Pr.) Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction, and the issue is relevant to other taxpayers' GSTINs registered (under multiple PANs) across various CGST jurisdictions. In this scenario, the (Pr.) Commissioner shall within 30 days of initiation of investigation take either of the following two actions with the approval of zonal (Pr.) Chief Commissioner –

i. If description of GSTINs or similar entity types involved (or likely to be involved) across various jurisdictions related to the issue or topic is available, the self-contained reference be shared with each concerned Zone or all the Zones.

ii. In other situations, Pr. DG DGGI shall be requested to issue suitable alert.

(g) The scenario may arise in a CGST Zone where an issue investigated by one of the (Pr.) Commissioners is based on an interpretation of CGST Act/ Rules, notifications, circulars etc, and it is in the direction of proposing non-payment or short payment of tax, however, the background is that the taxpayer(s) is/are following, or have followed, a prevalent trade practice based on particular interpretation on that issue in the sector/industry. This scenario results in more than one interpretation and likelihood of litigation, change in practice etc.

In such cases, it is desirable that the zonal (Pr.) Chief Commissioner make a selfcontained reference to the relevant policy wing of

the Board i.e. the GST Policy or TRU. The endeavor, to make such reference before concluding investigation, and as much in advance, as is feasible, of the earliest due date for issuing of show cause notice, may be useful in promoting uniformity or avoiding litigation if the matter, after being processed, is amongst those that also gets placed before the GST Council.

(h) In initiating investigation with respect to a listed company or PSU or Corporation or Govt Dept./agency or an Authority established by law, or seeking details (that are record-based and/or are reflected in statutory books of account or filings) from them, the practice to be adopted by the CGST field formation should be of initially addressing official letters (instead of summons) to the designated officer of such entity (detailing the reasons for investigation, and the legal provisions therefor) and requesting the submission of the relevant specified details in a reasonable time period which should be mentioned in the letter. Divergence from this practice at the initial stage must be backed by written reasons.

(i) In such a letter issued for seeking information/documents from regular taxpayer, the reference can be to inquiry “with respect to” or “in connection with” that entity. Further, the letter/summons should disclose the specific nature of the inquiry being initiated/ undertaken. The vague (or general) expressions such as that the officer is making inquiry in connection with “GST enquiry” or “evasion of GST” or “GST evasion” etc. must not be mentioned.

(j) Information available digitally/online on GST portal should not be called for under letter/summons from a regular taxpayer. Further, a letter or summons should not be used as a means to seek information filled in formats or proforma (specified by investigation).

(k) The summons in conduct of investigation must not convey requests outside the scope defined for a summons. In the case of GST, the scope of summons is in the wording of section 70 of CGST Act, 2017. Addressing letter/summons with context or content akin to a fishing inquiry is not acceptable.

(l) If a taxpayer has utilized ITC towards payment of GST on its outward supplies, it is not acceptable to seek via summons/letter aspects such as - ‘please clarify whether ITC availed and utilized was proper.”

(m) In issuing summons, the norm shall be of prior reasoned approval (of officer not below Dy/Asst. Commissioner level) of the content

of the summons to be printed by the summoning officer, including in terms of what is being sought and the time frame to be provided being reasonable for its compliance.

(n) Where, for strictly operational reasons, it is not possible to obtain such prior written permission, the approval by such an officer can be verbal, however this all must be confirmed in writing at the earliest opportunity.

(o) Before summoning any information or documents from a regular taxpayer, the relevancy and propriety of what is being sought must be recorded (on e-file), ensuring that it is holistic and result of preparation, and also so as not to have repeated issuance of summons or seeking piecemeal information.

(p) Scanned copy of a statement (recorded under summons) be uploaded in the same e-office file in which approval was obtained to issue summons. Outcome of search/inspection conducted, including panchnama (if any), be also so uploaded. The e-file should be submitted for information to Addl./Jt. Commissioner in not more than 4 working days from date of statement, completion of search/inspection.

(q1) An investigation initiated must reach the earliest conclusion which is not more than one year. It is not necessary to keep investigation pending till limitation in law approaches. Show cause notice should not be delayed after conclusion of investigation. The closure report consequent to the appropriate payment of government dues by the person concerned should also not be delayed and should have a brief self- explanatory narration of the issue and the period involved. Expeditious actions without delay at these stages are part of preventive vigilance ensuring that no room remains for malpractices. (q2) Conclusion of investigation may also take the form of recording that investigation is not being pursued further as nothing objectionable was found in terms of matter investigated. Grievance redressal

3. The (Pr.) Commissioner is to be proactive in a manner that prevents complaints from arising in respect of the investigation and related work being undertaken within the jurisdiction.

The Addl./Jt. Commissioner in-charge of investigation is the Grievance Officer whom taxpayers may approach (through letter, email or by

appointment) with grievance, if any, related to an ongoing investigation, for appropriate redress. In case the reasonable grievance persists, the (Pr.) Commissioner may consider meeting, by appointment, the taxpayer.

Yours faithfully,

(Vijay Mohan Jain)
Commissioner,
GST-Investigation, CBIC

F. No. GST/INV/Instructions/2023-24
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes and Customs)

New Delhi, Dated 14th August, 2024.

To,

All Pr. Chief Commissioners/Chief Commissioners, CGST Zones/ CGST & Customs Zones, All Principal Directors General/Directors General under CBIC, All Pr. Commissioners/Commissioners, CX & CGST (incl. Audit)

Madam/Sir,

Subject: Applying para 2(g) of Instruction No. 01/2023-24-GST (Inv.) dt. 30-3-2024 in Audit matters- reg.

The undersigned is directed to say that the Board's Instruction No. 01/2023-24-GST (Inv.) dated 30-03-2024 has been issued providing guidelines for maintaining ease of doing business while engaging in investigation with regular taxpayers. The para 2(g) of said Instruction is-

> "The scenario may arise in a CGST Zone where an issue investigated by one of the (Pr.) Commissioners is based on an interpretation of CGST Act/ Rules, notifications, circulars etc, and it is in the direction of proposing non-payment or short payment of tax, however, the background is that the taxpayer(s) is/are following, or have followed, a prevalent trade practice based on particular interpretation on that issue in the sector/industry. This scenario results in more than one interpretation and likelihood of litigation, change in practice etc.

In such cases, it is desirable that the zonal (Pr.) Chief Commissioner make a self-contained reference to the relevant policy wing of the Board i.e. the GST Policy or TRU. The endeavor, to make such reference before concluding investigation, and as much in advance, as is feasible, of the earliest due date for issuing of show cause notice, may be useful in promoting uniformity or avoiding litigation if the matter, after being processed, is amongst those that also gets placed before the GST Council."

2. The Board desires that during the process of audit, wherever the relevant CGST Audit (Pr.) Commissioner comes across the scenario described above, the Zonal (Pr.) Chief Commissioner should follow the procedure and endeavor prescribed by Board in para 2(g) of above Instruction. This applies also to on-going audit proceedings.

Hindi version to follow.

Yours faithfully,

(Vijay Mohan Jain)
Commissioner, GST-Investigation, CBIC

F. No. CBIC-20016/9/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 30th May 2024

To,

All the Principal Chief Commissioners / Chief Commissioners / Principal Commissioners/Commissioners of Central Tax
All the Principal Directors General/ Directors General of Central Tax

Madam/Sir,

Subject: Guidelines for initiation of recovery proceedings before three months from the date of service of demand order- regarding

Attention is invited to sub-section (1) of section 79 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST

Act'), which provides that where any amount payable by a person to the Government under any of the provisions of CGST Act or Rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the modes specified in the said sub-section. Attention is further invited to Section 78 of the CGST Act, which provides for the time for initiation of such recovery proceeding. These sections are reproduced below for ease of reference:

"Section 78: Initiation of recovery proceedings.-

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him."

"Section 79: Recovery of tax.-

"1. Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:-

1.2 On reading the above sections, it becomes clear that the general rule for initiating recovery proceedings is that, where any amount payable by a taxable person in pursuance of an order passed under the CGST Act is not paid within a period of three months from the date of service of such order, recovery proceedings shall be initiated by the proper officer only after the expiry of the said period of three months.

1.3 Only in exceptional cases, where it is necessary in the interest of revenue, the proper officer may require the said taxable person to pay the said amount within a period less than the period of three months from the date of service of the order, as may be specified by him, after recording the reasons for doing so in writing. If the said amount is not paid by the said taxable person within the period specified by the proper officer under the proviso to section 78 of

CGST Act or even after the expiry of three months from the date of the service of the order, the same can then be recovered by the proper officer as per provisions of sub-section (1) of section 79 of CGST Act.

2. It has been brought to the notice of the Board that some of the field formations are initiating recovery before the specified period of three months from the date of service of the order, even in the cases where the taxable person has not been specifically required by the proper officer, for reasons to be recorded in writing, for payment of such amount within a period less than the period of three months from the date of service of the order. Therefore, in order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 of the CGST Act, hereby issues the following instructions to be followed in cases where it is necessary, in the interest of revenue, to initiate recovery before the period of three months from the date of service of the order.

3.1 As per Circular No. 3/3/2017- GST dated the 5th July 2017, the proper officer for recovery under Section 79 of the CGST Act is the jurisdictional Deputy or Assistant Commissioner of Central Tax. It is also mentioned that the proper officer under proviso to Section 78 is the jurisdictional Principal Commissioner/ Commissioner of Central Tax.

3.2 Therefore, while recovery proceedings under sub-section (1) of section 79 of CGST Act are required to be undertaken by the jurisdictional Deputy or Assistant Commissioner of Central Tax, however, in the cases, where it is felt that recovery proceedings in respect of an amount payable by a taxable person in pursuance of an order need to be initiated in the interest of revenue before completion of three months from the date of service of the order, the matter needs to be placed by the jurisdictional Deputy or Assistant Commissioner of Central Tax before the jurisdictional Principal Commissioner/ Commissioner of Central Tax, along with the reasons/ justification for such an action. The jurisdictional Principal Commissioner/ Commissioner of Central Tax shall examine the reasons/justification given by the jurisdictional Deputy or Assistant Commissioner at the earliest and if he is satisfied that it is expedient in the interest of revenue to ask the said taxable person to pay the said amount before completion of three months from the date of service of the order, he must record in writing, the reasons as to why the concerned taxable person is required to make payment of such amount within such period, less than a period of three months, as may be specified by him. After recording such reasons in writing, he may issue directions to the concerned taxable person to pay the said amount within

the period specified by him in the said directions. Copy of such directions must also be sent to the jurisdictional Deputy or Assistant Commissioner of Central Tax for information.

3.3 It is further mentioned that jurisdictional Principal Commissioner/ Commissioner of Central Tax should provide the specific reason(s) for asking the taxable person for early payment of the said amount, clearly outlining the circumstances prompting such early action. Such reasons could include high risk to revenue involved in waiting till the completion of the three month period due to apprehension that the concerned taxable person may close the business operations in near future, or due to possibility of default by the taxable person due to his declining financial conditions or impending insolvency, or likely initiation of proceedings under Insolvency and Bankruptcy Act, etc. Reasons to believe for the apprehension of risk to revenue should be based on credible evidence, which may be kept on record to the extent possible. While issuing any such directions, the proper officer must duly consider the financial health, status of business operations, infrastructure, and credibility of the taxable person, and strike a balance between the interest of the revenue and ease of doing business. It is implicit that such directions for early payment of the confirmed demand should not be issued in a mechanical manner, and must be issued only in cases where interest of revenue is required to be safeguarded due to specific apprehension/ circumstances in the said case.

3.4 Wherever such directions are issued by the jurisdictional Principal Commissioner/ Commissioner of Central Tax as per powers conferred under proviso to section 78 of CGST Act, and where the taxable person fails to make payment of the said amount within the period specified in the said directions, the jurisdictional Deputy or Assistant Commissioner of Central Tax shall proceed to recover the said amount as per the procedure specified in sub- section (1) of section 79 of CGST Act.

4. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

(Sanjay Mangal)
Principal Commissioner, GST

Clarifications regarding applicability of GST on certain services

Circular No.201/13/2023-GST

F.No.190354/133/2023-TRU
Dated the 1st August, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services – reg.

Representations have been received seeking clarifications on the following issues

1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism;

2. Whether supply of food or beverages in cinema hall is taxable as restaurant service.

The above issues have been examined by GST Council in the 50th meeting held on 11th July, 2023. The issue -wise clarifications as recommended by the Council are given below:

Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:

2. Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism (RCM) or not.

2.1 Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

2.2 It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

Whether supply of food or beverages in cinema hall is taxable as restaurant service:

3. References have been received requesting for clarification whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

3.1 As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017,

> "Restaurant Service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."

3.2 Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

3.3 The cinema operator may run these refreshment or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

3.4 It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

a) the food or beverages are supplied by way of or as part of a service, and

b) supplied independent of the cinema exhibition service.

3.5 It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

4. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Rajeev Ranjan)
Under Secretary, TRU

Clarification relating to export of services – sub-clause (iv) of the Section 2 (6) of the IGST Act 2017

Circular No. 202/14/2023-GST

F.No. 20/06/22/2023-GST-CBEC
New Delhi, the 27th October, 2023

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam / Sir,

Subject: Clarification relating to export of services – sub-clause (iv) of the Section 2 (6) of the IGST Act 2017–reg.

Various representations have been received requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of clause (6) of section 2 of the Integrated Goods & Services Tax Act, 2017 (herein after referred to as the 'IGST Act").

2. The issue has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the 'CGST Act"), hereby clarifies the issue as under:

3. Relevant legal provisions:

3.1 Export of services has been defined under clause (6) of section 2 of IGST Act. As per the said definition, any supply of services needs to fulfill five conditions for it to qualify as export of services. Clause (6) of section 2 of the IGST Act is reproduced below for reference:

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

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

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

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

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

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

3.2 One of the conditions mentioned in sub-clause (iv) of Section 2(6) of the IGST Act is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

3.3 Reference is invited to RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 regarding International Trade Settlement in Indian Rupees (INR), vide which it has been clarified that to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR. Before putting in place this mechanism, AD banks shall require prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai. Para 3 of the Circular is reproduced below:

"3. In terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, AD banks in India have been permitted to open Rupee Vostro Accounts. Accordingly, for settlement of

trade transactions with any country, AD bank in India may open Special Rupee Vostro Accounts of correspondent bank/s of the partner trading country. In order to allow settlement of international trade transactions through this arrangement, it has been decided that:

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.

(b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country."

3.4 Reference is also invited to Para 2.52 (d) of chapter related to General Provisions Regarding Imports and Exports of the Foreign Trade Policy (FTP) 2023, which has come into force from 01.04.2023, which specifies that:

Para 2.52 (d) Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

(i) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier

(ii) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

3.5 On perusal of the above, it can be stated that the condition(s) of sub-clause (iv) of Section 2(6) of the IGST Act, 2017, can be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

4. Therefore, it is clarified that when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law .

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner(GST)

Clarification regarding determination of place of supply in various cases

Circular No.203/15/2023-GST

F. No. 20/06/22/2023-GST-CBEC
New Delhi, dated the 27th October, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification regarding determination of place of supply in various cases-reg.

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to determination of place of supply in case of –

i. supply of service of transportation of goods, including through mail and courier;

ii. supply of services in respect of advertising sector; and

iii. supply of the "co-location services".

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
A. Place of supply in case of supply of service of transportation of goods, including through mail and courier		
1.	Sub-section (9) of section 13 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act.	1.1 Place of supply of services where location of supplier or location of recipient is outside India is determined as per section 13 of the IGST Act. Sub-of Finance Act, 2023 which will come into effect from 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act. 1.2 Further, it is also mentioned that the place of supply in case of service of transportation of goods by mail or courier was not covered under the provisions of sub-section (9) of section 13 before the said sub-section was amended/ omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such

		services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.
B. Place of supply in case of supply of services in respect of advertising sector		
2.	Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below: (i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case? (ii) There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?	2.1 It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below: 2.2 Place of supply in Case (i): The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, 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 or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located. 2.3 Place of supply in Case (ii): In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing

		visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.
C. Place of supply in case of supply of the "co-location services"		
3.	Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure. A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers. In this respect, various doubts have been raised as to i. whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or ii. whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power	3.1 It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers. 3.2 In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service. 3.3 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of

	supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.	Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.

3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST

Circular No. 204/16/2023-GST

F. No. 20/06/22/2023-GST-CBEC
New Delhi, Dated the 27th October, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST-reg.

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to taxability of activity of providing personal bank guarantee by Directors to banks for securing credit facilities for the company. Similarly, clarifications are being sought with respect to taxability and valuation of the activity of providing corporate guarantee by a related person to banks/financial institutions for another

related person, as well as by a holding company in order to secure credit facilities for its subsidiary company.

In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred bysection 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.	As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration. Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply. *RBI has provided guidelines for obtaining personal guarantee of promoters, directors and other managerial personnel of the borrowing concerns vide Para 2.2.9 of its Circular No. RBI/2021-22/121 dated 9th November, 2021, which is reproduced below:* *"2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private,*

		only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations: *……...* *C. Worth of the guarantors, payment of guarantee commission, etc* *Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate.* *……..”* Accordingly, as per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of

		such supply/transaction having any open market value. **Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.** There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.
2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration. Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules. Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No.

		52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not. It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

Difficulties, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52ndmeeting held on 7th October, 2023.

Circular No. 205/17/2023-GST

F. No. CBIC-190354/195/2023-TO(TRU-II)

North Block, New Delhi, Date: 31st October, 2023

To,

Principal Chief Commissioners/ Principal Directors General,
Chief Commissioners/ Directors General,
Principal Commissioners/ Commissioners of Central Excise & Central Tax

Madam/ Sir,

Subject: Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52ndmeeting held on 7th October, 2023 –reg.

The GST Council in its 50th meeting had recommended reduction of GST rate to 5% on imitation zari thread or yarn known by any name in trade parlance, following which Sl. No. 218AA had been inserted in Schedule I of notification no. 1/2017- Central Tax (Rate) dated 28.6.2017.

2. Doubts have been raised whether metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread is covered under Sl No. 218AA of Schedule I covering imitation zari thread or yarn, and attracting 5% GST, or under Sl No. 137 of Schedule II covering other metallised yarn attracting 12% GST. As per HS Explanatory Notes, the heading 5605 covers – (1) yarn consisting of any textile material (including monofilament , strip and the like and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present (2) yarn of any textile material (including monofilament , strip and the like and paper yarn) covered with metal by any other process including yarn covered with metal by electro-deposition. The heading also covers products consisting of a core of metal foil (generally of aluminum) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film.

3. In light of the above, the GST Council has recommended to clarify that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered by Sl No. 218AA of Schedule I attracting 5% GST. The GST Council has also recommended that no refund will be permitted on polyester film (metallised)/plastic film on account of inversion of tax rate. Requisite changes have been made in notification no. 5/2017-Central Tax (Rate) vide Notification no 20/2023-Central Tax (Rate) dated 19.10.2023.

4 Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
Dibyalok
Technical Officer , TRU

Clarifications regarding applicability of GST on certain services.

Circular No. 206/18/2023-GST
F. No. CBIC-190354/195/2023-TO (TRU-II)-CBEC
North Block, New Delhi Dated the 31st October, 2023

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services – reg.

Based on the recommendations of the GST Council in its 52nd meeting held on 7th October, 2023, at New Delhi, clarification, with reference to GST levy, related to the following issues are being issued through this circular.

i. Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.

ii. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

iii. Whether job work for processing of "Barley" into "Malted Barley" attracts GST @ 5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption".

iv. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

v. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 percent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

2. Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.

2.1 Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

2.2 Same line of business as stated in the notification No. 11/2017-Central Tax (Rate) means *"service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle".*

2.3 It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

3. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

3.1 Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.

3.2 It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

3.3 However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

4. Whether job work for processing of "Barley" into "Malted Barley" attracts GST @ 5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption".

4.1 References have been received to clarify whether services by way of job work for conversion of barley into malt attracts GST at 5% prescribed

for “job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff” or at the rate of 18% prescribed for “services by way of job work in relation to manufacture of alcoholic liquor for human consumption”.

4.2 Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

4.3 It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers “job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff” irrespective of the end use of that malt and attracts 5% GST.

5. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

5.1 DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

5.2 These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

5.3 Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

6. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are

eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

6.1 Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.

6.2 Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

6.3 Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

6.4 Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

7. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Rajeev Ranjan)
Under Secretary, TRU

Reduction of Government Litigation – fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court

Circular No. 207/1/2024-GST

F. No. CBIC-20001/4/2024-GST
North Block, New Delhi, Dated the 26th June 2024

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /Commissioners of Central Tax (All)
The Principal Directors General/ Directors General of Central Tax (All)

Madam/Sir,

Subject: Reduction of Government Litigation – fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court - reg.

Reference is invited to the National Litigation Policy which was conceived with the aim of optimizing the utilization of judicial resources and expediting the resolution of pending cases. It underscores the importance of prudent litigation practices by establishing thresholds for filing appeals in Revenue matters. Specifically, the Policy mandates that appeals should not be pursued when the amount involved is below a specified monetary limit set by Revenue authorities. Furthermore, it discourages filing appeals in cases where established precedents from Tribunals and High Courts have settled the matter and have not been contested in the Supreme Court.

1.1 Section 120 of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "the CGST Act") provides for power to the the Central Board of Indirect Taxes & Customs (hereinafter referred to as "the Board") for fixing the monetary limits for filing of appeal or application by the tax authorities as below:

"120. Appeal not to be filed in certain cases. —

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub- section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).”

2. Accordingly, in exercise of the powers conferred by Section 120 of the CGST Act read with section 168 of the CGST Act, the Board, on the recommendations of the GST Council, fixes the following monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of CGST Act, subject to the exclusions mentioned in para 4 below:

Appellate Forum	Monetary Limit (amount involved in Rs.)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

3. While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

i. Where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal.

ii. Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.

iii. Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.

iv. Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.

v. Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be

considered for applying the monetary limit for filing appeal.

vi. Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.

vii. Monetary limit shall be applied on the disputed amount of tax/ interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filedin a case.

viii. In a composite order which disposes more than one appeal/ demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

4. **EXCLUSIONS**

Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

i. Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be *ultra vires* to the Constitution of India; or

ii. Where any Rules or regulations made under CGST Act or SGST/ UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be *ultra vires* the parent Act; or

iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be *ultra vires* of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Actor the Rules made thereunder*;*or

iv. Where the matter is related to -

   a. Valuation of goods or services; or
   b. Classification of goods or services; or
   c. Refunds; or
   d. Place of Supply; or
   e. Any other issue,

which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/ instruction etc; or

v. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or

vi. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

5. It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.

6. Attention is drawn to sub-sections (2), (3) & (4) of section 120 of the CGST Act, which provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that "*even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board."*

6.1 Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

6.2 Further, it is re-iterated that in such cases where appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline.

6.3 Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make

every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of section 120 of the CGST Act, 2017 as reproduced in para 1.1 above.

7. The above may be brought to the notice of all concerned.

8. Difficulties, if any, in implementation of thiscircular may be informed to the Board (gst-cbec@gov.in).

9. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities.

Circular No.-208/2/2024-GST

F.No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities as per Notification No. 04/2024 - Central Tax dated 05.01.2024– reg.

Based on the recommendation of 50th GST Council meeting, a special procedure was notified vide Notification No. 30/2023-Central Tax dated 31.07.2023 to be followed by the registered persons engaged in manufacturing of goods mentioned in the schedule to the said

notification. The said notification has been rescinded vide Notification No. 03/2024-Central Tax dated 05.01.2024 and a revised special procedure has been notified vide Notification No. 04/2024- Central Tax dated 05.01.2024.

2. Representations have been received from various trade associations seeking clarity on some issues pertaining to the said special procedure. To ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the "CGST Act"), hereby clarifies various issues as under:

S.No.	Issued Raised by Trade	Clarification on the issue
1.	Non availability of make, model number and machine number - The trade bodies have raised the issue that some of the manufacturers of the said goods are using very old packing machines since decades including second hand machines. Therefore, the details of make, model number and machine number of these machines are not readily available.	It is clarified that in Table 6 of FORM GST SRM-I as notified vide Notification No. 04/2024-CT dated 05.01.2024, make and model number are optional. However, where make of the machine is not available, the year of purchase of the machine may be declared as the make number. It is also clarified that the machine number is a mandatory field in Table 6 of FORM GST SRM-I to be filled up by the manufacturer. If the machine number is not available either on the machine or as per the available documents/ records, then the manufacturer may assign any numeric number to the said machine and provide the details of the same in Table 6 of FORM GST SRM-I.
2.	In cases where the electricity consumption rating of the packing machine is not available in the specifications of the said machine or in the documents/record of the same, then how to declare the electricity consumption rating of the said machine in Table 6 of FORM GST SRM-I?	It is clarified that electricity consumption rating of the packing machine is to be declared in Table 6 of FORM GST SRM-I on the basis of details of the same as available either on the machine or in the documents/record of the said machine. However, if the same is not available either on the machine or in the documents/ records, then the manufacturer may get such electricity consumption per hour of the said machine calculated through a Chartered Engineer and get the same certified by the said Chartered Engineer in the format prescribed in FORM GST SRM-III, as notified vide Notification No. 04/2024-CT dated 05.01.2024. The said electricity consumption rating can be declared in Table 6 of FORM GST SRM-I accordingly. The copy of such certificate of the Chartered Engineer needs to be uploaded along with FORM GST SRM-I. The details of the documents so uploaded

		needs to be provided in Table 10 of the said form. It is also clarified that in cases where there are certificates of Chartered Engineer for more than one machine, then all such certificates may be uploaded in a single PDF file.
3.	Which value has to be reported in Column 8 of Table 9 of FORM GST SRM-II in case of goods having no MRP, for example, goods manufactured for export market?	In cases where there is no MRP of the package, then the sale price of the goods so manufactured shall be entered in Column 8 of Table 9 of FORM GST SRM-II as notified vide Notification No. 04/2024-CT dated 05.01.2024.
4.	What should be the qualification and eligibility of the Chartered Engineer for providing Chartered Engineer certificate under the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024?	It is clarified that a Practicing Chartered Engineer having a certificate of practice from the Institute of Engineers India (IEI) is qualified to provide Chartered Engineer certificate under the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024.
5.	Whether the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is applicable to the manufacturing units located in Special Economic Zone (SEZ)?	It is clarified that the special procedure as notified vide Notification No. 04/2024-CT dated 05.01.2024 is not applicable to the manufacturing units located in Special Economic Zone.
6.	Whether the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is applicable to the manual processes using electric operated heat sealer and seamer?	It is clarified that the said special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is not applicable in respect of manual seamer/ sealer being used for packing operations. Further, it is also clarified that the said special procedure is not applicable in respect of manual packing operations such as those in cases of post-harvest packing of tobacco leaves.
7.	In cases where multiple machines are required for filling, capping and packing of containers, the serial number of which machine is required to be declared in Table 6 of FORM GST SRM-I?	It is clarified that in a manufacturing process there may be different machines being used such as one for filling of packages, another for putting seal on the packages and another for final packing. The detail of that machine is required to be reported in Table 6 of FORM GST SRM- I which is being used for final packing of the packages of the specified goods.
8.	In case of job work or contract manufacturing, which person shall be required to comply with the special procedure as notified vide Notification No. 04/2024-CT dated 05.01.2024?	It is clarified that the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 shall be applicable to all persons involved in manufacturing process including a job worker / contract manufacturer. However, if the job worker/ contract manufacturer is unregistered, then the liability to comply with the said special procedure will be of the concerned principal manufacturer.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Pr. Commissioner (GST)

Clarification on the provisions of clause (ca) of Section 10(1) of the Integrated Goods and Service Tax Act, 2017 relating to place of supply

Circular No.209/3/2024-GST

F.No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) Madam/Sir,

Subject: Clarification on the provisions of clause (ca) of Section 10(1) of the Integrated Goods and Service Tax Act, 2017 relating to place of supply of goods to unregistered persons– Reg.

Vide Notification 02/2023-Integrated Tax, dated 29th September, 2023, the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2023 (31 of 2023) came into force with effect from 01.10.2023.

2. Clause (ca) has been inserted in Section 10(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") with effect from 01.10.2023. The same is reproduced as under:

> "(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Explanation.—For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;"

2.1 The said provision has been inserted as a non-obstante provision overriding the provisions under Section 10(1)(a) or 10(1)(c) of IGST Act. The clause (ca) provides that where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. An explanation has also been added to the said clause to clarify that recording the name of the State of the said person shall be deemed to be the recording of the address of the said person.

3. Reference has been received from trade and industry seeking clarification regarding the place of supply in terms of newly added clause (ca) of section 10(1) of the IGST Act, in case of supply of goods made to an unregistered person where billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms.

4. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 hereby clarifies the issues as under:

S.No.	Issue	Clarification
Place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods.		
1.	Mr. A (unregistered person) located in X State places an order on an e- commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X state. In such a scenario, what would be the place of supply of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?	As per the provisions of clause (ca) of sub-section (1) of section 10 of IGST Act, where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. Further, as per Explanation to the said clause, recording the name of the State of the said unregistered person on the invoice shall be deemed to be the recording of the address of the said person. Accordingly, it is clarified that in such cases involving supply of goods to an unregistered person, where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the place of supply of goods in accordance with the provisions of clause (ca) of sub-section (1) of section 10 of IGST Act, shall be the address of delivery of goods recorded on the invoice i.e. State Y in

		the present case where the delivery address is located. Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit

Circular No.210/4/2024-GST

F. No. CBIC- 20001/4/2024-GST
North Block, New Delhi, Dated the 26th June, 2024

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit – Reg.

As per S.No. 4 of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business,is to be treated as supply even if made without consideration.

2. Representations have been received from trade and industry stating that demands are being raised by some of the field formations against the registered persons seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India,

by considering the said activities as import of services by the registered person in India, based on an expansive interpretation of the deeming fiction in S.No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India. It has been represented that the same treatment, which is being given to domestic related parties/ distinct persons as per clarification provided by Circular No. 199/11/2023-GST dated 17.07.2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

1.1 In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

1.2 Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules') is reproduced as below:

"Rule 28.Value of supply of goods or services or both between distinct or related persons, other than through an agent. –

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

***Provided** that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

***Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services**.*

…"

1.3 As per second proviso to rule 28(1) of CGST Rules, in cases involving supply of goods or services or both between the **distinct** or **related persons** where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the said goods or services.

1.4 It may be noted that vide Circular No. 199/11/2023-GST dated 17.07.2023, clarification has been issued regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.It has been clarified in the said circular that as per the second proviso to rule 28(1) of CGST Rules, in respect of supply of services by Head Office(HO) to Branch Offices(BO) of an organisation, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. It has also been clarified vide the said circular that in cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

1.5 The second proviso to Rule 28 (1) of CGST Rules, is applicable in all the cases involving supply of goods or services or both between the **distinct persons** as well as the **related persons, in cases where full ITC is available to the recipient.** Accordingly, it is evident that the clarification which has been issued vide Circular No. 199/11/2023-GST dated 17.07.2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons.

1.6 In case of import of services by a registered person in India from a r**elated person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism.** In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

1.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is availableto the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related

domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on time limit under Section 16(4) of CGST Act, 2017 in respect of RCM supplies received from unregistered persons.

Circular No. 211/5/2024-GST

F. No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) Madam/Sir,

Subject: Clarification on time limit under Section 16(4) of CGST Act, 2017 in respect of RCM supplies received from unregistered persons – reg.

Representations have been received from trade and industry seeking clarity on the applicability of time limit specified under section 16(4) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") for the purpose of availment of input tax credit (ITC)by the recipient on the tax paid by him under reverse charge mechanism (RCM) in respect of supplies received from unregistered persons. It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However,

later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid.

1.2 It has been represented that some of the field formations are taking the view that in such cases, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received. On the other hand, industry has represented that as the invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of CGST Act, the relevant year of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC should be available on the said invoice under section 16(4) of CGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation.

2. The matter has 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 the issue as follows.

2.1 As per section 16(2)(a) of CGST Act, 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 he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

2.2 Rule 36(1)(b) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) prescribes that input tax credit shall be availed by a registered person *inter alia* on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax.

2.3 Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly,

where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.

2.4 Section 16(4) of CGST Act, as amended vide the Finance Act, 2022, deals with time limit to avail ITC, and is reproduced below-

> *"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 thirtieth day of November following the end of financial year to which such invoice or debit note pertains*** *or furnishing of the relevant annual return, whichever is earlier."*

Section 16(4)of CGST Act, before the said amendment vide the Finance Act, 2022, provided as follows:

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

2.5 It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains. As discussed in Para 2.3 above, in case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same in cash under RCM. Further, as discussed in Para 2.1 above, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

2.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

2.7 Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers

Circular No.-212/6/2024-GST

F.No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers -reg.

In cases where the discounts are offered by the suppliers through tax credit notes, after the supply has been effected, the said discount is not to be included in the taxable value only if the condition of clause (b)(ii) of sub-section (3) of section 15 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), for reversal of the input tax credit attributable to the said discount by the recipient, is satisfied. Representations have been received from the trade and the field formations mentioning that there is presently no facility available to the supplier as well as the tax officers on the common portal to verify whether the input tax credit attributable to the said discount has been reversed by the recipient or not. Request has been made to provide a suitable mechanism for enabling the suppliers as well as tax officers to verify fulfilment of the condition of section 15(3)(b)(ii) of the CGST Act regarding proportionate reversal of input tax credit by the recipients in respect of such discounts given by the supplier by issuing tax credit notes after the supply has been effected.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

2.1 Section 15 of the CGST Act provides for value of taxable supply of goods or services or both. Sub-section (3) of the said section provides that the value of supply shall not include discount given by the supplier, subject to certain conditions. As per clause (b) of the said sub-section, any discount which is given after the supply has been effected shall not be included in the value of the supply, only if it satisfies the following conditions:

i. Such discount is established in terms of an agreement entered into at or before the time of such supply;

ii. Such discount must be specifically linked to the relevant invoices

iii. Input Tax Credit attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient.

2.2 Accordingly, wherever any discount is offered by the supplier to the recipient, by issuance of a tax credit note as per section 34 of the CGST Act, after the supply has been effected, the said discount can be excluded from the value of taxable supply only if the conditions of clause (b) of sub-section (3) of section 15 of the CGST Act are fulfilled. Such conditions inter alia includes the requirement of reversal of input tax credit by the recipient attributable to the said discount.

2.3 However, there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of input tax credit by the recipient.

2.4 In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier.

2.5 The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC-03/ return / any other relevant document through which such reversal of ITC has been made by the recipient.

2.6 Such certificate issued by CA or CMA shall contain UDIN (Unique Document Identification Number). UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx.

2.7 In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned in Para 2.5 above.

2.8 Such certificates issued by the CA/CMA or the undertakings/ certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. The supplier shall produce such certificates/undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc. Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST

Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and provide such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipients of supply, as the case may be, to the concerned investigating/audit/adjudicating authority as evidence of requisite reversal of input tax credit by his recipients.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Seeking clarity on taxability of re-imbursement of securities/shares as SOP/ESPP/RSU provided by a company to its employees.

CircuINo.213/07/2024-GST

F. No. CBIC-20001/4/2024-GST
North Delhi, New Delhi Dated the 26th June 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company - reg.

Representations have been received from the trade and field formations seeking clarification regarding the taxability of Employee Stock Option (ESOP)/Employee Stock Purchase Plan (ESPP)/ Restricted Stock Unit (RSU) provided by a company to its employees.

1.1 It has been represented that some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per

terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company, and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.

1.2 Doubts are being raised regarding taxability of such a transaction under GST, i.e. whether such transfer of shares/ securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imbursement of the cost of such shares/ securities by the Indian subsidiary company to the foreign holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under.

4. The companies are providing option of allotment of securities/ shares to their employees as a means of incentivization and the same is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee. ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance.

4.1 A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- The domestic subsidiary company gives option/ facility of ESOP/ ESPP/RSU to its employees as part of compensation package as per terms of employment.

- The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest.
- The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company.
- The foreign holding company transfers the shares directly to the employees of the subsidiary company.
- The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard.
- The employees hold the shares and may sell them at a later date, if they so choose.

4.2 The foreign holding company issues securities/shares as ESOP/ SPP/RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, Securities under GST Law are considered neither goods nor services in terms of definition of "goods" under clause (52) of section 2 of CGST Act and in terms of definition of "services" under clause (102) of the said section. Further, securities include 'shares' as per definition of "securities" under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares.

4.3 Further, the companies offer ESOP/ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. The ESOP/ESPP/ RSU is a part of remuneration of the employee by the employer as per terms of employment. As per Entry 1 of Schedule III of the CGST Act, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company.

4.4 The foreign holding company directly transfers the shares/ securities to the employees of the domestic subsidiary company on the

request of the said domestic subsidiary company. Reimbursement of such securities/ shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission. Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act.

4.5 However, if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the latter. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company.

4.6 Accordingly, it is clarified that no supply of service appears to be taking place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/ shares to the foreign holding company on cost-to-cost basis. However, in cases where an additional amount over and above the cost of securities/ shares is charged by the foreign holding company from the domestic subsidiary company, by whatever name called, GST would be leviable on such additional amount charged as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.

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.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on the requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value

Circular No.-214/8/2024-GST

F.No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on the requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value-reg.

Representations have been received from the trade and field formations seeking clarification on the issue as to whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") applicable for life insurance business, will be treated as pertaining to an exempt supply/ non-taxable supply and whether the input tax credit availed in respect of such amount shall be required to be reversed or not.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules applicable for life insurance business, shall be treated as pertaining to a non-taxable supply/ exempt supply for the purpose of reversal of Input tax credit as per section 17(1) of CGST Act read with Rule 42 & 43 of CGST Rules.	'Life insurance business' has been defined in Section 2(11) of the Insurance Act, 1938 as below: "2(11) life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include--

		(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance, (b) the granting of annuities upon human life ; and (c) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons ; **Explanation.** -- For the removal of doubts, it is hereby declared that life insurance business shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section. 2. Life insurance companies are providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured. A number of life insurance companies are providing policies which may consist of a component of investment in addition to the component for the risk cover of the life insurance and accordingly, in such cases, the premium charged also includes the component which is allocated for investment or saving on behalf of the policy holder. As per definition of 'Life insurance business' provided in Section 2(11) of the Insurance Act, 1938, life insurance business includes any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer. Accordingly, such life insurance policies, which also include a component of investment along with the component of risk cover for life insurance, are also covered under life insurance business. 2.1 It is mentioned that value of supply of services in relation to life insurance business is to be determined as per provisions of sub-rule (4) of rule 32 of CGST Rules. The said sub- rule provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment/savings on behalf of the policy holder from the gross premium charged from the policy holder. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in other situations. However,

		where the entire premium is only towards the risk cover in life insurance, the value of supply is not required to be determined under the said sub-rule as in such cases whole of the consideration i.e. gross premium is towards life insurance services. 2.2 As per section 2(47) of the CGST Act, exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services TaxAct, 2017 (hereinafter referred to as the "IGST Act"), and includes non-taxable supply. The said definition of exempt supply has the following three limbs: - (a) Supply of service which is nil rated; (b) Supply of service which is wholly exempted from tax under section 11 of CGST Act or under Section 6 of IGST Act; or (c) Supply of service which is non- taxable supply. 2.2.1. Further, as per section 2(78) of CGST Act, non-taxable supply means a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act. 2.1.2 It is mentioned that there is no doubt about taxability of supply of service of providing life insurance services by the insurance company to the insured/ policy holder but the only issue is regarding the treatment of the amount of premium which is not included in the taxable value of supply, as determined under the provisions of Rule 32(4) of CGST Rules. The service of providing life insurance cover is neither nil rated, nor there is any notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST. 2.1.3 It is also mentioned that the supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act or under the IGST Act. It is not a case where the tax is not leviable on the supply of life insurance services provided by life insurance companies to the insured/policy holder. The value of the said supply of service in respect of life insurance business as determined under Rule 32(4) of CGST Rules, 2017 may not include some portion of gross premium as per methodology provided in the said rule. This portion of premium which is not includible in taxable value as per provisions of Rule 32(4) of CGST Rules is neither nil rated, nor wholly exempted from tax under section 11 of CGST Act and also not a non-taxable supply. Therefore, just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion

		of consideration becomes attributable to a non-taxable or exempt supply. 2.2.4 Further, Rule 42 of the CGST Rules provides for reversal of input tax credit in certain scenarios. As per the said rule, only that input tax credit which attract the provisions of sub-section (1) and sub-section (2) of Section 17 of the CGST Act needs to be determined and reversed thereof. Further, sub-section (1) and sub-section (2) of Section 17 of the CGST Act restrict the amount of credit only in a case where the registered person uses the goods or services partly for business or other purposes or partly for making taxable supplies or exempt supplies. However, as discussed in Para 2.2.3 above, the portion of premium, which is not includible in taxable value of supply as per Rule 32(4) of CGST Rules, cannot be considered as pertaining to an exempt supply. 3. In view of this, it is clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, in respect of the said amount.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on taxability of wreck and salvage values in motor insurance claims.

Circular No.-215/9/2024-GST

F.No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle -reg.

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders. Such damages to the insured vehicle are classified in two categories:

i. Total Loss/ Constructive Total Loss or Cash Loss; and

ii. Partial Loss Situation

1.1 Representations have been received from the trade and field formations seeking clarification as to whether in case of motor vehicle insurance, GST is payable by the insurance company on salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	Whether the insurance company is liable to pay GST on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle?	Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act should be there. 1.1 Section 7 of CGST Act defines supply to mean 'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.' In the instant case, insurance companies are providing service of insuring the vehicle/ automobile for any damages and in return, charging consideration in the form of premium charged from the owner of the vehicle. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired or to compensate the insured person against the damage caused to the vehicle, to the extent covered under the terms of the insurance. 1.2 Any Deduction made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. In cases where as per the policy contract, the insurance company's liability to pay the insured is limited to Insured's Declared Value (IDV) of the vehicle less the value of salvage/

		wreck in cases of total loss to the vehicle, if the insurance claim is settled by the insurance company as per the terms of the insurance contract by deducting value of salvage/ wreckage from the claim settlement amount, the salvage/ wreckage does not become property of insurance company, and the ownership for such wreckage/ salvage remains with the insured. However, in some cases, the insurance company may support sourcing of competitive quotes from various salvage/ wreckage buyers and the insured may select the best available offer for sale of wreckage or damaged car. The insured may also source quotes from open markets and dispose the wreckage or damaged car to such a buyer. In any case, the ownership of the wreckage vests with the insured and not with the insurance company. The same can be disposed by the insured either directly, or through the garage, or may not be disposed at all, as per his wish and choice. The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to be any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on the part of insurance company in respect of this salvage value. 2.3 However, in situations where the insurance contract provides for settlement of claim on full IDV, without deduction of value of salvage/ wreck, the insured will be paid for full claim amount without any deductions on account of salvage value. In such a situation, the salvage becomes the property of Insurance Company after settling the claim for the full amountand the insurance company is obligated to deal with the same or dispose of the same. In such cases, the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies. 3. Therefore, in cases where due to the conditions mentioned in the contract itself, general insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreckage (as per the terms of the contract), the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification in respect of GST liability and input tax credit (ITC) availability in cases involving Warranty/ Extended Warranty, in furtherance to Circular No. 195/07/2023-GST dated 17.07.2023

Circular No. 216/10/2024-GST

F. No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) Madam/Sir,

Subject: Clarification in respect of GST liability and input tax credit (ITC) availability in cases involving Warranty/ Extended Warranty, in furtherance to Circular No. 195/07/2023-GST dated 17.07.2023-reg.

Reference is invited to Circular No. 195/07/2023-GST dated 17.07.2023 (herein after referred to as "the said circular") clarifying certain issues regarding GST liability and availability of input tax credit (ITC) in respect of warranty replacement of parts and repair services during warranty period. Representations have been received from trade and industry requesting for some further clarifications in related matters.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the "CGST Act"), hereby clarifies the following issues as below.

3. Clarification regarding GST liability as well as liability to reverse input tax credit in respect of cases where goods as such or the parts are replaced under warranty:

3.1 Table in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 clarifies regarding GST liability as well as liability to reverse ITC, only in cases involving replacement of 'parts' and not if goods as such are replaced under warranty. Request has been made to also issue a clarification in respect of cases where the goods as such are replaced under warranty.

3.2 In cases where warranty is provided by the manufacturer/ suppliers to the customers in respect of any goods, and if any defect is detected in the said goods during the warranty period, the manufacturer may be required

to replace either one or more parts or the goods as such, depending upon the extent of damage/ defect noticed in the said goods. However, Table in Para 2 of the said circular only clarifies in respect of the situations involving replacement of part/ parts and does not specifically refer to the situation involving replacement of goods as such. It is clarified that the clarification provided in Para 2 of the said circular is also applicable in case where the goods as such are replaced under warranty.

3.3 Accordingly, wherever, 'any *part*,' '*parts*' and '*part(s)*' has been mentioned in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023, the same may be read as '*goods or its parts, as the case may be'*.

4. Clarification in respect of cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer:

4.1 Sr. No. 4 of Para 2 of the said Circular clarifies about the GST liability as well as liability to reverse ITC in cases where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer. However, it does not cover the scenario where the distributor replaces the goods to the customer as part of warranty out of his own stock on behalf of the manufacturer to provide prompt service to the customer, and then raises a requisition to the manufacturer for the goods replaced by him under warranty. The manufacturer, thereafter, provides the said goods to the distributor vide a delivery challan, as replenishment for the goods provided as replacement to the customer by the distributor. Request has been made to issue clarification in respect of such a scenario also.

4.2 In cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer, the key aspects, viz.(i) distributor providing replacement out of his own stock; (ii) manufacturer replenishing the distributor for the said replacement; and (iii) the replacement being made at no additional cost on the distributor, are all covered in the scenario specified in point (b) of Sr. No.4 of Para 2 of the said Circular. Therefore, GST liability as well as liability to reverse ITC in cases covered by the said scenario should be similar to that in respect of the scenario covered in point (b) of S. No. 4 of Para 2 of the above circular.

4.3 Accordingly, to specifically clarify in respect of such a scenario, in column 3 of the table in Para 2 of the said circular, against S. No. 4, after point (c), point (d)shall be inserted as below:

"(d) There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor."

5. (i) Nature of supply of extended warranty, at the time of original supply of goods, as a separate supply from supply of goods, if the supply of extended warranty is made by a person different from the supplier of the goods;

(ii) Nature of supply of extended warranty, made after original supply of goods:

5.1 It has been represented that in respect of cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the extended warranty should be treated as a separate and independent transaction from the supply of goods, whereas Sr. No. 6 of Para 2 of the said Circular has treated it to be in the nature of composite supplies, the principal supply being the supply of goods. Request has been made to issue a suitable clarification in the matter.

5.1.1 There may be cases where the supplier of the goods may be the dealer while the supplier of extended warranty may be the OEM or third party. In such cases, the supplies being made by different suppliers cannot be treated as part of the composite supply. It is, therefore, clarified that in cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the supply of extended warranty and supply of goods cannot be treated as the composite supply. In such cases, supply of extended warranty will be treated as a separate supply from the original supply of goods.

5.2 It has also been represented that in cases where extended warranty is sold subsequent to the original supply of goods, the same should be considered as supply of services only whereas the said Circular

clarifies that GST on the same would be payable depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services). Request has been made to issue a revised clarification in respect of the same.

5.2.1 Supply of extended warranty is an assurance to the customers by the manufacturer/ third party that the goods will operate free of defects during the extended warranty coverage period, and in case of any defect attributable to faulty material or workmanship at the time of manufacture, the same will be repaired/ replaced by the said manufacturer/ third party. Further, whether the goods will later on require replacement of parts or just repair service or neither during the said extended warranty period, is also not known at the time of sale/ supply of extended warranty. Thus, extended warranty is in the nature of conveying of an "assurance" and not an actual replacement of part or repairs.

5.3 Accordingly, it is clarified that in cases, where supply of extended warranty is made subsequent to the original supply of goods, or where supply of extended warranty is to be treated as a separate supply from the original supply of goods in cases referred in Para 5.1.1 above, the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods, and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.

5.4 Accordingly, in Sr. No. 6 of Table in para 2 of the said Circular, in column No. 3 of the table, the following shall be substituted:

> "(a) If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.
>
> (b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services."

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 this Circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement.

Circular No. 217/11/2024-GST

F. No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All) Madam/Sir,

Subject: Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement-reg.

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policy holders and settle the claims in two modes i.e., Cashless or Reimbursement.

1.2 Under both modes of settlement, the insurance company accounts for repair liability (as assessed by the Surveyor/ Loss Assessor) as claim cost and is liable to make payment of approved repair charges to the garage. In both the cases, the invoices are generally issued by the garages in the name of Insurance companies. While in case of Cashless Mode, the insurance companies directly make the payment of approved repair charge to the Network Garage, in case of Reimbursement mode, the payment is first made by the Insured to the Non-Network Garage, which is subsequently reimbursed by the insurance company to the Insured,

to the extent of approved repair/ claim cost. Accordingly, the insurance companies may be availing input tax credit (ITC) on the tax paid in respect of such repair services provided by the garages in Cashless Mode of claim settlement as well as in Reimbursement Mode of claim settlement on the basis of the invoices issued by the garages in their name.

1.3 It has been represented by the insurance companies that in case of reimbursement mode of claim settlement, some field formations are raising objections on availment of ITC by insurance companies in respect of repair invoices issued by the non-network garages on insurance companies. It is being claimed by the said field formations that in case of reimbursement mode of claim settlement, there is no credit facility offered by the garages to the Insurance Companies and therefore, the supply of repair service is made by the garage to the insured and not to the insurer. Accordingly, it is being claimed that ITC of repair invoices, in such cases, should not be available to the insurance companies.

1.4 Request has been received seeking clarity on availability of ITC in respect of repair expenses incurred in case of reimbursement mode of claim settlement.

2. In order 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the following:

S. No.	Issue	Clarification
1	The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement. Whether ITC is available to insurance companies in respect of repair expenses reimbursed by the insurance company in case of reimbursement mode of claim settlement.	Under reimbursement mode of claim settlement, the insured avails repair services from non-network garages with which the insurance companies do not have routine business relationship. The said garages issue the invoice in the name of the insurance company while not extending credit facility for the repair costs. Accordingly, the policy holder/ insured makes payment of such repair services, and subsequently, the insurance company reimburses the approved claim cost to the insured. Section 17(5) of the CGST Act provides that ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him. Section 16 of CGST 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 of the said Act, 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. Further, section 2(93) of CGST Act defines "recipient" of supply of goods or services or both, as the person who is liable to pay the consideration, where such consideration is payable for the said supply of goods or services or both. Moreover, as per section 2(31) of CGST Act, "consideration" includes any payment made or to be made in relation to supply of the goods or services or both, whether by the recipient or by any other person. In reimbursement mode of claim settlement, the payment is made by the insurance company for the approved cost of repair services through reimbursement to the insured. Further, irrespective of the fact that the payment of the repair services to the garage is first made by the insured, which is then reimbursed by the insurance company to the insured to the extent of the approved claim cost, the liability to pay for the repair service for the approved claim cost lies with the insurance company, and thus, the insurance company is covered in the definition of "recipient" in respect of the said supply of services of vehicle repair provided by the garage under section 2(93) of CGST Act, to the extent of approved repair liability. Moreover, availment of credit in respect of input tax paid on motor vehicle repair services received by the insurance company for outward supply of insurance services for such motor vehicles is not barred under section 17(5) of CGST Act. Accordingly, it is clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.
2.	Where the invoice raised by the garage also includes an amount in excess of the approved claim cost, the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of the damaged parts	In cases where the garage issues two separate invoices in respect of the repair services, one to the insurance company in respect of approved claim cost and second to the customer for the amount of repair service in excess of the approved claim cost, input tax credit may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer. However, if the invoice for full amount for repair services is issued to the insurance company while

	of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage. What is the extent of ITC available to the insurer in such cases?	the insurance company makes reimbursement to the insured only for the approved claim cost, then, the input tax credit may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value.
3.	Whether ITC is available to the insurer where the invoice for the repair of the vehicle is not in name of the insurance company.	In such a case, condition of clause (a) and (aa) of section 16(2) of CGST Act is not satisfied and accordingly, input tax credit will not be available to the insurance company in respect of such an invoice.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person.

Circular No.218/12/2024-GST

F. No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person- reg.

Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a person in India to a related person		
1	Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.	1. As per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST. 2. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST. 3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. The processing fee/ service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC.

		4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST. 5. However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing. 6. Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan. 7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the

		said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Central Goods and Services Tax Rules, 2017. 8. However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulties, if any, in implementing this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017

Circular No. 219/13/2024-GST

F. No. CBIC-20001/4/2024-GST
North Block, New Delhi, Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017 - reg.

Representations have been received from Cellular Operators Association of India (COAI) submitting that input tax credit (ITC) is being denied by some tax authorities on ducts and manholes used in network of optical fiber cables (OFCs)on the ground that the same is blocked as per section 17(5) of the Central Goods &Services Tax Act, 2017 (herein after referred to as the 'CGST Act"), being in nature of immovable property (other than Plant and Machinery). It has been requested to issue clarification in respect of availability of ITC on ducts and manholes used in network of optical fiber cables (OFCs), so as to prevent unwarranted litigation in the telecommunication sector across the country.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issue as below.

Issue	Clarification
Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, read with Explanation to section 17 of CGST Act ?	1. Sub-section (5) to Section 17 of the CGST Act provides that input tax credit shall not be available, inter alia, in respect of the following: i. 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; or ii. 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. 2. Explanation in section 17 of CGST Act provides that the expression "plant and machinery" 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 and includes such foundation and structural supports but excludes land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises. 3. Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one

	point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of *"plant and machinery"* in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises. 4. Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Pr. Commissioner (GST)

Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors

Circular No 220/14/2024-GST

F. No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/ Sir,

Subject: Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors-reg

Representations have been received seeking clarification on the Place of Supply in cases of Custodial Services provided by Banks to Foreign Portfolio Investors (hereinafter referred to as "FPIs"), as a view is being taken by some field formations that the Place of Supply in case of 'custodial service' would be determined as per Section 13(8)(a) of the Integrated

Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"), i.e. the location of the service provider (banks or financial institutions).

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issue as under:

Issue	Clarification
Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017? Further, how the place of supply of the said services shall be determined?	According to the Securities and Exchange Board of India (Custodian of Securities) Regulations 1996, 'Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes- • maintaining accounts of securities of a client; • collecting the benefits or rights accruing to the client in respect of securities; • keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and • maintaining and reconciling records of the services referred above. As per Regulation 20(1) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, an FPI is allowed to invest only in the following securities, namely- (a) shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India; (b) units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996; (c) units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999; (d) derivatives traded on a recognized stock exchange; (e) units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board; (f) Indian Depository Receipts; (g) any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and (h) such other instruments as specified by the Board from time to time. Various banks enter into custodial agreements with the Foreign Portfolio Investors (FPIs) for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs. As per clause (a) of sub-section (8) of section 13 of IGST Act, Place of Supply of services supplied by banking company or

	a financial institution or a non-banking company to account holders shall be the location of the supplier of services. As per Explanation (a) of Section 13(8) of IGST Act, 'account' means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account. It is mentioned that the provisions similar to above provisions under IGST Act existed during the Service Tax regime. The place of provision of service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012 were identical to that of section 13(8)(a) of the IGST Act. The Education Guide under the Service Tax Law clarified the scope of the term "account holder" and the services provided by banks to account holders as well as the services which are not provided to account holders, as below: "Question: 5.9.2 What is the meaning of "account holder"? Which accounts are not covered by this rule? Answer: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule. Question:5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)? Answer: Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business :- i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc; ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc. Question:5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule? Answer: Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:- i) financial leasing services including equipment leasing and hire purchase; ii) merchant banking services; iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing; iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services

	In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise." Accordingly, as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder. As the provisions of section 13(8)(a) of the IGST Act are similar to the provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012, the clarification given in the Education Guide under Service Tax Regime is equally applicable under GST Regime. Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., sub-section (2) of section 13 of the IGST Act.

2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Time of supply on Annuity Payments under HAM Projects

Circular No.-221/15/2024-GST

F.No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National

Highway Projects of National Highways Authority of India (NHAI)in Hybrid Annuity Mode (HAM) model -reg.

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	Under HAM model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?	Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire. 2.1 A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same. 2.2 In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act.

		2.3 As per clause (a) of Section 13(2) of CGST Act, the time of supply in respect of a supply of services shall be the date of issue of Invoice, or date of receipt of payment, whichever is earlier, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per clause (b) of Section 13(2) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be date of provision of the service or date of receipt of payment, whichever is earlier. However, as per section 31(5) of CGST Act, in cases of continuous supply of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event. 2.4 Accordingly, as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act. 3. In the light of above, it is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier. 4. It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose

		of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Time of supply in respect of supply of allotment of Spectrum to Telecom companies in cases where an option is given to the Telecom Companies for payment of licence fee and Spectrum usage charges in instalments in addition to an option of upfront payment.

Circular No.-222/16/2024-GST

F.No. CBIC-20001/4/2024-GST
North Block, New Delhi Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) Madam/Sir,

Subject: Clarification on time of supply of services of spectrum usage and other similar services under GST -reg.

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply for payment of GST in respect of supply of spectrum allocation services in cases where the successful bidder for spectrum allocation (i.e. the telecom operator) opts for making payments in instalments under deferred payment option as per Frequency Assignment Letter (FAL) issued by Department of Telecommunication (DoT), Government of India.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the

Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to As "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	In cases of spectrum allocation In cases of spectrum allocation where the successful bidder (i.e. the 'telecom operator') opts for making payments in instalments as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter (FAL) issued by Department of Telecommunications (DoT), Government of India, what will be the time of supply for the purpose of payment of GST on the said supply of spectrum allocation services.	Under the spectrum allocation model followed Under the spectrum allocation model followed by DoT, bidder (the telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/ telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis *[Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 referred]*. 2.1 In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in installments, the payment has to be made spread over the contract period in installments and payment for each installment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of services' as defined under section 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations. 2.2 As per section 13(1) of CGST Act, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, which is the earlier of date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case maybe. 2.3 However, in respect of supply of services, on which tax is paid or liable to be paid on reverse charge basis, as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely:- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

		2.3.1 Some of the field formations are considering the Frequency Assignment Letter issued by DoT as akin to any other document, by whatever name called, in lieu of an invoice mentioned in clause (b) of section 13(3) of CGST Act and are demanding interest on instalments paid after 60 days from the date of issue of the same. 2.3.2 It is observed that Frequency Assignment Letter is in the nature of a bid acceptance document intimating the telecom operator that the result of the auction has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The Frequency Allotment Letter also mentions the options and the amounts to be paid by the telecom operator in each of the two options. 2.4 Further, as per section 31(5)(a) of CGST Act, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the Notice Inviting Applications read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator. 3. In the light of above, it is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier. 4. It is also clarified that the similar treatment regarding the time of supply, as is discussed in the above paras, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Amendment in circular no. 1/1//2017 in respect of Proper officer for provisions relating to Registration and Composition levy under the Central Goods and Services Tax Act, 2017 or the rules made thereunder.

Circular No. 223/17/2024-GST

F. No. 20016/19/2024-GST
New Delhi, Dated the 10th July, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) Madam/Sir,

Subject: Amendment in circular no. 1/1//2017 in respect of Proper officer for provisions relating to Registration and Composition levy under the Central Goods and Services Tax Act, 2017 or the rules made thereunder – Reg.

Attention is invited to Circular no. 1/1/2017-CT dated 26.06.2017 vide which functions of proper officer under various sections of Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") relating to Registration and Composition levy under the CGST Act or rules made thereunder were assigned to various officers of the Central Tax.

1.2 Consequent to the shifting of the GST back office operations of Central Board of Indirect Tax & Customs from ACES-GST to GSTN BO, it has now been decided by the Board that the functions of proper officer in relation to section 30 & Proviso to sub-section (1) of section 27 of CGST Act, as well as rule 6, rule 23 & rule 25 of Central Goods and Services

Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") may be assigned to Superintendent of Central Tax instead of Assistant or Deputy Commissioners of Central Tax or Assistant or Deputy Directors of Central Tax.

1.3 Accordingly, the table in Circular no. 1/1/2017-CT dated 26.06.2017 may be substituted by the following table: -

Table

Serial Number	Designation of the Officer	Functions under section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax	i. Sub-section (5) of section 10
2.	Superintendent of Central Tax	i. Sub-section (8) of section 25 ii. Proviso to sub-section (1) of section 27 iii. Section 28 iv. Section 29 v. Section 30 vi. Rule 6 vii. Rule 9 viii. Rule 10 ix. Rule 12 x. Rule 16 xi. Rule 17 xii. Rule 19 xiii. Rule 22 xiv. Rule 23 xv. Rule 24 xvi. Rule 25

2. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

3. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation.

Circular No. 224/18/2024 - GST

CBIC-20001/4/2024-GST
New Delhi, Dated the 11th July, 2024

To,

The Pr. Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation.

Doubts have been raised by the trade and the field formations in respect of recovery of outstanding dues, in cases where the first appellate authority has confirmed the demand created by the adjudicating authority, fully or partially, and where appeal against such order of appellate authority could not be filed under section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') due to non- constitution of Appellate Tribunal (hereinafter referred to as 'Tribunal'), as yet. Doubts have also been raised as to whether the amount that was originally intended to be paid towards the demand created but has inadvertently been paid and intimated by the taxpayer through FORM GST DRC-03 either under the 'voluntary' category or under the 'others' category, can be adjusted against the pre-deposit that is required to be paid by the taxpayer for filing appeal before the appellate authority under section 107, and before the appellate tribunal under section 112 of the CGST Act.

2. The matter has been examined. 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. In cases, where the first appellate authority has confirmed the demand issued by the adjudicating authority, partially or fully, the taxpayers

cannot file appeal against the said appellate order at present due to non-operation of GST Appellate Tribunal as yet. As per Section 112 of the CGST Act, every person has statutory remedy of appeal against the order passed by the first appellate authority or by a revisional authority, before the Tribunal. As per section 78 of CGST Act, the recovery proceedings are to be initiated, if the amount payable as per the order issued under the said act is not paid by the concerned person within the said period of three months from the date of service of the said order. It may further be noted that if any person files an appeal in accordance with the requirement of sub-section (8) of section 112 of the CGST Act (i.e., on payment of prescribed pre-deposit), the recovery proceedings for the balance amount is deemed to be stayed till disposal of the appeal as per sub-section (9) of section 112 of the CGST Act. However, as the taxpayers are not able to file appeal under section 112 in Appellate Tribunal against the orders of appellate authority and therefore, are not able to make the pre-deposit under sub-section (8) of section 112 of CGST Act, in some cases, the tax officers are taking a view that there is no stay against recovery as per sub-section (9) of section 112 of CGST Act. In some cases, taxpayers have either paid or are willing to pay the requisite amount of pre-deposit as per sub-section (8) of section 112 of CGST Act either by crediting in their electronic liability register against the demand so created, or by depositing the said amount through FORM DRC-03. However, tax officers are still resorting to recovery proceedings after completion of period stipulated under section 78 of CGST Act.

4. In order to facilitate the taxpayers to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, and to avail the benefit of stay from recovery of the remaining amount of confirmed demand as per sub-section (9) of section 112 of CGST Act, it is hereby clarified that in cases where the taxpayer decides to file an appeal against the order of the appellate authority and wants to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, he can make the payment of an amount equal to the amount of pre-deposit by navigating to ***Services >> Ledgers>> Payment towards demand,*** from his dashboard***.*** The taxpayer would be navigated to Electronic Liability Register (ELL) Part-II in which he can select the order, out of the outstanding demand orders, against which payment is intended to be made. The amount so paid would be mapped against the selected order and demand amount would be reduced in the balance liability in the aforesaid register. The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal.

5. The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit as per the procedure mentioned in para 4 above, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed as per provisions of sub-section (9) of section 112 of CGST Act.

6. In case, the taxpayer does not make the payment of the amount equal to amount of pre-deposit or does not provide the undertaking/ declaration to the proper officer, then it will be presumed that taxpayer is not willing to file appeal against the order of the appellate authority and in such cases, recovery proceedings can be initiated as per the provisions of law. Similarly, when the Tribunal comes into operation, if the taxpayer does not file appeal within the timelines specified in Section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.

7.1 It has also been noticed that some taxpayers have already paid amounts that were intended to have been paid towards a demand, through FORM GST DRC-03. Attention is invited to notification No. 12/2024- CT dated 10.07.2024, vide which sub-rule (2B) of Rule 142 and FORM GST DRC-03A has been inserted in Central Goods and Services Rules, 2017 (hereinafter referred to as 'CGST Rules), providing for a mechanism for cases where the person liable to pay tax, interest and penalty under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act has made payment of such tax, interest and penalty, inadvertently through FORM GST DRC-03 under sub-rule (2) of Rule 142. In such cases, the said person can file an application in FORM GST DRC-03A, electronically on the common portal, and the amount so paid and intimated through the FORM GST DRC-03 shall be adjusted as if the said payment was made towards the said demand on the date of such intimation through FORM GST DRC-03.

7.2 Accordingly, in cases where the concerned taxpayer has paid an amount that was intended to have been paid towards a particular demand through FORM GST DRC-03, has submitted an application in FORM GST

DRC-03A on the common portal, the amount so paid and intimated through the FORM GST DRC-03 will be considered as if the payment was made towards the said demand on the date of such intimation through FORM GST DRC-03. The amount so paid shall also be liable to be adjusted towards the amount required to be paid as pre-deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal, as mentioned in para 4 above, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per provisions of sub-section (6) of section 107 and sub-section (9) of section 112 of CGST Act. However, if the taxpayer does not file appeal within the timelines prescribed in Section 107 and Section 112 of the CGST Act, as the case may be, read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.

7.3 In this regard, it is to be mentioned that the application in FORM GST DRC-03A for adjustment of demand liability against the payment through FORM GST DRC-03 cannot be made in cases where against the payment made through the said FORM GST DRC-03, proceedings have already been concluded by issuance of an order in FORM GST DRC-05 as per the Rule 142(3) of CGST Rules, 2017.

8.1 Currently, the above-mentioned functionality for filing of an application in FORM GST DRC-03A, is not available on the common portal. Therefore, till the time such functionality is made available on the common portal, in respect of cases where an amount of pre-deposit has been inadvertently paid through FORM GST DRC-03 instead of making the said payment through Electronic Liability Ledger-II against the demand created in the said ledger, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the proper officer may not insist on recovery for the remaining amount payable by the concerned taxpayer, till the time the said functionality of FORM GST DRC-03A is made available on the portal.

8.2 Once the functionality of FORM GST DRC-03A is made available on the portal, the concerned taxpayer may file an application in FORM GST DRC-03A, on the common portal, at the earliest, as mentioned in para 7.1 above and on doing so, the amount paid vide FORM GST DRC-03 may be adjusted against the pre-deposit under section 107 or section 112 of the CGST Act, as the case may be, as detailed in para 7.2 above. However, in case the taxpayer fails to file an application in FORM GST DRC-03A on

the common portal, the proper officer may proceed to recover the amount payable as per provisions of section 78 and section 79 of CGST Act.

9. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

10. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons.

Circular No. 225/19/2024-GST

F. No. CBIC-20001/4/2024 - GST
New Delhi, Dated the 11th July, 2024

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons.

1.1 As per the recommendations of the GST Council, sub-rule (2) was inserted in Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") vide Notification No. 52/2023-Central Tax dated 26th October, 2023 to provide for a specific clause for valuation of supply of services of providing corporate guarantee to any banking company or financial institution by an entity on behalf of a related person. Besides, Circular No. 204/16/2023-GST dated 27th October, 2023 was also issued as per the recommendations of the GST Council, to provide clarity regarding the applicability of the said sub-rule. Subsequently, based on the recommendations of the GST Council, sub-

rule (2) of Rule 28 of CGST Rules has been amended retrospectively with effect from 26.10.2023 vide notification No. 12/2024 dated 10th July 2024.

1.2 In this regard, various representations have been received from trade and industry, seeking clarifications on various issues pertaining to the taxability and valuation of the supply of services of providing corporate guarantee between related persons as per the said rule.

2. Therefore, in order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168

(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1	Whether sub-rule (2) of rule 28 of CGST Rules will apply to the corporate guarantees issued prior to insertion of the said sub-rule on 26th October 2023? Also, where intra-group corporate guarantees have been issued before 26th October 2023, which are still in force today, would they be liable to pay GST on "1% of the amount of such guarantee offered" on such guarantees?	It is to be clarified that the supply of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the insertion of sub-rule (2) in rule 28 of CGST Rules with effect from 26th October 2023. Rule 28(2) of CGST Rules is only for determination of the value of the taxable supply of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient and not regarding the taxability of the said supply itself. Prior to the insertion of the said sub-rule, i.e., before 26th October 2023, the valuation of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done as per the provisions of Rule 28 of CGST Rules, as it existed then. Therefore, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules.
2	In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the	The activity of supply of the service of providing a corporate guarantee is not linked with the actual disbursal of the loan. The service that is provided by the guarantor to the guarantee is that of taking on the risk of default. Therefore, it is clarified that the

	recipient, what will be the value of supply of corporate guarantee. Also, whether the recipient would be eligible to avail full ITC (Input Tax Credit) even before total loan is disbursed?	value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee. Further, it is also clarified that the recipient of the service of providing corporate guarantee shall be eligible to avail the ITC, subject to other conditions specified in the Act and the Rules made thereunder, irrespective of when the loan is actually disbursed to the recipient, and irrespective of the amount of loan actually disbursed.
3	In the case of takeover of existing loans, since there is merely an assignment of an already issued corporate guarantee, whether GST would be applicable again?	In the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, the supplier of the service is the corporate entity providing the corporate guarantee and the recipient is the related entity for whom the corporate guarantee is provided by the said supplier. Therefore, if the loan issued by the banking company/ financial institution is taken over by another banking company/ financial institution, the said activity of taking over of the loan does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a recipient. Therefore, it is clarified that in such cases, there will be no impact on GST, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.
4	Where corporate guarantee is provided by more than one entity / co-guarantor, what is the amount on which GST is payable by each co-guarantor?	In cases where corporate guarantee is being provided by multiple related entities, the value of such services of providing corporate guarantee shall be the sum of the actual consideration paid/ payable to co-guarantors, if the said amount of total consideration is higher than one per cent of the amount of such guarantee offered. In cases where the sum of the actual consideration is less than one per cent of the amount of such guarantee offered, then GST shall be payable by each co-guarantor proportionately on one per cent of the amount guaranteed by them. For instance, if there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for Rs. 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed. However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf a related recipient C for Rs 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guaranteed amount, then GST shall be payable

		by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on Rs. 60 lakhs and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on Rs. 40 lakhs.
5	Where intra-group corporate guarantee is issued, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity may not be able to claim input tax credit of tax paid by the domestic guarantor?	It is clarified that in cases where domestic corporates issue intra-group guarantees, GST is to be paid under forward charge mechanism, and invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under Section 31 of CGST Act, 2017 read along with the relevant rules. However, in cases where such guarantee is provided by the foreign/ overseas entity for a related entity located in India, then GST would be payable under reverse charge mechanism, by the recipient of service, i.e., the related entity located in India.
6	Whether the discharge of tax liability on corporate guarantee @ 1% of such guarantee offered is to be done one time or on yearly basis or on monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?	Rule 28(2) of CGST Rules has been amended retrospectively with effect from 26th October 2023, vide notification No. 12/2024 -CT dated 10.07.2024. Therefore, it is clarified that the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient shall be one per cent of the amount guaranteed per annum or the actual consideration, whichever is higher. Accordingly, the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient for a particular number of years shall be one per cent of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration whichever is higher. In addition to the above, in cases where the corporate guarantee is provided for a period less than a year, say 6 months (half a year), then in those cases as well, the valuation may be done on proportionate basis for the said period, i.e., in this case, the value of the said supply of services may be taken as half of one per cent of the amount of such guarantee offered (6/12 * one per cent), or the actual consideration, whichever is higher. To illustrate the same, if a corporate guarantee is issued for a period of say five years, then the value of such guarantee is to be calculated at one per cent per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher.

		However, if a corporate guarantee is issued, say for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.
7	Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?	Proviso has been inserted in sub-rule (2) of Rule 28 of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, similar to that provided in the second proviso to sub-rule (1) of Rule 28 of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons. Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service.
8	Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?	As per the amendment done in sub-rule (2) of rule 28 of CGST Rules retrospectively w.e.f. 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulties, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Mechanism for refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to export.

Circular No. 226/20/2024-GST

F. No. CBIC-20001/4/2024-GST
New Delhi, Dated the 11th July, 2024

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All) Madam/Sir,

Subject: Mechanism for refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to exports– reg.

Representations have been received from trade/ industry requesting for prescribing a mechanism for seeking refund of additional IGST paid on account of upward revision in price of goods subsequent to export. It has been represented that there are cases where the price of export goods needs to be revised, subsequent to their exports, due to various reasons such as linking of the prices of the export commodities to some international index or as per the terms of contract between the two parties etc. In such cases, where there is upward revision in price of goods subsequent to exports, the exporter is required to pay additional IGST on account of upward price revision along with applicable interest but there exists no mechanism for allowing them to claim refund of such additional IGST paid.

2. In order 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the following procedure for claim and processing of refunds of additional integrated tax paid on account of upward revision in prices of goods subsequent to their exports.

3. Filing of refund claim for additional IGST paid on account of upward revision of prices of export goods, subsequent to export:

3.1 The refund of IGST paid on account of export of goods is processed by the proper officer of Customs in an automated manner without manual intervention in terms of provision of rule 96 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"). However, there exists no mechanism for processing of refunds of any additional integrated tax paid on account of upward revision in price of goods, subsequent to exports, by the proper officer of customs. Therefore, it has been decided that such exporter may file an application for refund of such additional IGST paid in **FORM GST RFD-01** electronically on the common portal and such application for refunds would be processed by the jurisdictional GST officer of the concerned exporter. Accordingly, CGST Rules have been amended vide Notification No. 12/2024-CT dated 10.07.2024 to provide for filing of such refund application in **FORM GST RFD-01**, which shall be dealt with in accordance with provisions of rule 89 of CGST Rules.

3.2 GSTN is in the process of development of a separate category of refund in **FORM GST RFD-01**, for filing an application of refund of such

additional IGST paid. However, till the time such separate category for claiming refund of additional amount of IGST paid is developed on the common portal, such exporter(s) may claim refund of the additional IGST paid on account of upward revision in price of goods subsequent to exports, by filing an application of refund in **FORM GST RFD-01** under the category "**Any other**" with remarks "*Refund of additional IGST paid on account of increase in price subsequent to export of goods*" along with the relevant documents as prescribed in clause (bb) of sub-rule (2) of rule 89 of the CGST Rules. The exporter shall also upload the statements 9A & 9B as prescribed in clause (bb) & clause (bc) of sub-rule (2) of rule 89 of the CGST Rules along with the said refund claim. The exporter may also upload any other document to establish that the refund is admissible to him.

3.3 The said refund application shall be processed based on the documentary proof submitted by the refund applicant. Further, the validated details of shipping bills, amount of IGST involved in such shipping bills, as well as the amount of IGST refund sanctioned by the customs under rule 96(3) of CGST Rules will also be made available to jurisdictional GST officers by GSTN to enable them to process such refund claims of additional IGST paid.

4. Minimum Refund Amount: Sub-section (14) of section 54 of the CGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no such refund shall be paid if the amount claimed is less than one thousand rupees.

5. Time limit for filing refund: Sub-rule (1B) of rule 89 of CGST Rules, inserted vide Notification No. 12/2024-CT dated 10.07.2024, provides that the application for refund of additional IGST paid can be filed before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act. However, in cases, where the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act was before the date on which sub-rule (1B) of rule 89 of CGST Rules has come into force, such refund application can be filed before the expiry of a period of two years from the date on which the said sub-rule has come into force.

6. The following documents are required to be accompanied with the refund claim in order to establish that refund is due to such exporter:

(a) Copy of shipping bill or bill of exports;

(b) Copy of original invoices;

(c) Copy of contract/ other document(s), as applicable, indicating requirement for the revision in price of such goods subsequent to exports;

(d) Copy of the original invoices as well as relevant debit note(s)/ supplementary invoices;

(e) Proof of payment of additional IGST and applicable interest and details of the relevant FORM GSTR-1/ FORM GSTR-3B furnished by the applicant in which the said debit note(s)/ supplementary invoice(s) were declared and tax and interest thereon had been paid by the applicant;

(f) Proof of receipt of remittance of additional foreign exchange (FIRC) issued by Authorised Dealer-I banks;

(g) A certificate of a practising chartered accountant or a cost accountant certifying therein that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to export;

(h) Statement 9A of FORM GST RFD 01; and

(i) Statement 9B of FORM GST RFD 01.

7. The proper officer while processing such refund claim shall verify that the exporter has duly reported the details of the export invoice and the debit note in his statement of outward supplies in **FORM GSTR-1** and has duly paid such additional amount of IGST along with applicable interest for which refund is being sought in their **FORM GSTR-3B** return. The proper officer while ascertaining the eligibility of the refund to the exporter shall verify the revised value declared by the exporter in his **FORM GSTR-1**/ **FORM GSTR-3B** and details of foreign exchange remittances received thereof.

8. The proper officer shall scrutinize the application with respect to its completeness and eligibility and only if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall proceed to issue the refund sanction order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**. The proper officer shall also upload a detailed speaking order along with the refund sanction order in **FORM GST RFD-06** in terms of Instruction No. 03/2022-GST dated 14.06.2022.

9. Further, there may be certain cases where there is downward revision in price of goods subsequent to exports, when the export has been made with payment of IGST. In all such cases, the supplier of goods/

exporter is required to deposit the refund of the IGST received in proportion to the reduction in price of exported goods, along with applicable interest. The proper officer while granting the refund as per para 8 above, shall also verify whether the exporter has deposited the excess refund amount in the cases where there is a downward revision in price of goods subsequent to exports, during the relevant tax period, if any.

10. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Processing of refund applications filed by Canteen Stores Department (CSD).

Circular No. 227/21/2024-GST

F. No. CBIC-20001/4/2024-GST
New Delhi, Dated the 11th July, 2024

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) The Principal Chief Controller of Accounts, CBIC

Madam / Sir,

Subject: Processing of refund applications filed by Canteen Stores Department (CSD)- regarding

The Central Government, vide Notifications No. 06/2017-Central Tax (Rate), No. 06/2017-Integrated Tax (Rate) and No. 06/2017-Union territory Tax (Rate), all dated 28th June 2017, had specified the Canteen Stores Department ("CSD" for short), under the Ministry of Defence, as a person who shall be entitled to claim a refund of fifty per cent of the applicable central tax, integrated tax and Union territory tax paid by the CSD on all inward supplies of goods received by the CSD for the purposes of subsequent supply of such goods to their Unit Run Canteens or to their authorized customers. Further, vide Circular No. 60/34/2018-GST dated

04.09.2018, the manner and procedure for filing and processing of such refund claims was specified so as to ensure that the CSD shall apply for refund by filing an application manually to the jurisdictional tax office till the time the online utility for filing such refund claim is made available on the common portal.

2. In order to enable such CSD to file application for refund electronically, a new functionality has been made available on the common portal which allows CSD to apply for refund by filing an application electronically on the common portal. Further, Central Goods and Service Tax Rules, 2017 (hereinafter referred to as „CGST Rules") have been amended and a new rule 95B and **FORM GST RFD-10A** have been inserted in CGST Rules vide Notification No. 12/2024-Central Tax dated 10.07.2024.

3. In order to ensure uniformity in the implementation of the provisions of law across 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 lays down the following revised procedure for electronic submission and processing of refund application by CSD, in accordance with section 55 of CGST Act, in supersession of Circular No. 60/34/2018-GST dated 04.09.2018.

4. Filing of refund application:

The CSD, who wants to wants to file an application for refund under section 55 of CGST Act, in cases where the refund is claimed of fifty per cent of the applicable central tax, integrated tax and Union territory tax paid by the said CSD on all inward supplies of goods received by it, for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers, shall file an application for refund in **FORM GST RFD-10A** electronically on the common portal and the same shall be processed electronically. The refund to be granted to the CSD shall be based on the invoices of the inward supplies of goods received by it for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers.

5. Filing of refund claim by CSD:

The CSD may apply for refund with the jurisdictional Central tax/ State tax authority to whom the CSD has been assigned. In terms of rule 95B of the CGST Rules, the CSD is required to apply for refund once in every quarter. The CSD will also be allowed to file the refund application for multiple quarters, clubbing multiple FYs, as per their option. The refund

of the tax paid by the CSD shall be available only if the inward supplies of goods were received from a registered person against a tax invoice and details of such supplies have been furnished by the said registered person in his details of outward supply in **FORM GSTR-1** and the said supplier has furnished his return in **FORM GSTR-3B** for the concerned tax period. The CSD while filing the refund application shall ensure that all the invoices declared by it have the GSTIN of the supplier and the GSTIN of the respective CSD clearly mentioned on them. The said refund application form shall be accompanied with the following documents:

(i) An undertaking stating that the goods on which refund is being claimed have been received by the CSD for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers; and

(ii) A declaration stating that no refund has been claimed earlier against the invoices on which the refund is being claimed.

6. Relevant date for filing of refund:

As per sub-section (2) of section 54 of the CGST Act, a person notified under section 55 of the CGST Act, can file the application for refund of tax paid by it on inward supplies of goods or services or both, before the expiry of two years from the last day of the quarter in which such supply was received. Therefore, as the CSD have been notified under section 55 of CGST Act vide notifications No. 06/2017-Central Tax (Rate), No. 06/2017-Integrated Tax (Rate) and No. 06/2017-Union territory Tax (Rate), all dated 28th June 2017, as a person entitled to claim a refund of fifty per cent of the applicable central tax, integrated tax and Union territory tax paid by it on all inward supplies of goods received for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers, the CSD can file the refund of fifty per cent of tax paid on such inward supplies of goods before expiry of two years from the last day of the quarter in which such supply was received.

7. Processing and sanction of the refund claim:

7.1 The proper officer shall process the refund claim filed by the CSD in a manner similar to the refund claims filed in **FORM GST RFD-01** under the provisions of rule 89 of

CGST Rules. The proper officer while processing the refund application shall validate the GSTIN details of the CSD on the common portal to ascertain whether all the returns in **FORM GSTR-1** and **FORM GSTR-3B**, which were due to be furnished on or before the date on which the refund

application is being filed, have been filed. The proper officer may scrutinize the details contained in **FORM RFD-10A**, **FORM GSTR-3B** and **FORM GSTR- 2B**, for processing the said refund claim. The proper officer shall also verify whether the details of the invoices for which refund has been claimed by the CSD, have been furnished by the concerned supplier in his details of outward supply in **FORM GSTR-1** and the said supplier has furnished his return in **FORM GSTR-3B** for the concerned tax period.

7.2 Further, the proper officer shall ensure that the amount of refund sanctioned is not more than 50 % of the central tax, state tax, Union territory tax and integrated tax paid on the supplies received by CSD. It may be noted that the invoices uploaded by the CSD while filing will be validated on the portal with **FORM GSTR 2B** of the applicant and only the validated invoices will be allowed in the application. The invoices for which refund has already been availed by the CSD will be flagged in the system and will not be allowed for the refund. The Table in Sl. No. 7 of **FORM GST- RFD 10A** will be auto-populated on the portal based on the 50 % of the amount of respective tax (central tax, state tax, Union territory tax and integrated tax) as per the Col 8, 9 and 10 of the Table in Sl. No. 6 of **FORM GST- RFD 10A**.The Table in Sl. No. 7 of **FORM GST- RFD 10A** shall be kept editable downwards, i.e., the CSD will be able to make a downward revision in the auto-populated amount in the said Table and cannot enhance the auto-populated amount in the said Table. The proper officer shall also verify whether the ITC in respect of such inward supplies of goods received for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers has been reversed by the CSD as clarified in Circular no. 170/02/2022-GST dated 06-Jul-2022.

7.3 The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the order in **FORM GST RFD-06** accordingly. The proper officer shall also upload a detailed speaking order along with the said order in **FORM GST RFD-06**.

8. It is also mentioned that the provisions of the Circular No. 60/34/2018-GST dated 04.09.2018 shall continue to apply for all refund applications filed manually before the amendments in CGST Rules mentioned in Para 2 above and before the said functionality being made available on the common portal. The said applications filed manually shall continue to be processed manually, according to the earlier circular.

9. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

10. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarifications regarding applicability of GST on certain services -reg.

Circular No. 228/22/2024-GST

F. No. CBIC-190354/94/2024-TO(TRU-II)-CBEC
North Block, New Delhi Dated the 15th July, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/Commissioners of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services - reg.

In exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 and on the recommendations of the 53rd GST Council in its meeting held on 22nd June, 2024, at New Delhi, clarifications, related to the following issues are being issued through this circular:

i. GST exemption on the outward supplies made by the Ministry of Railways (Indian Railways).

ii. GST exemption on the transactions between Special Purpose Vehicles (SPVs) and Ministry of Railways (Indian Railways).

iii. Applicability of GST on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the Real Estate (Regulation and Development) Act, 2016.

iv. Applicability of GST on the incentive amount shared by acquiring bank with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay

Debit Cards and low value BHIM-UPI transactions.

V. GST liability on the reinsurance of specified general and life insurance schemes.

vi. GST liability on the reinsurance of insurance schemes for which total premium is paid by the Government.

vii. Applicability of GST on retrocession services.

viii. GST liability on certain accommodation services.

2. GST exemption on the outward supplies made by Ministry of Railways (Indian Railways).

2.1 Based on the request of Ministry of Railways (Indian Railways) and recommendations of the 52nd GST Council meeting held on 07.10.2023, all supplies of goods and services made by Ministry of Railways (Indian Railways) were brought under Forward Charge Mechanism and consequently exemptions that were available to Ministry of Railways (Indian Railways) were withdrawn vide notification No.13/2023-CT(R) dated 19.10.2023 w.e.f. 20.10.2023.

2.2 However, Ministry of Railways had brought out certain difficulties in implementation of the abovesaid notification and matter was examined by the 53rd GST Council in its meeting held on 22nd June, 2024.

2.3 GST Council has recommended to exempt the services provided by Ministry of Railways (Indian Railways) to general public viz., sale of platform tickets, facility of retiring rooms/waiting rooms, cloak room services and battery-operated car services. GST council has also recommended to exempt the supply of services made between various zones/ divisions under Ministry of Railways (Indian Railways). Notification No. 04/2024-CT(R) dated 12.07.2024 has been issued in this regard and effective date of implementation of the said notification is 15.07.2024.

2.4 The GST Council in its 53rd meeting has also recommended to regularize GST liability for the intervening period i.e. from 20.10.2023 to 14.07.2024 on ‘as is where is’ basis.

2.5 Therefore, as recommended by the 53rd GST Council, the GST on the services provided by Ministry of Railways (Indian Railways) to general public viz., sale of platform tickets, facility of retiring rooms, cloak

room services and battery-operated car services and supply of services made between various zones/ divisions under Ministry of Railways (Indian Railways) is hereby regularized on 'as is where is' basis from 20.10.2023 to 14.07.2024.

3. GST exemption on the transactions between Special Purpose Vehicles (SPVs) and Ministry of Railways (Indian Railways).

3.1 Based on the recommendations of the 48th GST Council meeting held on 17.12.2022, it was clarified to Ministry of Railways (Indian Railways) that supply of services by SPVs to Ministry of Railways (Indian Railways) by way of allowing Indian Railways to use infrastructure built and owned by them during the concession period against consideration and maintenance services supplied by Ministry of Railways (Indian Railways) to SPVs are taxable.

3.2 However, Ministry of Railways had brought out certain difficulties faced in implementation of the said recommendations of the 48th GST Council and matter was examined by the 53rd GST Council in its meeting held on 22nd June, 2024.

3.3 GST Council has recommended to exempt the supply of service by SPVs to Ministry of Railways (Indian Railways) by way of allowing Indian Railways to use the infrastructure built and owned by SPVs during the concession period against consideration and maintenance services supplied by Ministry of Railways (Indian Railways) to SPVs from GST. Notification No. 4/2024-CT(R) dated 12.07.2024 has been issued in this regard.

3.4 The GST Council in its 53d meeting has also recommended to regularize the past period in respect of such transactions for the period from 01.07.2017 to 14.07.2024 on 'as is where is' basis.

3.5 Thus, as recommended by the 53rd GST Council, GST on the supply of services by SPVs to Ministry of Railways (Indian Railways) by way of allowing it to use infrastructure built and owned by them during the concession period against consideration and maintenance services supplied by Ministry of Railways (Indian Railways) to SPVs in relation to such use of infrastructure built and owned by SPVs during the concession period against consideration is hereby regularized for the period from 01.07.2017 to 14.07.2024 on 'as is where is' basis.

4. Applicability of GST on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the Real Estate (Regulation and Development) Act, 2016.

4.1 Representation has been received requesting for clarification on whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA).

4.2 RERA is constituted under the Real Estate (Regulation and Development) Act, 2016. RERA performs function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No.1 and 2 of the Twelfth Schedule of the Indian Constitution.

4.3 RERA is a governmental authority' as per the definition in the exemption notification No.12/2017- CT(R) dated 28.06.2017 and is covered under the scope of entry at Sl. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

4.4 GST Council in its 53rd meeting has recommended to clarify that statutory collections made by RERA are covered under the Sl. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

4.5 Thus, as recommended by the 53rd GST Council, it is hereby clarified that statutory collections made by RERA are covered under the Sl. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

5. Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

5.1 Representation has been received requesting for clarification on whether GST is applicable on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

5.2 Under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Ministry of Electronics and Information Technology (MeitY) pays the acquiring banks an incentive as a percentage of the value of the transactions up to two thousand rupees. Applicability of GST on the incentive paid by the Meity to acquiring banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions was examined in the 48th GST Council meeting held on 17th December, 2022 and based on the recommendations of the GST Council meeting, it was clarified by Circular

No. 190/02/2023- GST dated 13th January, 2023, that incentives paid by MeitY to acquiring banks under the said scheme are in the nature of subsidy and thus, not taxable.

5.3 The Gazette Notifications dated 17th December, 2021 and 14th January, 2023 issued by MeitY state that the incentives will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by the National Payments Corporation of India (NPCI) in consultation with the participating banks. MeitY pays the incentive to the acquiring bank and it is further shared by the acquiring bank with the issuer bank. Issuer bank further shares the incentive with the Payer Payment Service Provider (PSP), which are typically banks, and the UPI app.

5.4 The share of incentive paid by the acquiring bank to the issuer bank and further shared by the issuer bank to the Payer PSPs and the UPI app are decided by the NPCI in consultation with participating banks. Payer PSPs may choose to further share this incentive with Third Party App Providers (TPAP). However, the proportion of the incentive shared by Payer PSPs with TPAPs is not being decided by NPCI in consultation with the participating banks for Financial Years 2021-22 and 2022-23 and was determined by the business agreement between the Payer PSPs and TPAP.

5.5 GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to clarify that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI in consultation with the participating banks under the notified Incentive Scheme, is in the nature of a subsidy and thus, not taxable.

5.6 Thus, as recommended by the 53rd GST Council, it is hereby clarified that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI in consultation with the participating banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, is in the nature of a subsidy and is thus, not taxable.

6. GST liability on the reinsurance of specified general and life insurance schemes.

6.1 Representations have been received to either exempt or regularize the GST liability, for the period from 01.07.2017 to 24.01.2018, on

reinsurance of specified general insurance and life insurance schemes, which are exempt from GST.

6.2 Certain specified general insurance and life insurance schemes are exempt from GST under Sl. Nos. 35 and 36 of notification No. 12/2017-CT(R) dated 28.06.2017. Vide entry at Sl. No. 36A of the said notification, reinsurance of the aforesaid exempted insurance schemes has also been exempted w.e.f. 25.01.2018.

6.3 GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to regularize the GST liability on such reinsurance of exempt general insurance and life insurance schemes for the past period, i.e. from 01.07.2017 to 24.01.2018, on 'as is where is' basis.

6.4 Thus, as recommended by the GST Council, GST liability on the services by way of reinsurance of the insurance schemes specified in Sl. Nos. 35 and 36 of notification No. 12/2017-CT(R) dated 28.06.2017 is regularized for the period from 01.07.2017 to 24.01.2018 on 'as is where is' basis.

7. GST liability on the reinsurance of insurance schemes for which total premium is paid by the Government.

7.1 Representations have been received to exempt GST, for the period from 01.07.2017 to 26.07.2018, on reinsurance of those insurance schemes for which total premium is paid by the Government.

7.2 Services provided to the Central Government, State Government, or Union Territory under any insurance scheme for which total premium is paid by the Central Government, State Government, or Union Territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-CT(R) dated 28.06.2017. Vide entry at Sl. No. 36A of the said notification, re-insurance of the aforesaid insurance schemes has been prospectively exempted w.e.f. 27.07.2018.

7.3 GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to regularize the GST liability on such reinsurance of Government sponsored insurance schemes for the past period, i.e. from 01.07.2017 to 26.07.2018, on 'as is where is' basis.

7.4 Thus, as recommended by the GST Council, GST liability on the services by way of reinsurance of insurance services covered under Sl. No. 40 of notification No. 12/2017-CT(R) dated 28.06.2017 is regularized for the period from 01.07.2017 to 26.07.2018 on 'as is where is' basis.

8. Applicability of GST on retrocession services.

8.1 Representations have been received to clarify whether the term 'reinsurance' as mentioned in Sl. No. 36A of notification No. 12/2017-CT(R) dated 28.06.2017 includes 'retrocession'.

8.2 The matter was placed before the GST Council in its 53d meeting held on 22nd June, 2024. As per the IRDAI (Re-insurance) Regulations, 2018, 'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer). Accordingly, the GST Council has recommended to clarify that reinsurance includes retrocession services.

8.3 Thus, as recommended by the GST Council, it is hereby clarified that the term 'reinsurance' as mentioned in Sl. No. 36A of notification No. 12/2017-CT(R) dated 28.06.2017 includes 'retrocession services.

9. GST liability on certain accommodation services.

9.1 Representations have been received requesting to clarify whether service by way of hostel accommodation, service apartments/hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted under entry at Sl. No. 12 of notification No. 12/2017-CTR dated 28.06.2017. Requests have also been received for GST exemption on hostels for poor and middle-class students run by charitable trusts.

9.2 The matter was placed before the GST Council in its 53rd meeting held on 22nd June, 2024 and the GST Council recommended to exempt the supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days. The same has been exempted w.e.f. 15.07.2024 vide notification No. 4/2024-CT(R) dated 12.07.2024.

9.3 In its 53nd meeting, the GST Council further recommended extending the benefit for past cases provided that value of supply of accommodation services supplied was less than or equal to twenty thousand rupees per person per month and that the accommodation service was supplied for a minimum continuous period of ninety days.

9.4 Thus, as recommended by the GST Council, GST liability on the supply of accommodation services is regularized on 'as is where is' basis

for the period from 01.07.2017 to 14.07.2024 where value of supply of the accommodation service is less than or equal to twenty thousand rupees per person per month and the said accommodation service was supplied for a minimum continuous period of ninety days.

10. Difficulties, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Limatula Yaden) Joint Secretary, TRU

Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 53rd meeting held on 22nd June, 2024, at New Delhi –reg.

Circular No. 229/23/2024-GST

F. No. 190354/94/2024-TO(TRU-II)-CBEC
North Block, New Delhi, Date: 15th July, 2024

To

The Principal Chief Commissioners/ Principal Directors General,
The Chief Commissioners/Directors General,
The Principal Commissioners/Commissioners of Central Excise & Central Tax

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 53rd meeting held on 22nd June, 2024, at New Delhi-reg.

Madam/Sir,

Based on the recommendations of the GST Council in its 53d meeting held on 22nd June, 2024, at New Delhi, in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, clarifications on the following issues are being issued through this Circular as under:

2. Clarification regarding GST rate on Solar Cookers:

2.1 Representations have been received seeking clarification regarding appropriate classification and applicable GST rate on supply of solar cookers that work on dual energy source.

2.2 On the recommendations of GST Council, it is hereby clarified that solar cookers that work on dual energy of solar energy and grid electricity are appropriately classifiable under heading 8516 and already attract a GST rate of 12% vide Sl. No. 201A of Schedule II of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017.

3. Clarification regarding GST rate on Fire Water Sprinklers:

3.1 Representations have been received seeking clarification as to whether the existing entry covering sprinkles at 12% GST rate also cover Fire Water Sprinklers.

3.2 On the recommendations of the Council, it is hereby clarified that all types of sprinklers, including fire water sprinklers attract GST at the rate of 12% vide Sl. No. 195 B of Schedule II of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017.

3.3 Further, on the basis of the recommendation of the GST Council, in view of the prevailing genuine doubts, the issues for the past period are regularized on "as is where is basis".

4. Clarification regarding GST rate on parts of Poultry-keeping machinery:

4.1 Representations have been received seeking clarification regarding appropriate classification and applicable GST rate on supply of 'parts' of Poultry-keeping machinery.

4.2 Parts of Poultry-keeping machinery are classifiable under tariff item 8436 91 00 and attract GST at the rate of 12% vide Sl. No. 199 of Schedule II of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017. On the recommendations of the Council, to bring clarity on the issue, the relevant entry at Sl. No. 199 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017, has been amended vide notification No. 2/2024-Central Tax (Rate), dated the 12th July, 2024 to specifically include 'parts' of Poultry-keeping machinery.

4.3 Further, on the basis of the recommendation of the GST Council, in view of the prevailing genuine doubts, the issues for the past period are regularized on "as is where is basis".

5. Clarification regarding the scope of expression 'pre-packaged and labelled' for supply of agricultural farm produce:

5.1 Representations have been received seeking clarification regarding the scope of expression 'pre-packaged and labelled for the purposes of

levy of GST on supply of agricultural farm produce in view of amendment made in Legal Metrology (Packaged Commodities) Rules, 2011.

5.2 On the basis of the recommendation of the GST Council, the definition of 'pre-packaged and labelled' in notification No. 1/2017-Central Tax (Rate) and notification No. 2/2017-Central Tax (Rate), both dated the 28th June, 2017, has been amended vide notification No. 2/2024-Central Tax (Rate) dated 12th July 2024 and notification No. 3/2024-Central Tax (Rate) dated 12th July, 2024, respectively, to exclude the supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litre from the scope of pre-packaged and labelled'. Consequently, supply of agricultural farm produce in package (s) containing quantity of more than 25 kilogram or 25 litre will not attract GST levy of 5%.

5.3 Further, on the basis of the recommendation of the GST Council, in view of the prevailing genuine doubts, the issues for the past period are hereby regularized on "as is where is" basis.

6. Clarification regarding supplies of goods made to or by agency engaged by Government

6.1 Prior to 17th July, 2022, supplies of pulses and cereals attracted GST at rate of 5%, wherein the said goods were put up in a unit container and bearing a registered brand name and/or bearing a brand name on which an actionable claim or enforceable right in a court of law is available.

6.2 On the basis of the recommendation of the GST Council, in view of the genuine interpretational issues, the issues for the past period from 01.07.2017 up to 17.07.2022 are hereby regularized on "as is where is" basis for supplies made to or by any agency engaged by Union Government or State Government/Union Territory for procurement and sale of such goods under any programme/scheme duly approved by the Central Government or any State Government intended to distribute such goods at free of cost or at subsidized rate to the eligible beneficiaries like economically weaker sections of the society subject to following conditions, namely:-

a. the concerned supplier furnishes a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned recommending that supplies have been made to or by an agency engaged by Union Government or State Government/Union Territory for procurement

and sale of such goods under any programme/scheme duly approved by the Central Government or any State Government intended to distribute such goods at free of cost or at subsidized rate to the eligible beneficiaries like economically weaker sections of the society, within a period of 180 days from the date of issuance of this Circular to the jurisdictional commissioner of the Central Tax or jurisdictional commissioner of the State Tax, or jurisdictional officer of the Union Territory Tax, as the case maybe; and

b. Input Tax Credit shall not be allowed on such inputs and, if availed on such inputs, it shall be reversed within a period of 180 days from the date of issuance of this Circular, if the supplier intends to take the benefit under the proposed regularisation.

7. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully.
(Limatula Yader)) 202 Joint Secretary (TRU)
Tel: 011-2309 2687

Clarification in respect of advertising services provided to foreign clients.

Circular No. 230/24/2024-GST

F. No. CBIC-20001/6/2024-GST
New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All),
The Principal Directors General/ Directors General (All).

Madam/Sir,

Subject: Clarification in respect of advertising services provided to foreign clients–reg.

References have been received from the trade and industry requesting for clarification regarding advertising services being provided by Indian advertising companies/agencies to foreign entities, as some of the field

formations are considering the place of supply of the said services as within India, thereby denying the export benefits to such advertising companies.

1.2 In view of the difficulties being faced by the trade and industry 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in succeeding paragraphs.

2. Issue in Brief

2.1 A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.

2.2 In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client. In this regard, clarification has been sought as to:

a. Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners in terms of section 2(13) of Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act"), thereby resulting in determination of place of supply under section 13(8)(b) of the IGST Act?

b. Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the recipient of the services being supplied by the advertising company under section 2(93) of CGST Act?

c. Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)of the IGST Act?

3. CLARIFICATION:

3.1 Issue 1 -Whether the advertising company can be considered as an “intermediary” between the foreign client and the media owners as per section 2(13) of IGST Act?

3.1.1 As per section 2(13) of IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as intermediary.

3.1.2 In the instant scenario, it is observed that the foreign clients enter into a comprehensive agreement with advertising companies/agencies in India and outsource the entire activity of advertising services to the advertising companies/agencies. Further, these advertising companies/ agencies enter into an agreement with the media owners in India for implementing the said media plan and procurement of media space for airing or releasing or printing advertisement.

3.1.3 The advertising agency, in this case, enters into two agreements:

i. With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.

ii. With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

3.1.4 Thus, the agreement, in the instant case, is in the nature of two distinct principal-to- principal supplies and no agreement of supply of services exists between the Media company and the foreign client. The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency is providing the services to the client on its own account.

3.1.5 In view of above, it is clarified that in the present scenario, the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis as detailed above and does not fulfil the criteria of “intermediary”

under section 2(13) of the IGST Act. Thus, the same cannot be considered as "intermediary" in such a scenario and accordingly, the place of supply in the instant matter cannot be linked with the location of supplier of services in terms of section 13(8)(b) of the IGST Act.

3.2 Issue-2 Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "*recipient*" of the services being supplied by the advertising company under section 2(93) of CGST Act?

3.2.1 As per Section 2(93)(a) of the CGST Act, the "recipient" of the services means the person who is **liable to pay consideration** where a consideration is payable for the supply of goods or services or both.

3.2.2 In the instant scenario, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India. Further, in this case, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India cannot be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client. Further, the target audience of the advertisements may be based in India but such target audience cannot be considered as recipient of the said advertising services being supplied by the advertising company as per the definition of the recipient under section 2(93) of CGST Act.

3.2.3 Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per section 2(93) of the CGST Act, 2017.

3.3 Issue-3Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)of the IGST Act?

3.3.1 The place of supply of performance based services is provided in sub-section (3) of section 13 of IGST Act. The provisions of clause (a) of the said sub-section pertain to the services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services. However, in the instant matter, there

does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services. Therefore, the said provisions of clause (a) of the said sub-section cannot be made applicable for determination of place of supply of advertising services.

3.3.2 Further, clause of (b) of sub-section (3) of section 13(3)(b) of IGST Act provides that the place of supply shall be the location where the services are actually performed in case, where,

a. services are supplied to an individual,

b. represented either as the recipient of services or a person acting on behalf of the recipient, and

c. which requires the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services

3.2.3 In the present scenario, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) of the IGST Act for being considered as the services actually performed in India in terms of the said section.

3.3.3 Accordingly, it is clarified that the place of supply of advertising services in such cases can neither be determined as per the provision of section 13(3)(a) nor as per the provisions of section 13(3)(b) of IGST Act.

4. Further, it is observed that in the present scenario, the place of supply of the above- mentioned advertising services does not appear to be covered under any other provisions of sub-sections (3) to (13) of Section 13 of the IGST Act. Therefore, in view of foregoing discussion, it appears that the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. sub-section (2) of section 13 of IGST Act, i.e. the place of location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per Section 13(2) of IGST Act, and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6) of IGST Act.

5. However, there may be cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client. In such cases, the agreement/ contract for providing the media space and

broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

5.1 Consequently, in such cases, the advertising company is an "intermediary" in accordance with Section 2(13) of the CGST Act, 2017, as elucidated in Circular No. 159/15/2021-GST dated 20.09.2021, in respect of the said services of facilitating the foreign client and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b)of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

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 this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on availability of input tax credit in respect of demo vehicles.

Circular No. 231/25/2024-GST

F. No. CBIC-20001/6/2024-GST
New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on availability of input tax credit in respect of demo vehicles-reg.

The demo vehicles are the vehicles which the authorised dealers for sale of motor vehicles are required to maintain at their sales outlet as per dealership norms and are used for providing trial run and for demonstrating features of the vehicle to the potential buyers. These vehicles are purchased by the authorised dealers from the vehicle manufacturers against tax invoices and are typically reflected as capital assets in books of account of the authorized dealers. As per dealership norms, these vehicles may be required to be held by the authorized dealers as demo vehicle for certain mandatory period and may, thereafter, be sold by the dealer at a written down value and applicable tax is payable at that point of time.

2. Reference has been received to issue clarification regarding availability of input tax credit in respect of demo vehicles on the following issues:

i. **Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause(a) of section 17(5) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act").**

ii. **Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.**

3. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the above issues as below.

4. Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause(a) of section 17(5) of CGST Act.

4.1 Clause (a) of Section 17(5) of CGST Act provides that input tax credit shall not be available in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons(including the driver), **except when they are used for making following taxable supplies,** namely:

A. **further supply of such motor vehicles**; or

B. transportation of passengers; or

C. imparting training on driving such motor vehicles.

4.2 The intention of law, as it appears from the use of expression **'when they are used for making the following taxable supplies'** in clause (a) of section 17(5) of CGST Act, is to exclude certain cases (based on the nature of outward taxable supplies being made using the said motor vehicle) from the restriction on availment of input tax credit in respect of the specified motor vehicles i.e. motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver). The taxable supplies, permitted for the purpose of being excluded from the blockage of input tax credit as per provisions of clause (a) of section 17(5) of CGST Act, being further supply of such motor vehicles, transportation of passengers and imparting training on driving such motor vehicles.

4.3 As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it is quite apparent that demo vehicles cannot be said to be used by the authorized dealer for providing taxable supply of transportation of passengers or imparting training on driving such motor vehicles. Therefore, demo vehicles are not covered in the exclusions specified in sub-clauses (B) and (C) of clause

(a) of section 17(5) of CGST Act. Accordingly, it is to be seen whether or not the Demo vehicles in question can be said to be used for making "further supply of such motor vehicles", as specified in the sub-clause (A) of the clause (a) of section 17(5) of CGST Act.

4.4 Regarding the provision for blockage of input tax credit in respect of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), the usage of the words **"such motor vehicles" instead of "said motor vehicle", in sub-clause (A) of the clause (a) of section 17(5) of CGST Act,** implies that the intention of the lawmakers was not only to exclude from the blockage of input tax credit, the motor vehicle which is itself further supplied, but also to exclude from the blockage of input tax credit, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles. As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type

of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. **Accordingly, input tax credit in respect of demo vehicles is not blocked under clause (a)** of section 17(5) of CGST Act, as it is excluded from such blockage in terms of sub-clause

(A) of the said clause.

4.5 There may be some cases where motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for transportation of its staff employees/ management etc. In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, input tax credit in respect of such motor vehicles would not be excluded from blockage in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act.

4.6 Further, there may be cases where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. In such cases, the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer. For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer. The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST. In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles. Accordingly, in such cases, input tax credit in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act and therefore, input tax credit on the same would not be available to the said dealer.

5. Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.

5.1 As per provisions of section 16(1) of CGST Act, every registered taxpayer is entitled to take input tax credit charged on any supply of

goods and services made to him, where such goods or services are used in the course or furtherance of business of such person, subject to such conditions and restrictions as may be prescribed and in the manner which is specified.

5.2 Further, "goods" has been defined in **section 2(52) of CGST Act**, as,

> ***"goods"*** *means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.*

5.3 Also, **section 2(19) of CGST Act** defines "capital goods" as, *"**capital goods**" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.*

5.4 As mentioned in paras above, as the demo vehicles are used by the authorized dealers to promote further sale of motor vehicles of the similar type and therefore, such vehicles appear to be used in the course or furtherance of business of the authorized dealers. Where such vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods" under section 2(19) of CGST Act. As per provision of section 16(1) of CGST Act, subject to such conditions and restrictions as may be prescribed, a recipient of goods is entitled to take input tax credit in respect of tax charged on the inward supply of any goods, which as per definition of "goods" under section 2(52) of CGST Act, includes even capital goods. Further, section 2(19) of CGST Act also recognizes that capital goods are used or intended to be used in the course or furtherance of business. **Accordingly, availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.**

5.5 However, it is to be mentioned that in case of capitalization of demo vehicles, availability of input tax credit would be subject to provisions of section 16(3) of CGST Act, which provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. It is further mentioned that in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an

amount or tax as per provisions of section 18(6) of CGST Act read with rule 44(6) of the Central Goods and Service Tax Rules, 2017.

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 this Circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

Circular No. 232/26/2024-GST

F. No. CBIC-20001/6/2024-GST
New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All),
The Principal Directors General/ Directors General (All).

Madam/Sir,

Subject: Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India-reg.

Representations have been received from the trade and industry seeking clarification on the place of supply in case of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

2. Issue

2.1 It has been represented that some field formations are of the view that the place of supply of data hosting services provided by the service providers located in India to cloud computing service providers located outside India is the location of data hosting service provider in India and

therefore, the benefit of export of services is not available on such supply of data hosting services.

2.2 Thus, clarification has been sought in respect of the following issues-

(i) Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act") and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.

(ii) Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act.

(iii) Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.

3. Clarification

3.1 Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/ users/subscribers as per Section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.

3.1.1 As per section 2(13) of the IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as 'intermediary'. Persons who supply goods or services, or both on their own account are not covered in the definition of "intermediary".

3.1.2 The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for

hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. The data hosting service provider generally handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. Importantly, the data hosting service providers do not deal with end users/consumers of cloud computing services and may not even know about the end users.

3.1.3 It is observed that data hosting service provider provides data hosting services to the cloud computing service provider on a web platform through computing and networking equipment for the purpose of collecting, storing, processing, distributing, or allowing access to large amounts of data. The cloud computing service provider provides cloud-based applications and software services to various end users/customers/ subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc.. The end users/customers/subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers. There appears to be no contact between data hosting service provider and the end users/ consumers/ subscribers of the overseas cloud computing service provider. Thus, it is observed that the data hosting service provider provides data hosting services to the cloud computing service provider on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers.

3.1.4 Accordingly, it is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers cannot be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.

3.2 Whether the data hosting services are provided in relation to goods “made available” by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act, 2017.

3.2.1 Section 13(3)(a) of the IGST Act provides that in cases where the services are supplied in respect of goods which are made physically available by the recipient of services to service provider, the place of supply will be location of service provider.

3.2.2 In the instant scenario, it is observed that the data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that throughout the provision of the said services, the data hosting service provider owns premises for data center or operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services

3.2.3 In view of above, it is clarified that data hosting services provided by data hosting service provider to the saidcloud computing service providers cannot be considered in relation to the goods “made available” by the said cloud computing service providers to the data hosting service provider in India and hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act.

3.2.4 There may be some cases where some of the hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service provider to the data hosting service provider. Even in these cases, data hosting service provider handles all aspects of data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, in such cases, though the data hosting services is being provided by the data hosting service provider *inter-alia* using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under section 13(3)(a) of the IGST Act..

3.3 Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.

3.3.1 Section 13(4) of the IGST Act provides for the place of supply where services supplied are directly in relation to immovable property.

3.3.2 In the present scenario, it is observed that the data hosting service providers either use owned or leased premises for keeping IT infrastructure and other hardware required for providing data hosting services. They also procure hardware, uninterrupted power supplies, backup generators, ventilation and cooling equipment, network connectivity, fire suppression systems, security, human resource, etc.; handle operations like server monitoring, IT management and equipment maintenance, including repairs and replacements of the same, for providing data hosting services to their clients.

3.3.3 Thus, it is observed that data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for cloud computing service provider to provide cloud computing services to the end users/customer/subscribers.

3.3.4 Accordingly, it is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

4. Further, the place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in sections 13(3) to 13(13) of the IGST Act. Therefore, the place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply will be considered to be outside India according to section 13(2) of the IGST Act.

5. Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6) of IGST Act.

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 this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess.

Circular No. 233/27/2024-GST

F. No. CBIC-20001/6/2024-GST
New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax and
Central Tax (Audit) (All)
The Principal Directors General / Directors General (All) Madam/Sir,

Subject: Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess - regarding.

Sub-rule (10) of rule 96 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") provides for a bar on availment of the refund of integrated tax (IGST) paid on export of goods or services, if benefits of certain concessional/exemption notifications, as specified in the said sub-rule, have been availed on inputs/raw materials imported or procured domestically. In this regard, references have been received from the field formations and trade/ industry wherein clarification has been

sought on whether refund of integrated tax paid on exports of goods by a registered person can be regularized in a case where the registered person had initially imported inputs without payment of integrated tax and compensation cess, by availing the benefits under Notification No. 78/2017-Customs dated 13.10.2017 or Notification No. 79/2017-Customs dated 13.10.2017, but subsequently, at a later date, the said person has either paid the IGST and compensation cess, along with interest, on such imported inputs or is now willing to pay such IGST and compensation cess, along with interest.

2. The issue has been examined and in order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the following:

2.1 Vide Notification No. 16/2020-CT dated 23.03.2020, an Explanation was inserted in sub-rule (10) of rule 96 of CGST Rules retrospectively with effect from 23.10.2017, which reads as follows:

> "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."

2.2 A bare perusal of the said Explanation, which was inserted with retrospective effect, reveals that in cases where the benefits of these exemption notifications have not been availed in respect of IGST and compensation cess, it shall be deemed that benefit of the said notifications has not been availed for the purpose of sub-rule (10) of rule 96 of CGST Rules. Therefore, extension of logic given in the said Explanation may lead to a view that in cases where inputs were initially imported without payment of integrated tax and compensation cess but subsequently, IGST and compensation cess on such imported inputs is paid at a later date, along with interest, then in such cases, it can be considered that the benefits of notifications mentioned in clause (b) of sub-rule (10) of rule 96 of CGST Rules have not been availed for the purpose of said sub-rule. Accordingly, refund of IGST claimed on exports made with payment of Integrated tax in such cases may not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

2.3. In view of the above, it is clarified that where the inputs were initially imported without payment of integrated tax and compensation

cess by availing benefits under Notification No. 78/2017-Customs dated 13.10.2017 or Notification No. 79/2017-Customs dated 13.10.2017, but subsequently, IGST and compensation cess on such imported inputs are paid at a later date, along with interest, and the Bill of Entry in respect of the import of the said inputs is got reassessed through the jurisdictional Customs authorities to this effect, then the IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarifications regarding applicability of GST on certain services

Circular No. 234/28/2024-GST

F. No. CBIC-190354/149/2024-TO(TRU-II)-CBEC
North Block, New Delhi Dated the 11th October 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)/
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services – reg.

Based on the recommendations of the GST Council in its 54th meeting held on 9th September 2024, at New Delhi, in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, clarifications on the following issues are being issued through this Circular as under:

2. Applicability of GST on the service of affiliation provided by universities to colleges:

2.1 Representations have been received seeking clarification on the applicability of GST on the service of affiliation provided by universities to colleges.

2.2 The activity of affiliation is to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, faculty strength, etc. and is thereby eligible for the privileges to conduct the course/program of study for the degree/title extended by the University to the students enrolled in such institutions. The affiliation services provided by the universities to colleges are not by way of services related to the admission of students to such colleges or the conduct of examinations by such colleges.

2.3 Thus, as recommended by the 54th GST Council, it is hereby clarified that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions in the notification No. 12/2017-CT(R) dated 28.06.2017 and GST at the rate of 18% is applicable on the affiliation services provided by the universities.

3. Applicability of GST on the service of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to schools:

3.1 Representations have been received to clarify the applicability of GST on the service of affiliation provided by the Central and State educational boards or councils, or other similar bodies, to schools and to regularize the payment of tax on such services for the past period.

3.2 The activity of affiliation carried out by educational boards or councils, or other similar bodies, is to monitor and ensure whether the schools possess the required infrastructure, finances, faculty strength etc. and are thereby eligible for the privileges to operate under the aegis of said boards or councils. The services of affiliation provided to schools by educational boards or councils, or other similar bodies, are not by way of services related to the admission of students to such schools or the conduct of examinations by such schools..

3.3 The matter was placed before the GST Council in its 54th meeting held on 09th September 2024, and the GST Council recommended to clarify that such services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. At the same time, the GST Council recommended exempting the supply of affiliation services provided by Central and State

educational boards or Councils, or other similar bodies, by whatever name called to government schools i.e. schools established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity. The same has been exempted w.e.f. 10.10.2024 vide notification No. 08/2024-Central Tax (Rate) dated 08.10.2024.

3.4 In its 54th meeting, the GST Council further recommended regularizing the GST liability on such services provided to all schools for the period from 01.07.2017 to 17.06.2021, i.e., the date of issuance of Circular No. 151/07/2021-GST wherein accreditation services of boards are clarified to be taxable at the rate of 18%.

3.5 Therefore, as recommended by the GST Council, it is clarified that services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. Further, as recommended by the Council, the payment of GST on the services of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to all schools is regularized on '*as is where is*' basis for the period from 01.07.2017 to 17.06.2021.

4. Applicability of GST on the Directorate General of Civil Aviation (DGCA) approved flying training courses conducted by Flying Training Organizations approved by the DGCA:

4.1 Representations have been received regarding the applicability of GST on the DGCA-approved flying training courses conducted by Flying Training Organizations (FTOs) which are approved by the Directorate General of Civil Aviation (DGCA). The same has been examined.

4.2 Under GST Law, vide Sl. No. 66 of the notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, *"educational institution"* has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

4.3 In exercise of the power vested by Section 5 of the Aircraft Act, 1934, the Central Government has made the Aircraft Rules, 1937, which, inter-alia, provide for 'approved training', i.e. training the curriculum of which has been approved by the DGCA, and 'approved training organization', i.e. a flying training organization which shall obtain the approval of DGCA before the students are enrolled to acquire flying experience. The said

rules further state that flying experience required for the issue of private pilot and commercial pilot licenses shall be acquired at the Flying Training Organization (FTO) approved/ recognized by the DGCA. The Civil Aviation Requirements (CAR) issued under the said rules also provide for a completion certificate to be issued by an approved FTO to each student who completes its approved course of training.

4.4 It is evident from the above that the DGCA not only approves FTOs but also flying training courses and mandates the requirement of course completion certificates to be issued to successful candidates in terms of the Aircraft Act, 1934 and the rules prescribed thereunder. Therefore, the approved flying training courses conducted by FTOs approved by DGCA, wherein the DGCA mandates the requirement of a completion certificate, are covered under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and are hence, exempt.

5. Regularizing payment of GST on transport of passengers by helicopter:

5.1 54th GST Council has recommended that the GST rate on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis may be notified at 5%. Accordingly, notification No. 07/2024- Central Tax (Rate) dated 08.10.2024 effective from 10.10.2024 has been issued.

5.2 The Council further recommended to regularize payment of GST on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis on *'as is where is'* basis.

5.3 In addition to above, the Council also recommended to clarify that charter of helicopter would continue to attract GST at the rate of 18%.

5.4 Thus, as recommended by the 54th GST Council, payment of GST on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis is hereby regularized on *'as is where is'* basis for the period from 01.07.2017 to 09.10.2024.

5.5 Further, as recommended by the 54th GST Council, it is hereby clarified that transport of passengers by helicopter on other than seat share basis i.e., for charter operations will continue to attract GST at the rate of 18%.

6. Whether incidental/ ancillary services such as loading/ unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of

Goods Transport Agency service, being composite supply, or these services are to be treated as separate independent supplies:

6.1 Representations have been received to clarify whether incidental/ ancillary services such as loading/ unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of Goods Transport Agency (GTA) service, being composite supply, or these services are to be treated as separate independent supplies.

6.2 It has been brought to notice that enforcement agencies are raising demands for such services holding them leviable to GST at the rate of 18% by interpreting last para of Question No. 6 of the FAQ issued by CBIC which states that ***"If such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies",*** to mean that if a GTA shows packing charges, loading, unloading charges etc., separately in the invoice, the GTA becomes liable to pay GST at the rate of 18% on these services by treating them as cargo handling services.

6.3 After deliberations on the issue and based on recommendations of the 54th GST Council, it is hereby clarified that ancillary or incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods. The method of invoicing used by GTAs will not generally alter the nature of the composite supply of service. However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.

7. Regularizing payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration:

7.1 54th GST Council has recommended to exempt import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration. Accordingly, notification No. 08/2024-Integarted Tax (Rate) dated 08.10.2024 effective from 10.10.2024 has been issued.

7.2 The Council further recommended to regularize payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration for the past period on '*as is where is*' basis.

7.3 Therefore, on recommendations of the 54th GST Council, the payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration is hereby regularized for the period from 01.07.2017 to 09.10.2024 on *'as is where is'* basis.

8. Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties:

8.1 Allowing choice of location of apartment is integral part of supply of construction services and therefore, location charge is nothing but part of consideration charged for supply of construction services before issuance of completion certificate. Being charged along with supply of construction services for the apartment, the same attract GST at same rate as of construction services before issuance of completion certificate.

8.2 Therefore, based on the recommendations of the 54th GST Council, it is hereby clarified that location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential /commercial/industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.

9. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility:

9.1 GST Council in its 54th meeting held on 09th September, 2024 has recommended to exempt **supply of services by way of providing metering equipment on rent, testing for meters/ transformers/ capacitors etc., releasing electricity connection, shifting of meters/ service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by transmission and distribution utilities to their consumers.**

9.2 The same have been exempted vide notification No. 08/2024-Central Tax (Rate) dated 08.10.2024 effective from 10.10.2024.

9.3 The GST Council in its 54th meeting has also recommended to regularize the payment of GST for supply of such services for the period i.e., from 01.07.2017 to 09.10.2024 on '*as is where is*' basis.

9.4 Therefore, as recommended by the 54th GST Council, the payment of GST on services provided by an electricity transmission or distribution

utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as those listed in para 9.1 above is hereby regularized on '*as is where is'* basis from 01.07.2017 to 09.10.2024.

10. Regularizing payment of GST on services of film distributors or sub-distributors who act on a principal basis to acquire and distribute films:

10.1 Representations have been received to clarify regarding the GST liability for the period from 01.07.2017 to 01.10.2021 on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centers. Field formations have viewed that such transaction are classifiable under SAC 9996 and attracts GST at the rate of 18%.

10.2 Prior to 1st October 2021, GST at the rate of 18% was leviable on "*Motion Picture, videotape and television programme distribution services"* under Heading 9996 whereas 12% rate of GST was leviable on *"temporary or permanent transfer or permitting the use or enjoyment of intellectual property right in respect of goods other than IT technology software"* under Heading 9973. It was observed that both entries apparently covered services by way of licensing of rights to broadcast or show films. This issue was discussed in the 45th GST Council meeting held on 17.09.2021 wherein, the Council recommended to keep a uniform rate of 18% on both these entries with effect from 01.10.2021.

10.3 The GST Council in its 54th meeting held on 09th September 2024 has recommended to regularize the payment of GST on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centers on '*as is where is*' basis from 01.07.2017 to 30.09.2021.

10.4 Therefore, as recommended by the GST Council, the payment of GST on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centers is regularized for the period from 01.07.2017 to 30.09.2021 on *'as is where is'* basis.

11. Difficulties, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Sachin Jain)
Joint Secretary, TRU-II

Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 54th meeting held on 9 th September 2024 at New Delhi

Circular No. 235/29/2024-GST

F. No. CBIC-190354/149/2024-TO(TRU-II)-CBEC
North Block, New Delhi Dated the 11th October 2024

To,

The Principal Chief Commissioners/ Principal Directors General,
The Chief Commissioners/ Directors General,
The Principal Commissioners/ Commissioners of Central Excise & Central Tax

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 54th meeting held on 9 th September, 2024, at New Delhi -reg.

Madam/Sir,

Based on the recommendations of the GST Council in its 54th meeting held on 9th September, 2024, at New Delhi, in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, the Board hereby clarifies the following issues through this circular for the purpose of uniformity in their implementation:

1. Clarification regarding GST rate on Extruded/Expanded Savoury food products:

1.1 Representations were received seeking clarification regarding appropriate classification and whether savoury or salted extruded snack pellets are classifiable under HS 2106 as Namkeens due to disputes in the field. Based on the recommendations of GST Council, with effect from 10.10.2024, extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion), falling under HS 1905 90 30 attract GST at the rate of 12% *vide* entry 32C of Schedule II of notification 1/2017-Central Tax (Rate) dated the 28th June, 2017 at par with namkeens, *bhujia*, mixture, *chabena* (pre-packaged and labelled) and similar edible preparations in ready for consumption form which are classifiable under HS 2106 90 of entry 46 of Schedule II of Notification 1/2017-Central Tax(Rate)

dated the 28th June, 2017. The GST rate of 5% continue on un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion.

1.2 However, it is clarified that the reduced GST rate of 12% on extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion) falling under HS 1905 90 30 shall apply prospectively from the date of effect of the said notification. For the past period, 18% GST shall be payable.

2. Clarification regarding GST rate on Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways:

2.1 Representations have been received regarding classification of Roof mounted air conditioners for Railways as to whether these goods are to be classified under HS 8415 with 28% GST rate or HS 8607 with 18% GST.

2.2 In this regard Goods falling under heading 8415 (including air conditioning machines) attract a GST rate of 28% vide S. No. 119 of Schedule IV of notification No. 01/2017-CT (Rate) dated 28.06.2017 (as amended). The goods falling under heading 8607 (including parts of railways or tramway locomotives) attract a GST rate of 18% vide S. No. 398G of Schedule III of notification No. 01/2017-CT (Rate) dated 28.06.2017 (as amended). Machines and apparatus of heading 8415, which include Air conditioning machines, are excluded from the ambit of 'parts' covered under heading 8607 as per Section note 2 of Section XVII of Customs Tariff Act, 1975. From a conjoint reading of Note 2 and Note 3 of the Section notes for the Section XVII, it is clear that goods of heading 8401 to 8479 (including 8415 – Air Conditioning Machines) are excluded from the ambit of 'parts' covered under Chapter 86.

2.3 Although there is no ambiguity in the classification, to make it explicitly clear, it is clarified that the Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways are classified under HS 8415.

3. Clarification regarding GST rate on Car and Motor cycle seats:

3.1 Representations were received seeking clarification regarding classification of seats meant for four wheeled cars and two-wheelers and the consequent GST rate on seats meant for four wheeled cars and two-wheelers.

3.2 With regards to seats for two wheelers, it is pertinent to note that the Explanatory Note for HS 9401 has specifically excluded items under HS 8714 (includes parts and accessories of two wheelers). The explanatory note for HS 8714 has a list of inclusions, which has mention of Saddles (seats). Thus, for two wheelers (HS 8711), the seats would be classifiable under HS 8714 attracting GST rate of 28% *vide* S. No. 174 of Schedule IV of notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 (as amended).

3.3 As regards seats for 4 wheeled vehicles, HS 9401 covers 'Seats, whether or not convertible into beds and parts thereof' (Tariff Item 9401 20 00 specifically covers seats of a kind used for motor vehicle). The Explanatory Note for this heading has also mentioned that seats for vehicles are covered under the ambit of HS 9401. Further, the Explanatory Notes to Chapter 94 have a list of exclusions that are not to be classified under the said Chapter. This list of exclusions does not mention seats meant for vehicles. Thus, it is seen that car seat would fall under HS 9401.

3.4 Thus, the seat assembly for 4 wheelers are classifiable under HS 9401 while seats for 2-wheelers are classifiable under HS 8714. There is no ambiguity in the GST rates on the said goods - car seats which are classifiable under 9401 attract GST @ 18 % *vide* S. No. 435A of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 (as amended) and seats meant for two wheelers are classifiable under HS 8714 which attract a GST rate of 28%.

3.5 In order to bring parity with seats of motorcycles (classified under HS 8714) which already attract a GST rate of 28%, based on the recommendation of the Council, with effect from 10.10.2024 *vide* S. No. 210A of Schedule IV of notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 (as amended), car seats classifiable under HS 9401 attract GST at the rate of 28%. It is clarified that the 28% rate on car seats classifiable under HS 9401 is applicable prospectively, that is, from the date of effect of the said notification.

4. Field formations under your charge may be instructed accordingly.

5. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Limatula Yaden)
Joint Secretary (TRU)
Tel: 011 -2309 2687

Clarification regarding the scope of “as is / as is, where is basis” mentioned in the GST Circulars issued on the basis of recommendation of the GST Council in its meetings

Circular No. 236/30/2024-GST

F. No. CBIC-190354/149/2024-TO(TRU-II)-CBEC
North Block, New Delhi Dated the 11th October 2024

To,

The Principal Chief Commissioners/ Principal Directors General, The Chief Commissioners/ Directors General,
The Principal Commissioners/ Commissioners of Central Excise & Central Tax

Subject : Clarification regarding the scope of “as is / as is, where is basis” mentioned in the GST Circulars issued on the basis of recommendation of the GST Council in its meetings

Instances were brought to the notice of the Board pertaining to the prevailing doubts among the field formations/trade as regards the scope of regularization on “as is” or “as is, where is basis” *vide* various GST Circulars issued for clarification regarding applicable GST rates and appropriate classification of specified goods or service or both on the basis of recommendation of the GST Council in its various meetings.

2. The GST Council in its 54th Meeting held on 9th September 2024 has recommended issuance of clarification to clarify the intent behind the regularization done in the past meetings. Therefore, this Circular is being issued in exercise of power under Section 168 of CGST Act 2017 to clarify **scope of “as is” or “ as is, where is basis”**.

3. Circulars have been issued based on recommendation of the GST Council wherein GST non-payment/ short-payments for past period have been regularized “*As is*” or *As is, where is basis*” in certain cases for supply of goods or services or both. Regularization for the past period has been done, on the recommendations of the Council, in situations, such as, where genuine doubts have arisen as there are two competing entries with different rates in the notifications or issues have arisen due to diverse interpretation resulting in a situation where some suppliers have paid a lower rate of GST (including nil rate on account of an exemption entry) and some suppliers have paid a higher rate of GST. It has also been clarified that where taxpayers had paid at the higher GST rate, in such situations they shall not be entitled to any refund.

4. The phrase *'as is where is' is* generally used in the context of transfer of property and means that the property is being transferred in its current condition, whatever this condition happens to be and the transferee of property has accepted it with all its faults and defects, whether or not immediately apparent. In the context of GST, the phrase '*regularized on as is where is'* basis means that the payment made at lower rate or exemption claimed by the taxpayer shall be accepted and no refund shall be made if tax has been paid at the higher rate. The intention of the Council is to regularize payment at a lower rate including nil rate due to the tax position taken by taxable person, as full discharge of tax liability. The tax position of a taxable person is reflected in the returns filed by the person where the applicable rate of tax (or relevant exemption entry) on a transaction/supply is declared.

5. Thus, in cases where the matters have been regularized on "as is" or " as is, where is basis", in case of two competing rates and the GST is paid at lower of the two rates, or at nil rate where one of the competing rates was nil under notification entry, by some suppliers while other suppliers have paid at higher rate, payment at lower rate shall be treated as tax fully paid for the period that is regularized.

Illustration 1:

In a situation where certain tax payers have paid 5% GST on supply of "X", while some have paid 12% and the GST Council recommends to reduce the rate to 5% prospectively and regularize the past on "as is where is basis" which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by tax payer will be treated as tax fully paid and they would not be required to pay duty differential of 7% between 5% and 12%. For those tax payers who have paid 12% GST, no refund would be allowed.

Illustration 2:

In a situation where certain tax payers have paid 5% GST on supply of "X" while some have paid nil duty due to the genuine doubt that there was an exemption entry for "X", and the GST Council recommends to clarify that the applicable rate is 5% and to regularize the past on "as is where is basis", in view of prevailing genuine doubts, which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, nonpayment of GST and declaring such transactions as exempted supply in their return by the tax payer will be treated as full discharge of tax liability and they would not be required to pay duty differential of 5 % between Nil and 5%. For those tax payers who have paid 5%, no refund would be made.

Illustration 3:

In a situation where the interpretational issue is between 5% and 12% rates and some taxpayers have paid 5 % , others have paid 12% while certain tax payers have not paid GST on supply of “X”, and the GST Council recommends to clarify that the applicable rate is 12% and regularize the past on “as is where is basis” which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by tax payer will be treated as tax fully paid and they would not be required to pay duty differential between 5% and 12% . For those tax payers who have paid 12%, no refund would be made. However, the regularization would not apply to situations where no tax has been paid. In such cases, the applicable tax i.e. 12% shall be recovered.

6. Accordingly, suitable instructions shall be passed on to the field formations under your charge.

7. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,

(Limatula Yaden)
Joint Secretary (TRU)
Tel: 011 -2309 2687

Corrigendum to Circular No. 237/31/2024-GST dated 15th October, 2024

Corrigendum to Circular No. 237/31/2024-GST

F. No. CBIC-20001/6/2024-GST
New Delhi, dated the 25th October, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) Madam/Sir,

Subject: Corrigendum to Circular No. 237/31/2024-GST dated 15th October, 2024 issued vide F. No. CBIC-20001/6/2024-GST-reg.

In the said circular, following shall be inserted at the end of para 4:

"However, it is clarified that said restriction on refund under section 150 of the Finance (No. 2) Act, 2024 will not apply to the refund of an amount paid as pre-deposit by the taxpayer as per sub-section (6) of section 107 or sub-section (8) of section 112 of the CGST Act, at the time of filing of an appeal, where such appeals are decided in favor of the said taxpayer."

(Sanjay Mangal)
Principal Commissioner (GST)

Clarifying the issues regarding implementation of provisions of sub-section (5) and sub-section (6) in section 16 of CGST Act,2017.

Circular No. 237/31/2024-GST

F. No. CBIC-20001/6/2024-GST
New Delhi, dated the 15th October, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All) Madam/Sir,

Subject: Clarifying the issues regarding implementation of provisions of sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017-reg.

Reference is invited to sub-section (5) and sub-section (6) of section 16 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") inserted in section 16 of the CGST Act, with effect from the 1st day of July, 2017, vide section 118 of the Finance (No. 2) Act, 2024, whereby the time limit to avail input tax credit under provisions of sub-section (4) of section 16 of CGST Act has been retrospectively extended in certain specified cases.

1.2 Sub-section (4), sub-section (5) and sub-section (6) of section 16 of the CGST Act are reproduced below for ready reference:

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

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under subsection (1) of section 37 till the due date for furnishing the details under sub- section (1) of said section for the month of March, 2019.

(5) *Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered personshall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.*

(6) *Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—*

(i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later."

1.3 Further, it has been provided in section 150 of the Finance (No.2) Act, 2024 (reproduced below), that no refund of any

tax paid or the input tax credit reversed shall be granted on account of the said retrospective insertion of sub-section (5) and sub-section (6) of section 16 of the CGST Act.

***"150.** No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 118 been in force at all material times."*

1.4 Besides, vide Notification No. 22/2024 –Central tax dated 08.10.2024, a special procedure for rectification of orders has been notified under section 148 of the CGST Act, to be followed by the class of taxable persons, against whom orders under section 73 or section 74 or section 107 or section 108 of the CGST Act have been issued confirming demand for wrong availment of input tax credit on account of contravention of provisions of sub-section(4) of section 16 of the CGST Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, and where appeal against the said order has not been filed.

1.5 Representations have been received from trade and industry requesting for clarification in respect of various issues pertaining to availment of benefit of the said amendments in section 16 of CGST Act to the taxpayers against whom demands have been issued alleging wrong availment of input tax credit in contravention of provisions of sub- section (4) of section 16 of CGST Act, who are now entitled to avail the said input tax credit as per the retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as below.

3. The following action may be taken by the tax authorities and/ or the taxpayers in various scenarios for availment of benefit on account of retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act:

3.1 Where no demand notice/statement has been issued under section 73 or section 74 of the CGST Act:

In cases, where any investigation/proceedings in respect of wrong availment of input tax credit alleging contravention of provisions of sub-section (4) of section 16 of the CGST Act has been initiated, but no demand notice/statement under section 73 or section 74 of the said Act has been issued, and taxpayers are now entitled to avail the said input tax credit under the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, the proper office shall take cognizance of the sub-section (5) or sub-section (6) of section 16 of CGST Act, inserted retrospectively with effect from 01.07.2017 and take further appropriate action. This also includes the cases where an intimation in FORM DRC-01A has been issued under rule 142(1A) of the CGST Rules for denial of input tax credit on account of contravention of sub-section (4) of section 16 of the said Act, but no demand notice/statement under section 73 or section 74 of the said Act has been issued.

3.2 Where demand notice/ statement under section 73 or section 74 of CGST Act has been issued but no order under section 73 or section 74 of CGST Act has been issued by the Adjudicating Authority:

In such cases, the Adjudicating Authority shall take cognizance of sub-section (5) or sub- section (6) of section 16 of the CGST Act, inserted retrospectively with effect from 01.07.2017, and pass appropriate order under section 73 or section 74 of the CGST Act.

3.3 Where order under section 73 or section 74 of the CGST Act has been issued and appeal has been filed under section 107 of the CGST Act with the Appellate Authority but no order under section 107 of the CGST Act has been issued by the Appellate Authority:

In such cases, the Appellate Authority shall take cognizance of sub-section (5) or sub- section (6) of section 16 of the CGST Act, inserted retrospectively with effect from 01.07.2017, and pass appropriate order under section 107 of the CGST Act.

3.4 Where order under section 73 or section 74 of the CGST Act has been issued and Revisional Authority has initiated proceedings under section 108 of the CGST Act, but no order under section 108 of the CGST Act has been issued by the Revisional Authority:

In such cases, the Revisional Authority shall take cognizance of sub-section (5) or sub- section (6) of section 16 of the CGST Act,

inserted retrospectively with effect from 01.07.2017, and pass appropriate order under section 108 of the CGST Act.

3.5 Where order under section 73 or section 74 of the CGST Act has been issued but no appeal against the said order has been filed with the Appellate Authority, or where the order under section 107 or section 108 of the CGST Act has been issued by the Appellate Authority or the Revisional Authority but no appeal against the said order has been filed with the Appellate Tribunal:

In such cases, where any order under section 73 or section 74 or section 107 or section 108 of the CGST Act has been issued confirming demand for wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of section 16 of the CGST Act, but where such input tax credit is now available as per the provisions of sub- section (5) or sub-section (6) of section 16 of the CGST Act, and where appeal against the said order has not been filed, the concerned taxpayer may apply for rectification of such order under the special procedure under section 148 of the CGST Act notified vide Notification No. 22/2024 – Central tax dated 08.10.2024, within a period of six months from the date of issuance of the said notification.

3.5.1 The taxpayers can file an application for rectification electronically, after login to www.gst.gov.in, using their credentials, by navigating as below in various cases:

a. In case where an application for rectification of an order issued under section 73 or section 74 of the CGST Act is to be filed:

i. Click **Dashboard > Services > User Services > My Applications.**

ii. Select “Application for rectification of order” in the **Application Type** field. Then, click the **NEW APPLICATION** button.

b. In case where an application for rectification of an order issued under section 107 of the CGST Act is to be filed:

i. Click **Dashboard > Services > User Services > View Additional Notices/Orders**

ii. Additional Notices and Orders page is displayed. Click the **View** hyperlink to go to the Case Details

screen of the issued Notice/Order.

iii. **Case Details** page is displayed. The **APPLICATIONS** tab is selected by default. Select the **ORDERS** tab and click the "Initiate Rectification" link.

c. In case where an application for rectification of an order issued under section 108 of the CGST Act is to be filed:

i. Click **Dashboard > Services > User Services > View Additional Notices/Orders**

ii. **Additional Notices and Orders** page is displayed. Click the **View** hyperlink to go to the Case Details screen of the issued Notice/Order.

iii. **Case Details** page is displayed. The **NOTICES** tab is selected by default. To submit Rectification Request against the Revision Order issued to you by the Revisional Authority, select the **ORDERS** tab and click the "Initiate Rectification" link.

3.5.2 While filing such application for rectification of order, the taxpayer shall upload along with the application for rectification of order, the information in the proforma in **Annexure A** of the said notification, containing *inter-alia* the details of the demand confirmed in the said order of the input tax credit wrongly availed on account of contravention of sub-section (4) of section 16 of the CGST Act, which is now eligible as per sub-section (5) and/or sub-section (6) of section 16 of the CGST Act.

3.5.3 Such application for rectification shall be dealt by the proper officer who had passed the order for which the said rectification application has been filed. The said officer shall take a decision on the said application for rectification and issue the order, as far as possible, within a period of three months from the date of such application. Besides, in case where any rectification is being made by the proper officer in the order for which the rectification application has been filed, he shall also upload a summary of the rectified order electronically in **FORM DRC-08** in cases where rectification of an order issued under section 73 or section 74 of the CGST Act is being made, and in **FORM GST APL-04**, in cases where rectification of an order

issued under section 107 or section 108 of the said Act is being made. While taking a decision on such application for rectification filed under the said special procedure, the proper officer shall also consider other grounds, if any, for denial of input tax credit, other than contravention of sub-section (4) of section 16 of the CGST Act, invoked in the concerned notice issued under section 73 or section 74, as applicable, in respect of the said amount of input tax credit.

3.5.4 Where the rectification adversely affects the said person, the principles of natural justice shall be followed by the said proper officer.

3.5.5 Further, it is to be noted that in cases where any rectification has been made by the proper officer in the order for which the rectification application has been filed, an appeal against such rectified order can be filed under the provisions of section 107 or section 112 of the CGST Act, as the case may be, within the time limit specified therein.

4. It is pertinent to note that in terms of section 150 of the Finance (No. 2) Act, 2024, no refund of tax already paid or input tax credit already reversed would be available, where such tax has been paid or input tax credit has been reversed on account of contravention of provisions of sub-section (4) of section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act.

5. It is to be noted that the rectification application of an order issued under section 73 or section 74 or section 107 or section 108 of the CGST Act, can be filed under the special procedure notified vide notification No. 22/2024 – Central tax dated 08.10.2024, within a period of six months from the date of issuance of the said notification, only in cases where the issue or one of the issues on which the demand has been confirmed in the said order, pertains to wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act. In cases where no such issue is involved and a taxpayer requires to file an application of rectification of an order, such rectification application can be filed by the taxpayers only under the provisions of section 161 of the CGST Act, within the time limit specified therein. In case a taxpayer has filed an application for rectification of an order under the special procedure notified

vide notification No. 22/2024 – Central tax dated 08.10.2024, but where it is found that the issues in the said order do not involve any issue of wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, such an application would be summarily rejected by the proper officer with a remark that, "*The rectification application is rejected as it is found that the same is not covered under the notification No. 22/2024 – Central tax dated 08.10.2024, as no such issue is involved in the said order pertaining to wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act*".

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 this Circular may be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Circular No. 238/32/2024-GST

F. No. CBIC-20001/6/2024-GST
New Delhi, dated the 15th October, 2024

To,

The Pr. Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Based on the recommendations of the GST Council made in its 53rd meeting, Section 128A has been inserted in the Central Goods and Services

Tax Act, 2017 (hereinafter referred to as 'the CGST Act') with effect from 01.11.2024 to provide for waiver of interest or penalty or both, relating to demands under section 73 of the CGST Act pertaining to Financial Years 2017- 18, 2018-19 and 2019-20, subject to certain conditions.

1.2 Subsequently, based on the recommendations of the GST Council made in its 54th meeting, Rule 164 has been inserted in Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') with effect from 01.11.2024 vide notification No.20/2024- Central tax dated 8th October 2024, providing for procedure and conditions for closure of proceedings under section 128A of CGST Act.

1.3 Further, vide notification No. 21/2024-Central tax dated 8th October 2024, 31.03.2025 has been notified under sub-section (1) of section 128A of CGST Act as the date on or before which the full payment of tax demanded in the notice/ statement/ order needs to be made by the taxpayer in order to avail the benefit of waiver of interest or penalty or both under the said section. Also, for cases where the application is made as per the first proviso to the sub-section (1) of the section 128A of CGST Act, the date on or before which the full payment of tax demanded in the order issued by the proper officer redetermining the tax under section 73 of CSGT Act needs to be made by the taxpayer, has been notified as six months from the date of issuance of such order by the proper officer redetermining the tax under section 73 of CGST Act.

2.1 Various doubts have been raised by the trade and the field formations in respect of implementation of provisions of Section 128A of the CGST Act, relating to waiver of interest or penalty or both in respect of demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20.

2.2 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.

2.3 Unless otherwise specified, all the sections mentioned in this circular refer to sections of the CGST Act and all the rules mentioned herein refer to the rules of CGST Rules.

3. The procedure to be followed by the taxpayers and the tax officers to avail and implement the benefit provided under Section 128A, is as follows:

3.1 Filing of application:

3.1.1 Section 128A provides for "Waiver of interest or penalty or both relating to demands raised under **section 73**, for certain tax periods". Therefore, provisions of Section 128A are applicable in cases where notices/ statements have been issued under Section 73, for the FYs 2017-18, 2018-19 and 2019-20, in the following situations:

(a) Where a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, but where no order under sub-section (9) of section 73 has been issued;

(b) Where an order has been issued under sub-section (9) of section 73, in respect of the notice/ statement issued under section 73, but where no order has been issued by the Appellate Authority/ Revisional Authority under sub-section (11) of section 107 or sub-section (1) of section 108;

(c) Where an order has been issued by the Appellate Authority/ Revisional Authority under sub-section (11) of section 107 or sub-section (1) of section 108, in the cases where notice/ statement was issued under section 73 and where no order under sub- section (1) of section 113 has been passed by the Appellate Tribunal;

3.1.2 Additionally, as per the first proviso to sub-section (1) of Section 128A, in cases where a notice was initially issued under section 74 for FYs 2017-18, 2018-19 and 2019-20, and an order is passed or required to be passed by the proper officer under section 73 (in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75), those cases are also covered under Section 128A for the purpose of waiver of interest or penalty or both.

3.1.3 In cases referred to in clause (a) of sub-section (1) of Section 128A where a notice/ statement under Section 73 has been issued demanding tax *interalia* pertaining to the period from July 2017 to March 2020, for which no order has been issued under section 73, an application in FORM GST SPL-01, may be filed electronically on the common portal, by the taxpayer.

3.1.4 In cases referred to in clause (b) of sub-section (1) of Section 128A, where an order has been issued under Section 73 demanding tax *inter alia* pertaining to the period from July 2017 to March 2020, for which no order has been issued under section 107 or section 108, an application in FORM GST SPL-02, may be filed electronically on the common portal,

by the taxpayer. Similarly, in cases referred to in clause (c) of sub-section (1) of Section 128A, where an order has been issued under Section 107 or Section 108, but no order has been issued under section 113, an application in FORM GST SPL-02, may be filed electronically on the common portal, by the taxpayer.

3.1.5 The application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, shall be filed within a period of three months from the date notified under section 128A (1), i.e., within three months from 31.03.2025. However, as per the first proviso to sub-section (1) of Section 128A, where a notice has been issued under section 74, and the Appellate Authority or Appellate Tribunal or a court directs the proper officer to redetermine the tax as if the demand notice is issued under section 73, in accordance with the provisions of section 75(2), then same is covered under clause (b) of sub-section (1). Therefore, as mentioned in proviso to sub-rule (6) of Rule 164, in such cases, an application in FORM GST SPL-02, can be filed within six months from the date of communication of order of the proper officer redetermining the amount of tax to be paid under section 73.

3.1.6 Where an appeal under Section 107 or section 112 has been filed by the taxpayer, against an order referred to in clause (b) or clause (c) of sub-section (1) of section 128A, or where a writ petition has been filed by the taxpayer against a notice/ statement/ order referred to in clause (a) or (b) or clause (c) of sub-section (1) of section 128A, the taxpayer is required to withdraw the same before filing an application for waiver of interest or penalty or both, and enclose the order of withdrawal of such appeal/ writ petition in along with the application filed in FORM GST SPL-01 or FORM GST SPL-02, as the case may be. However, in cases where the applicant has filed the application or any other document, for withdrawal of an appeal or writ petition before Appellate Authority or Appellate Tribunal or a court, as the case may be, but the order for withdrawal has not been issued by the concerned authority till the date of filing of the application in FORM GST SPL-01 or FORM GST SPL-02, he is required to upload the copy of such application or the document filed for withdrawal of the said appeal or writ petition along with the said application in FORM GST SPL-01 or FORM GST SPL-02. It is to be mentioned that he is required to upload the final order for withdrawal of the said appeal or writ petition on the common portal, within one month of the issuance of the said order for withdrawal by the concerned authority.

3.1.7 It may be noted that, in case the taxpayer has been issued multiple notices/ statements/ orders pertaining to demands under section 73, for period from July 2017 to March 2020, he is required to file a separate

application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, in respect of each of the concerned notice/ statement/ order.

3.2 Payment of tax:

3.2.1 With respect to a notice or statement referred to in clause (a) of sub-section (1) of Section 128A, i.e., a notice or statement that is yet to be adjudicated, the payment towards the tax demanded in the said notice shall be made by the taxpayer through FORM GST DRC-03.

3.2.2 With respect to an order referred to in clause (b) and clause (c) of sub-section (1) of Section 128A, the payment towards such tax demanded shall be made by the taxpayer, only by the making the payment against the debit entry created in the Part II of the Electronic Liability Register (ELR) by the demand order. In this regard, the procedure mentioned in para 4 of Circular No. 224/18/2024 -GST dated 11th July 2024 may be referred to. However, in cases where the payment towards tax demanded in the demand order has already been made through FORM GST DRC-03, the procedure prescribed in rule 142(2B) may be followed. In such cases, the taxpayer shall be required to file an application in FORM GST DRC-03A as prescribed in the said rule, in order to adjust the amount already paid vide the FORM GST DRC-03, towards the demand created in the ELR-Part II, before filing the application for waiver under Section 128A in FORM GST SPL-02. For the purposes of determining the date of payment of full amount of tax, the date on which the amount has been paid through FORM GST DRC-03 may be considered and not the date on which the said amount has been adjusted using FORM GST DRC-03A.

3.2.3 Such payment shall be made on or before the date notified under section 128A (1), i.e., on or before 31.03.2025. Where applications are filed in respect of cases referred to in the first proviso to sub-section (1) of section 128A, then the applicants shall be required to make the payment on or before the date notified under section 128A (1) specifically for those cases, i.e., within six months of the communication of the order of the proper officer redetermining the amount of tax to be paid under section 73.

3.2.4 In cases where the amount of tax payable as per the notice/ statement/ order includes the amount that was demanded due to contravention of provisions of sub-section (4) of section 16, which is however not payable anymore due to the retrospective insertion of sub-section (5) and sub-section (6) to section 16, the full amount of tax payable as per the notice/ statement/ order as mentioned in sub-section (1) of section 128A for eligibility of waiver of interest or penalty or both shall

be calculated after deducting the amount, which is not payable anymore as per sub-sections (5) or sub-section (6) of section 16, as per sub-rule (5) of Rule 164. In this regard, it is also to be mentioned that, where the taxpayer is deducting the amount of input tax credit which was denied on account of contravention of sub-section (4) of section 16, but which is now available as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, he is not required to file an application for rectification for the same in terms of the special procedure notified under section 148 vide notification No. 22/2024- Central tax dated 8th October 2024.

3.2.5 It is also clarified that while calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds. The tax officer scrutinising such applications is also required to verify that the said amount that has been deducted by the taxpayer as not payable anymore on account of retrospective insertion of sub-section (5) and sub-section (6) to section 16, was initially denied solely deducted on the basis of contravention of sub-section (4) of section 16, and not on any other grounds.

3.2.6 It is further mentioned that, in cases referred to in sub-rule (3) and sub-rule (4) of rule 164, the applicant can file the application for waiver of interest or penalty or both under section 128A, in respect of a notice/ statement/ order mentioned in sub-section (1) of section 128A, only after payment of full amount of tax demanded in the said notice/ statement/ order, including on account of demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, if any, in the said notice/ statement/ order.

3.3 Processing of application and issuance of order:

3.3.1 The proper officer for processing the application for waiver of interest or penalty or both under Section 128A, would be the proper officer to issue the order under section 73, in case the application is filed in FORM GST SPL-01, and would be the proper officer for recovery under Section 79, in case the application is filed in FORM GST SPL-02.

3.3.2 The proper officer on receipt of the application in FORM GST

SPL-01 or FORM GST SPL-02, shall examine the said application. If, on examination, he finds that the said application is liable to be rejected, he shall issue a notice to the applicant, within three months from the date of receipt of the said application, in FORM GST SPL-03 on the common portal. The proper officer shall also give the applicant an opportunity of personal hearing.

3.3.3 On receipt of the notice in FORM GST SPL-03, the applicant may file his reply in FORM GST SPL-04, electronically on the common portal, within a period of one month from the date of receipt of the notice.

3.3.4 The proper officer shall issue an order in FORM GST SPL-05, accepting the said application, if he is satisfied that the applicant is eligible for waiver of interest or penalty or both under Section 128A. However, if the proper officer, based on the application and the reply in FORM GST SPL-04 received from the taxpayer, is of the view that the applicant is not eligible for waiver of interest or penalty or both under Section 128A, he shall issue an order in FORM GST SPL-07, rejecting the said application.

3.3.5 The order in FORM GST SPL-05 or FORM GST SPL-07 shall be required to be issued within the time period prescribed in sub-rule (13) of rule 164. In terms of sub-rule (14) of rule 164, in cases where no order is issued within the time limit prescribed in sub-rule (13) of rule 164, the application filed in FORM GST SPL-01 or FORM GST SPL -02, as the case may be, shall be deemed to be approved, and the order in FORM GST SPL-05 approving the said application shall be made available on the common portal.

3.3.6 In cases where an application for waiver of interest or penalty or both was filed in FORM GST SPL-01 and an order approving the said application is issued by the proper officer in FORM GST SPL-05, then a summary of order in FORM GST DRC-07 need not be issued on the common portal. However, in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, has been issued approving an application filed in FORM GST SPL-02, the liability earlier created in the ELR – Part II by the demand order or the appellate order, as the case may be, shall stand modified accordingly.

3.3.7 It is also to be mentioned that as per the second proviso to sub-section (1) of Section 128A, the conclusion of proceedings against a demand notice/ statement/ order under this section and further issuance of such conclusion order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, in cases where the department had filed an application/

initiated revisional proceedings against the said demand notice/ statement/ order, is conditional upon the payment of additional tax payable, if any, as determined by the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months of issuance of such order. In case, such additional tax is not paid within the specified time limit, then as per sub-rule (16) of Rule 164, the waiver of interest or penalty or both provided under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, shall become void.

3.3.8 Further, while processing the said application, the proper officer shall ensure that the applicant has paid the amount of tax demanded in the notice/ statement/ order referred in sub- section (1) of section 128A (other than the amount not payable anymore due to the retrospective insertion of sub-section (5) and sub-section (6) to section 16, as referred in para 3.2.4), including the amount of tax demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, if any, in the said notice/ statement/ order. Further, the proper officer shall also keep in consideration that waiver of interest and penalty under section 128A is available only in respect of demand pertaining to the period mentioned in sub-section (1) of section 128A, and the demand on issues other than on account of erroneous refund.

3.3.9 Where it is found that any amount of interest and penalty is payable by the applicant on account of some demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A or pertaining to demand of erroneous refund, the detail of the same shall be mentioned in column no. 19 and column no. 20 of FORM GST SPL-05 or FORM GST SPL- 06, as the case may be. Further, in such cases, an opportunity of personal hearing may be granted to the applicant, before issuance of order in FORM GST SPL-05 or FORM GST SPL-06.

3.3.10 In cases referred in para 3.3.9, the applicant is required to pay the amount of interest or penalty or both, detailed in column no. 19 and column no. 20 of FORM GST SPL-05 or FORM GST SPL-06, within a period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. In case where the said amount is not paid within the period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of rule 164.

3.4 Appeal against the orders issued under Rule 164:

3.4.1 No appeal shall lie under section 107, against an order issued in FORM GST SPL-05 concluding the proceedings under section 128A. The order issued in FORM GST SPL-07, rejecting the application for waiver, shall be, however, appealable in accordance with sub-section (1) of section 107 within the time limit specified therein, by filing an application in FORM GST APL-01. In such cases, normally, no pre-deposit may be required to be paid by the taxpayer for filing the said appeal, as the said amount may already have been paid as a part of payment of tax dues involved in the demand notice/ statement / order before filing an application in FORM GST SPL-01 or FORM GST SPL-02. However, in cases where no amount of tax dues has been paid or amount of tax dues paid is less than the requisite amount for pre-deposit for filing appeal as per sub-section (6) of section 107, the remaining amount of pre-deposit will be required to be paid for filing the said appeal.

3.4.2 It is also important to note that the subject matter of the appeal will only be regarding the applicability of waiver of interest or penalty or both under Section 128A and not on the merits of the original notice/ statement/ order.

3.4.3 It is to be mentioned that, in cases where an appeal has been filed by the applicant against the order in FORM GST SPL-07, and the appellate authority holds that the proper officer has wrongly rejected the application, thereby allowing the applicant the benefit of the waiver of interest or penalty or both, the said appellate authority shall pass an order in FORM GST SPL-06. This form shall accordingly modify the liability created, if any, in the ELR-Part II.

3.4.4 Where appeal had been withdrawn before filing an application in FORM GST SPL-02, for availing the waiver of interest or penalty or both under Section 128A, but the application for waiver is rejected by the proper officer by issuance of order in FORM GST SPL-07,

(a) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has righty rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST APL-04, then the original appeal filed by the applicant shall be restored, subject to condition that the applicant files an undertaking electronically on the portal in FORM GST SPL-08, that he has neither filed nor intends to file any appeal against such order of the Appellate Authority.

(b) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has wrongly rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST SPL-06, thereby holding that the appellant is eligible for waiver of interest or penalty or both, no appeal shall lie against the said order issued in FORM GST SPL-06.

(c) in case, where the taxpayer does not prefer an appeal within the time period mentioned in sub-section (1) of section 107 against the said rejection order, then the original appeal filed by the applicant shall be restored.

4. Further, the following issues with respect to availing the benefit of waiver of interest or penalty or both provided under Section 128A, are also clarified hereby:

S. No.	Issue	Clarification
1	Whether the benefit provided under Section 128A will be applicable to taxpayers who have paid the tax component in full before the date on which the said section has come into effect?	In this regard, it is to be mentioned that all such amount paid towards the said demand upto the date notified under sub-section (1) of section 128A, irrespective of whether the said payment has been done before Section 128A comes into effect, or after that, and irrespective of whether such payment was made before the issuance of the demand notice or demand order, or after that, shall be considered as paid towards the amount payable in sub-section (1) of Section 128A, as long as the said amount has been paid upto the date notified under sub-section (1) of section 128A and was intended to be paid towards the said demand.
2	Whether amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer, against a particular demand can be considered as tax paid towards the same for the purpose of Section 128A?	Yes. The said amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer against a demand, shall also be considered as the tax paid towards the said demand, for the purpose of section 128A provided the same has been recovered on or before the date notified under sub-section (1) of section 128A.
3	Whether the amount recovered by the tax officers as interest or penalty or both, pertaining to demand under Section 73 pertaining to Financial Years 2017-18, 2018-19 and 2019-20, can be adjusted against the tax amount payable towards the demand made under Section 73 pertaining to the said financial years?	No. It is mentioned that as per the third proviso to sub-section (1) of section 128A, no refund of such amount of interest or penalty or both, is available. Accordingly, any amount paid by the taxpayer or recovered by the tax officers, as interest or penalty cannot be adjusted towards the amount payable as tax.

4	Whether the benefit provided under Section 128A will be applicable in cases, where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved?	Where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of section 128A. However, the benefit of waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable nder sub-section (12) of section 75.
5	Whether the benefit under Section 128A is available, if the taxpayer intends to avail partial waiver of interest or penalty or both, on certain issues, by making part payment of the amount demanded in the notice/ statement/ order, as the case may be, and opts to litigate for the remaining issues?	No. Section 128A (1) clearly provides that the waiver of interest or penalty or both is only applicable when the full amount of tax demanded in the notice/ statement/ order is paid.
6	Where the notice/order involves multiple periods, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for which such waiver is not applicable, whether the benefit of waiver of interest or penalty or both under Section 128A can be availed for the period covered under section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A?	The taxpayer is eligible to apply for waiver of interest or penalty or both, in such cases where the demand notice/ order spans tax periods covered under Section 128A and those not covered under the said section. However, as per sub-rule (4) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the case may be, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, though the amount of tax demanded shall be required to be paid as per the notice/ statement / order, as the case may be, for whole of the period covered under the said notice/ statement / order, but the waiver of interest or penalty or both under section 128A shall only be applicable for the period specified in section 128A, and not for the period not covered under the said section. On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both for tax periods not covered under Section 128A, remains payable by the taxpayer. The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above,

		the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of rule 164.
7	Where the notice/ statement/ order issued under Section 73 involves multiple issues and one of them is regarding demand of erroneous refund, whether an application can be filed for waiver of interest or penalty or both under Section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A?	Yes. However, as per sub-rule (3) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the case may be, including on account of demand of erroneous refund, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, in such cases, the waiver of interest or penalty or both under section 128A shall only be available in respect of tax demand other than that pertaining to demand of erroneous refund. On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A in respect of tax demand other than that pertaining to demand of erroneous refund, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both, that corresponds to demand of erroneous refund, remains payable by the applicant. The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL- 06, shall become void, as per sub-rule (17) of rule 164.
8	In cases where department has filed an appeal against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A and the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, has issued an order enhancing the tax liability, and in the meanwhile the proper officer has issued an order in FORM GST SPL-05 under section 128A, and the taxpayer has not paid the said additional amount of tax liability within the specified time limit, what will be the status of the conclusion of proceedings under Section 128A?	Yes, as per the second proviso to section 128A, the conclusion of proceedings in such cases is subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order. Accordingly, it becomes clear that even in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06 has been issued the conclusion of the said proceedings will be subject to the condition that the taxpayer pays the additional tax amount as determined by the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority by an order issued in the matter of appeal filed by the department, within a period of three months from the date of the such order enhancing the tax liability.

		In case such additional payment is not done within a period of three months from the date of the said order, then as per sub-rule (16) of Rule 164, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 shall become void.
9	Sub-section (3) of section 128A refers to only appeal or writ petition. In this regard, whether matters where SLP filed by the applicant is pending before the Supreme Court, what is the procedure to be followed by the taxpayer to avail the waiver of interest or penalty or both?	Yes, in such cases also the applicant will be required to withdraw the said special leave petition and file an application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, along with proof of withdrawal of SLP or the copy of the application or any other document filed for withdrawal of SLP, where the order for withdrawal of SLP has not been issued at the time of filing application in FORM GST SPL-01 or FORM GST SPL-02. In such cases, the procedure mentioned in para 3.1.6 may be followed.
10	Whether the benefit provided under Section 128A will be available for matters involving IGST and Compensation Cess?	Yes. On joint reading of section 20 of the Integrated Goods and Services Tax Act, 2017 and section 11 of GST (Compensation to States) Act, 2017 along with section 128A of CGST Act, it becomes clear that the benefit provided under Section 128A of CGST Act will be available for matters involving IGST and compensation cess as well. In this regard, it is mentioned that in such cases, full payment of tax means payment of CGST, SGST, IGST and compensation cess demanded in the notice/ statement/ order, as the case may be.
11	Whether Section 128A covers cases involving demand of irregularly availed transition credit?	The transitional credit is considered to be availed on the date on which the said credit amount is credited in the Electronic Credit Ledger. On reading Rule 121 read with sub-rule (3) of rule 117, it is clear that any demand in respect of transitional credit wrongly availed, whether wholly or partly can be made under section 73 or, as the case may be, section 74. Therefore, it is mentioned that if the amount of transitional credit has been availed in the period covered under Section 128A and notice for demand of wrongly availed credit is issued under section 73, the same is covered under Section 128A.
12	Whether Section 128A will cover waiver of penalties under other provisions, late fee, redemption fine etc?	It is clarified that any penalty, including penalties under section 73, section 122, section 125 etc, demanded under the demand notice/ statement/ order issued under section 73, is covered under the waiver provided under Section 128A. However, late fee, redemption fine etc are not covered under the waiver provided under Section 128A.
13	Whether payment to avail waiver under Section 128A can be made by utilizing ITC?	Yes. The payment of tax required to be made for eligibility for waiver under section 128A is the amount of tax demanded in the notice/ statement/ order. Therefore,

		it can be paid either by debiting from electronic cash ledger or by utilising the Input Tax Credit (ITC), by debiting the electronic credit ledger, or partly from both. However, where the demand is in respect of any amount of tax to be paid by the recipient under Reverse Charge Mechanism or by the Electronic Commerce Operator under section 9(5), then the said amount shall be required to be paid by debiting the electronic cash ledger only and not through the electronic credit ledger. Further, where the amount has to be paid for demand of erroneous refund, the demand in respect of erroneous refund paid in cash is required to be paid only by debiting the electronic cash ledger only and not through the electronic credit ledger.
14	Whether the benefit of waiver under Section 128A be availed qua import IGST payable under the Customs Act, 1962?	No. In such cases, demand is not issued under section 73 of the CGST Act, but is issued under the provisions of Customs Act, 1962 and therefore, such cases are not covered under waiver of interest or penalty or both under section 128A.
15	With retrospective insertion of sub-sections (5) and (6) to Section 16 of the CGST Act, the tax demanded in notice/ statement/ order reduces. Whether the entire tax amount demanded in the notice/ statement/ order has to be paid in such cases, to avail the benefit under section 128A?	Sub-rule (5) of rule 164 mentions that the amount payable in order to avail the benefit under section 128A, shall be calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be. Therefore, the applicant is required to pay only the amount that is payable, calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, before submitting the application. While calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds. He is also advised to provide a breakup of the amount not payable by him anymore, as per sub-sections (5) and (6) of section 16, in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, to enable the officer to verify the payment easily. It is also re-iterated that where the taxpayer is deducting the amount of ITC which was denied on account of contravention of sub-section (4) of section 16 of the CGST Act, but which is now available, as per retrospectively inserted provisions of sub-section

		(5) or sub-section (6) of section 16 of the CGST Act, he is not required to file application for rectification in respect of the same as per special procedure notified under Section 148 vide notification No. 22/2024-Central tax dated 8th October 2024.
16	In case of application in FORM GST SPL-02, where the applicant has paid full or partial amount of tax through FORM GST DRC-03, whether the said applicant is mandatorily required to file application in FORM GST DRC-03A for such tax amount which he desires to get adjusted against tax demand as per FORM GST DRC-07/ FORM GST DRC- 08/ FORM GST APL-04?	Yes. In cases where order in FORM GST DRC-07, FORM GST DRC-08 or FORM GST APL-04, as the case may be, has been issued and such taxpayer has paid required amount through FORM GST DRC-03, such applicant is required to adjust the said amount towards the demand created in the Electronic Liability Register, as per the second proviso to sub-rule (2) of rule 164, before filing the application in FORM GST SPL-02.

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.

(Sanjay Mangal)
Principal Commissioner (GST)

Amendment to Circular No. 31/05/2018-GST, dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017'–reg.

Circular No. 239/33/2024-GST

F. No. CBIC-20016/2/2022-GST
New Delhi, dated the 4th December, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Amendment to Circular No. 31/05/2018-GST, dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017'–reg.

Vide Notification No. 02/2022-Central Tax dated 11th March, 2022, para 3A was inserted in Notification No. 02/2017-Central Tax dated 19th June, 2017, to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence (herein after referred as DGGI). Further, vide Notification No. 27/2024- Central Tax dated 25th November, 2024, Table V has been substituted in the Notification No. 02/2017-Central Tax dated 19th June, 2017, to empower more number of Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of DGGI. Notification No 27/2024- Central Tax dated 25th November, 2024 has come into effect from 1st December, 2024.

2. Consequently, para 7.1 of the Circular No. 31/05/2018-GST dated 9th February, 2018 (as amended by Circular No. 169/01/2022-GST dated 12th March, 2022) is substituted as below:

"7.1 In respect of show cause notices issued by officers of DGGI, there may be cases where,

(i) a show cause notice is issued to multiple noticees, either having the same or different PANs; or

(ii) multiple show cause notices are issued on the same issue to multiple noticees having the same PAN,

and the principal place of business of such noticees fall under the jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/ Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction through amendment in the Notification No. 02/2027 dated 19th June, 2017 vide Notification No. 02/2022-Central Tax dated 11th March, 2022, as further amended vide Notification No. 27/2024-Central Tax dated 25th November, 2024. Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide the above mentioned notifications. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification

will allocate charge of Adjudication (DGGI cases) to one or more Additional Commissioners/ Joint Commissioners posted in their Commissionerates. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone/Commissionerate mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by one of the Additional Commissioners/ Joint Commissioners of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone/ Commissionerate. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

TABLE

Sl. No.	**Central Tax Zone/ Commissionerates in whose jurisdiction the location of the principal place of business of the noticee having highest amount of demand of tax involved falls**	**Central Tax Commissionerate whose Additional Commissioner or Joint Commissioner shall adjudicate Show Cause Notices issued by officers of Directorate General of GST Intelligence**
(1)	(2)	(3)
1.	Ahmedabad Zone	Ahmedabad South
2.	Vadodara Zone	Surat
3.	Bhopal Zone	Bhopal
4.	Nagpur Zone	Nagpur-II
5.	Chandigarh Zone	Chandigarh
6.	Panchkula Zone	Faridabad
7.	Chennai Zone	Chennai South
8.	Bengaluru Zone	Bengaluru East
9.	Thiruvananthapuram Zone	Thiruvananthapuram
10.	Delhi North and Delhi East Commissionerates of Delhi Zone	Delhi North
11.	Delhi West and Delhi South Commissionerates of Delhi Zone	Delhi West
12.	Jaipur Zone	Jaipur
13.	Guwahati Zone	Guwahati
14.	Hyderabad Zone	Rangareddy
15.	Visakhapatnam (Amaravathi) Zone	Visakhapatnam
16.	Bhubaneshwar Zone	Bhubaneshwar

17.	Kolkata Zone	Kolkata North
18.	Ranchi Zone	Ranchi
19.	Lucknow Zone	Lucknow
20.	Meerut Zone	Meerut
21.	Mumbai West, Thane, Thane Rural, Raigarh, Belapur, Navi Mumbai and Bhiwandi Commissionerates of Mumbai Zone	Thane
22.	Mumbai South, Mumbai East, Mumbai Central and Palghar Commissionerates of Mumbai Zone	Palghar
23.	Pune Zone	Pune-II

7.1.1 It is further clarified that in cases where a show cause notice has been issued to multiple noticees, either having same or different PANs, and the said show cause notice is required to be adjudicated by a common adjudicating authority as per the highest amount of demand of tax in accordance with the criteria mentioned in para 7.1 above, then if any show cause notice(s) is issued subsequently on the same issue to some other noticee(s) having PAN(s) different from the PANs of the noticees included in the earlier show cause notice, the said later show cause notices is to be adjudicated,

(i) by the jurisdictional adjudicating authority of the noticee, if there is only one noticee (GSTIN) involved in the said later show cause notice; or

(ii) by the common adjudicating authority in accordance with the criteria mentioned in para 7.1 above as applicable independently based on the highest amount of tax demand in the said later show cause notice, if there are multiple noticees (GSTINs) involved in the said later show cause notice having principal place of business under the jurisdiction of multiple Central Tax Commissionerates.''

3. Further para 7.3 of the Circular No. 31/05/2018-GST dated 9th February, 2018 (as amended by Circular No. 169/01/2022-GST dated 12th March, 2022) is substituted as below:

"7.3 In respect of show cause notices issued by the officers of DGGI prior to Notification No. 27/2024-Central Tax dated 25th November, 2024 coming into effect, involving cases mentioned in

para 7.1 read with para 7.1.1 above and where no adjudication order has been issued upto 30th November, 2024, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para 7.1 read with para 7.1.1 above, by issuing corrigendum to such show cause notices."

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification in respect of input tax credit availed by electronic commerce operators where services specified under Section 9(5) of Central Goods and Services Tax Act, 2017 are supplied through their platform

Circular No. 240/34/2024-GST

F. No. CBIC-20001/14/2024-GST
North Block, New Delhi, Dated the 31st December, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam / Sir,

Sub: Clarification in respect of input tax credit availed by electronic commerce operators where services specified under Section 9(5) of Central Goods and Services Tax Act, 2017 are supplied through their platform -reg.

Reference is invited to Circular No. 167/23/2021 – GST dated 17.12.2021 which clarified that electronic commerce operators (hereinafter referred to as "ECOs") required to pay tax under section 9(5) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") are not required to reverse input tax credit (ITC) in respect of supply of restaurant

services through their platform (notified services under section 9(5)). In this regard, representations have been received seeking clarification regarding requirement of reversal of ITC, if any, in respect of supply of services, other than restaurant services, under section 9(5) of CGST Act.

2. The issue has been examined and to ensure uniformity in the implementation 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:

S. No	Issue	Clarification
1.	Whether electronic commerce operator, required to pay tax under section 9(5) of CGST Act, is liable to reverse proportionate input tax credit on his inputs and input services to the extent of supplies made under section 9(5) of the CGST Act.	1. ECO, required to pay tax under section 9(5) of CGST Act, is making supplies under two counts: i. Supplies notified under section 9(5) of CGST Act for which he is liable to pay tax as if he is the supplier of the said services. ii. Supply of his own services by providing his electronic platform for which he charges platform fee /commission etc. from the platform users. 2. For providing the services mentioned at 1(ii) above, the ECO procures inputs as well as input services for which he avails Input Tax Credit. 3. It has been clarified vide question no. 6 of Circular No. 167/23/2021 – GST dated 17.12.2021 that the ECO shall not be required to reverse input tax credit on account of restaurant services on which he pays tax under section 9(5) of the CGST Act. It has also been clarified that the input tax credit will not be allowed to be utilized for payment of tax liability under section 9(5) and whole of the tax liability under section 9(5) will be required to be paid in cash. 4. The principle, which has been outlined in question no. 6 of Circular No. 167/23/2021 – GST dated 17.12.2021, also applies to the supplies made in respect of other services specified under section 9(5) of CGST Act. 5. In view of this, it is clarified that Electronic Commerce Operator, who is liable to pay tax under section 9(5) of the CGST Act in respect of specified services, is not required to reverse the input tax credit on his inputs and input services proportionately under section 17(1) or section 17(2) of CGST Act to the extent of supplies made under section 9(5) of the CGST Act. 6. It is further clarified that ECO will be required to pay the full tax liability on account of supplies

		under section 9(5) of the CGST Act only through electronic cash ledger. The credit availed by him in relation to the inputs and input services used to facilitate such supplies cannot be used for discharge of such tax liability under section 9(5) of the CGST Act. However, such credit can be utilized by him for discharge of tax liability in respect of supply of services on his own account.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on availability of input tax credit as per clause (b) of sub-section (2) of section 16 of the Central Goods and Services Tax Act, 2017 in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract

Circular No. 241/35/2024-GST

F. No. CBIC-20001/14/2024-GST
North Block, New Delhi, Dated the 31st December, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam / Sir,

Subject: Clarification on availability of input tax credit as per clause (b) of sub- section (2) of section 16 of the Central Goods and Services Tax Act, 2017 in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract-reg.

Reference has been received from automobile sector seeking clarification on availability of input tax credit (hereinafter referred to as "ITC") as per clause (b) of sub- section (2) of section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract.

1.2 It has been stated that in automobile sector, the contract between the automobile dealers and the Original Equipment Manufacturers (OEMs) is generally an Ex-Works (EXW) contract, and as per the terms of the contract, the property in goods (i.e. vehicles) passes to the dealer at the factory gate of the OEM, when the goods are handed over to the transporter at the instance of the dealer, and the delivery on the part of the OEM is complete at his factory gate. The transport may be arranged by the OEM on behalf of the dealer and where insurance is arranged, it may also be done on behalf of the dealer. Any claim in case of loss has to be lodged by the dealer. The dealer also duly accounts for the invoice in his books of accounts on such delivery of the vehicles at the factory gate of the OEM. The dealer avails ITC on the date the vehicles are billed to him and handed over to the transporter by the OEM at his factory gate. However, some field formations are taking a view that ITC can be availed by the dealer only after the vehicles are physically received by him at his business premises and show cause notices have been issued to a number of dealers, demanding tax for wrongful availment of ITC for contravention of provisions of clause (b) of sub-section (2) of section 16 of the CGST Act.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act, hereby clarifies the issue as below.

3. Sub-section (2) of section 16 of the CGST Act is a non-obstante clause to section 16 of the CGST Act which enlists the conditions, failing which the registered person is not entitled to ITC in respect of supply of goods or services or both. One of the conditions as per clause (b) of the said sub-section (reproduced below) is that a registered person is not entitled to claim ITC in respect of any supply of goods or services or both unless he has "received" the said goods or services or both. The Explanation to the said clause provides for deemed receipt of goods and services in certain scenarios.

"Section 16. Eligibility and conditions for taking input tax credit.

…

(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, -

...

*(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;

…"

3.1 From a plain reading of the clause (b) of sub-section (2) of section 16 of the CGST Act, it is quite apparent that there is no reference of any particular place where goods are required to be "received" by the registered person. This is in contrast to the erstwhile Central Excise regime, where the provisions contemplated physical receipt of the goods at the factory of the manufacturer for taking CENVAT credit on the said goods. In most of the State VAT Acts, the provisions related to credit of the input tax did not have any explicit mention of physical receipt of goods at any particular place and input tax credit was allowed on purchase of goods.

3.2 Explanation to clause (b) of sub-section (2) of section 16 of the CGST Act provides that the goods would be deemed to have been "received" by the registered person for the purpose of this clause, where:

a) the goods are delivered by the supplier to a recipient or to any other person on the direction of such registered person, whether acting as an agent or otherwise;

b) such direction may be given before or during movement of goods; and

c) the goods may be delivered either by way of transfer of documents of title to goods or otherwise.

3.2.1 The said Explanation provides that where goods are delivered by the supplier to any other person, whether acting as an agent or not, upon the direction of the registered person, and where such delivery occurs either through transfer of documents of title to goods or otherwise, the registered person is deemed to have "received" such goods for the purpose of the clause (b) of sub-section (2) of section 16 of CGST Act. Accordingly, in cases where goods are delivered by the supplier to the registered person, either directly or to any other person on the directions of the said registered person, the registered person shall be considered to

have "received" the said goods for the purpose of clause (b) of sub-section (2) of section 16 of CGST Act.

3.3 In the instant case, as per the terms of the EXW contract between the dealer and the OEM:

a) the goods are being handed over by the OEM to the transporter at his factory gate for onward transmission to the dealer;

b) transport is arranged by OEM on the behalf of dealer; and

c) if insurance is arranged, it is done on the behalf of dealer and any claim in case of loss has to be lodged by the dealer.

3.3.1 In such a scenario, the property in the said goods can be considered to have been passed on to the dealer by the OEM upon handing over of the said goods to the transporter at his factory gate, meaning thereby that the goods can be considered to have been delivered to the registered person (the dealer), through the transporter, by the supplier (the OEM) at his factory gate and the supply of the said goods can be considered to have fructified at the factory gate of the OEM, even though the goods may be physically received by the registered person (the dealer) after the transit period. Accordingly, it is clarified that as per Explanation to clause (b) of sub-section (2) of section 16 of CGST Act, the registered person (the dealer) can be considered to have "received" the said goods at the time of such handing over of the goods by the supplier to the transporter, at his factory gate, for their onward transmission to the said registered person (the dealer).

3.4 The same principle is applicable in respect of supply of other goods also where the contract between the supplier and recipient is an EXW contract, and as per terms of the contract, the goods are to be delivered by the supplier to the recipient, or to any other person (including a transporter) on behalf of the recipient, at his (supplier's) place of business and the property in the goods stands transferred to the recipient at the time of such handing over. In such cases, the said goods can be construed to have been "received" by the said recipient at the time of handing over the said goods to the recipient or to the transporter, as the case may be, as per provisions of clause (b) of sub-section (2) of section 16 of CGST Act.

3.5 It is also mentioned that as per provisions of sub-section (1) of section 16 of the CGST Act, a registered person is entitled to input tax credit only in respect of supply of goods or services or both, **which is used or intended to be used in the course or furtherance of business.**

Therefore, the input tax credit may be available to the registered person on such receipt of goods by the said registered person from the supplier at his (supplier's) factory gate or business premises, subject to fulfilment of other conditions of section 16 and section 17 of CGST Act, including the condition that the said goods are used or intended to be used in the course or furtherance of business by the said registered person.

3.6 It is also to be noted that if the goods are found to have been diverted for non-business purposes at any stage, either before physically receiving the said goods at his business premises or subsequently, the registered person shall not be entitled to input tax credit on such goods in terms of sub-section (1) of section 16 of CGST Act. Further, if at any time after "receiving" the goods, such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples, the registered person would not be entitled to the input tax credit in respect of such goods as per provisions of clause (h) of sub-section (5) of section 17 of CGST Act.

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 this Circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients

Circular No. 242/36/2024-GST

F. No. CBIC-20001/14/2024-GST
North Block New Delhi, Dated the 31st December, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam / Sir,

Sub: Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients-reg.

References have been received from field formations regarding non-compliance of provisions of mandatory recording of correct place of supply

on the invoices by the suppliers in respect of online services provided by them, either themselves or through electronic commerce operators, to unregistered recipients due to wrong interpretation of provisions of section 12(2)(b) of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") read with rule 46 of Central Goods and Services Rules, 2017 (hereinafter referred to as "CGST Rules"). It has also been mentioned that though in such cases of taxable online supplies of services to unregistered recipients, registered suppliers are required to mention State name of the recipient on the invoice, irrespective of the value of such supply, and declare place of supply of such services as the State of the recipient as per the provisions of clause (i) of section 12(2)(b) of IGST Act but many suppliers are not recording the State name of the unregistered recipient on the invoice and are declaring place of supply of such services as the location of the supplier as per clause (ii) of section 12(2)(b) of IGST Act. This is resulting in wrong declaration of place of supply, resulting in flow of revenue in respect of the said supply to the wrong State. Request has been made to clarify the issue so as to ensure correct declaration of place of supply by the suppliers of such services to unregistered recipients.

2. 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 Central Goods and Services Act, 2017 (hereinafter referred to as "CGST Act") hereby issues the following clarification.

3. **Legislative provisions:**

3.1 As per sub-section (17) of section 2 of the IGST Act, 'online information and database access or retrieval services' means:

> "services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—
>
> *(i) advertising on the internet;*
>
> *(ii) providing cloud services;*
>
> *(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
>
> *(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017);"

3.2 The term 'electronic commerce' has been defined under section 2(44) of CGST Act, as follows:

"electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

3.3 The term 'electronic commerce operator' has been defined under section 2(45) of CGST Act, as follows:

"electronic commerce operator" means any person who owns, operates or manages digital or electronic facility, or platform for electronic commerce;

3.4 Sub-section (2) of section 12 of the IGST Act, reads as follows:

"*(2) the place of supply of services, except the services specified in sub- section (3) to (14),-*

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be, -

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases."

3.5 As per sub-section (2) of Section 31 of the CGST Act,

"(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars ***as may be prescribed****:"*

3.6 Rule 46 of CGST Rules provides as below:

" 46. Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

…

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

Provided that in cases involving supply of online money gaming or in cases that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient;

….."

4. **Clarification:**

4.1 Section 12 of the IGST Act provides that except in cases specified in sub-sections (3) to

(14) of the said section, when the services are supplied to a registered person, the place of supply of services shall be the location of the recipient and **when the services are supplied to an unregistered person, the place of supply of the said services shall be the location of the recipient, if his address is available on record,** and shall be the location of the supplier, if the address is not available on record.

4.2 Section 31(2) of the CGST Act provides that a registered person providing taxable services must issue a tax invoice with details like the service description, value, tax charged and such other **particulars as may be prescribed.**

4.3 Rule 46 of CGST Rules provides the particulars required to be mentioned on the tax invoice. Clause (f) of the said rule provides for mentioning some details on the invoice in case of supplies made to unregistered recipient. Further, proviso to clause (f) of rule 46 of the CGST Rules provides that in cases involving the supply of online money gaming

or involving supply of any taxable services by or through an electronic-commerce operator or by a supplier of online information and database access or retrieval services, to an unregistered recipient, irrespective of the value of the said supply, the tax invoice issued by the registered supplier must contain the recipient's State name. It has also been provided in the said proviso that such State name shall be deemed to be the address on record of the recipient.

4.4 A conjoint reading of clause (b) of sub-section (2) of Section 12 of the IGST Act, sub- section (2) of Section 31 of the CGST Act and proviso to rule 46(f) of CGST Rules leads to a conclusion that in respect of supply of services made to unregistered persons, irrespective of the value of the said supply, the supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice, in cases involving supply of online money gaming or supply of taxable services by or through an electronic commerce operator or supply of online information and database access or retrieval (OIDAR) services. Recording of the name of State of the unregistered recipient on the tax invoice in respect of such supply of services shall be deemed as the address on record of the recipient for the purpose of determination of place of supply of the said services under section 12(2)(b) of IGST Act. Accordingly, in such cases, the place of supply of such services shall be considered as the location of the recipient of the services as per provisions of clause (i) of section 12(2)(b) of IGST Act.

4.5 It is also observed that a combined reading of the definitions of 'electronic commerce' and 'electronic commerce operator' as per section 2(44) and section 2(45) of CGST Act, along with rule 46(f) of CGST Rules, leads to an understanding that all services supplied to unregistered recipients over digital or electronic network, either by the supplier using his own digital or electronic facility / platform or through any other electronic or digital platform owned and operated by an independent electronic commerce operator, will be covered under proviso to rule 46(f) of CGST Rules.

4.5.1 It is, accordingly, clarified that provisions of proviso to rule 46(f) of CGST Rules shall be applicable in respect of all the online supplies of services supplied to an unregistered recipient, in addition to the supply of online money gaming and OIDAR services. Some of the examples of such services are subscription of e-newspapers and e-magazines, online subscription of entertainment services (e.g. OTT platforms), online telecom services, digital services through mobile applications etc. Therefore, in respect of supply of any such online/ digital services, OIDAR services and online money gaming to unregistered recipients, the suppliers are

mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services, and to declare place of supply of the said services as the location of the recipient (based on the name of State of the recipient) in their details of outward supplies in FORM GSTR-1/1A.

4.5.2 For the purpose of recording the name of the State of the recipient on tax invoice in respect of such supplies made to unregistered persons for such online services, supplier should devise suitable mechanism to ensure collection of such details from unregistered recipient before making any supplies to him. As mentioned above, in such cases, the name of the State of the recipient so recorded shall be deemed to be the address of recipient available on record and thus, for determining place of supply of the said services, provisions of section 12(2)(b)(i) of IGST Act will be applicable as per which the place of supply shall be the location of the recipient.

4.5.3 It is also mentioned that if the supplier fails to issue invoice in accordance with the said provisions by not recording correct mandatory particulars, including recording of name of State of unregistered recipient in respect of such supplies, he may be liable to penal action under the provisions of section 122(3)(e) of CGST Act.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on various issues pertaining to GST treatment of vouchers

Circular No. 243/37/2024-GST

F. No. CBIC-20001/14/2024-GST
North Block New Delhi, Dated the 31st December, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam / Sir,

Subject: Clarification on various issues pertaining to GST treatment of vouchers- reg.

References have been received from the trade and industry as well as the field formations seeking clarity on various issues with respect to vouchers such as whether transactions in voucher are a supply of goods and/or services, whether GST is leviable on trading of vouchers by distributor/sub-distributor and whether unredeemed vouchers **(**breakage) are taxable. It has been represented that the field formations are taking different views on these issues leading to ambiguity and litigations.

2. Accordingly, in view of the difficulties being faced by the trade and industry 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues, as below.

3. **Issue 1 -Whether "transactions in vouchers" falls under the category of supply of goods and/or services?**

3.1 The relevant legal provisions of CGST Act, 2017 are as under:

(i) Section 2(52) - "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

(ii) Section 2(102) - "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.

Explanation. - For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

(iii) Section 2(118) — "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

(iv) Section 2(75) — "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognized by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

(v) Section 2(1) – "actionable claim" shall have the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882 (4 of 1882).

Section 3 of the Transfer of Property Act, 1882 provides the definition of "actionable claim" as below: -

""actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;"

(vi) Section 2(102A) — "specified actionable claim" means the actionable claim involved in or by way of-(i) betting;(ii) casinos;(iii) gambling; (iv)horse racing; (v)lottery; or (vi)online money gaming".

(vii) Section 7- "….

(2)- Notwithstanding anything contained in sub-section (1), - (a) activities or transactions specified in Schedule III; or

…

shall be treated neither as a supply of goods nor a supply of services."

(viii) ***Schedule III*** to the CGST Act deals with *"Activities or Transactions which shall be treated neither as a supply of Goods nor a supply of services:*

….

6. Actionable claims, other than specified actionable claims.

…"

3.2 From the definition of voucher under section 2(118) of CGST Act, it emerges that "voucher" may be in nature of payment instrument which creates an obligation on the supplier to accept it as a consideration or part consideration for the supply of goods and/or services. The issuance of payment instruments, including pre-paid instruments, in India is regulated by Reserve Bank of India (RBI) in terms of the Payment and Settlement Act, 2007, RBI's Master Directions and the relevant Notifications/Circulars/ Communications issued by the RBI from time to time.

3.3 Pre-paid instruments (PPIs) as defined by RBI are payment instruments that facilitate purchase of goods and/or services against the value stored on such instruments. The value stored on such instruments represents the value paid for by the holder, by cash, by debit to a bank account, or by credit card. The pre-paid instruments can be issued as cards, wallets and in any such form/ instrument which can be used to access the PPI and to use the amount therein. Further, as per section 2(75) of CGST Act, "money" includes an instrument recognized by the Reserve Bank of India which is used as a consideration to settle an obligation.

3.4 On combined reading of the definition of "voucher" as per section 2(118) of the CGST Act, along with definition of "money" as per section 2(75) of the CGST Act and the description of "pre-paid instruments" given by RBI, it emerges that where the voucher is covered as a pre-paid instrument recognized by the RBI and is used as a consideration to settle an obligation, then in such cases, the voucher will fall under the definition of "money". In such a case, as "money" is excluded from the definition of goods and services as provided in section 2(52) and section 2(102) of the CGST Act respectively, the transactions in voucher would be considered neither as a supply of goods nor as a supply of services.

3.5. In cases, where voucher is not covered as a pre-paid instrument recognized by RBI and hence, cannot be treated as money, the voucher will be in nature of an obligation on the supplier to receive it as consideration or part consideration and assure the beneficiary/voucher holder to claim certain goods and/or services as specified on the voucher or in the related documents. In such cases, the voucher can be considered as an *"actionable claim"* within the meaning of section 2(1) of the CGST Act, read with section 3 of the Transfer of Property Act, 1882.

3.6 Further, as per entry 6 of Schedule III of CGST Act, an activity or transactions of actionable claims, other than specified actionable claims, is to be treated neither as a "supply of goods" nor as a "supply of services". Further as per section 2(102A) of CGST Act, specified actionable claim means the actionable claim involved in or by way of betting, casinos,

gambling, horse racing, lottery or online money gaming. As vouchers are not covered under definition of specified actionable claim, it appears that they are covered in entry 6 of Schedule III of CGST Act as actionable claims, other than specified actionable claims. Therefore, it appears that even in such a case, transaction in vouchers would be treated neither as a "supply of goods" nor as a "supply of services".

3.7 Therefore, it is clarified that irrespective of whether voucher is covered as a pre-paid instrument recognized by RBI or not, the voucher is just an instrument which creates an obligation on the supplier to accept it as consideration or part consideration and the transactions in voucher themselves cannot be considered either as a supply of goods or as a supply of services. However, supply of underlying goods and/or services, for which vouchers are used as consideration or part consideration, may be taxable under GST.

Issue 2 -What would be the GST treatment of transactions in vouchers by distributors/ sub-distributors/ agents etc.?

4.1 There are primarily two models for distribution of vouchers through distributors/ sub distributors/ agents, etc.

(i) Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal (P2P) basis.

(ii) Where vouchers are distributed using agents/ distributors/ sub-distributors on commission/ fee basis.

4.2 Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal(P2P) basis: In such cases, the distributor/ dealer purchases voucher from the voucher issuer typically at a discounted rate and subsequently sells the same to the sub-distributors, corporates or end customers and generate revenue through a trading margin, which is a difference between the acquisition cost and the selling price of the vouchers by the said distributor/ dealer. In such cases, distributors/ dealers (including sub- distributors) own the vouchers and operate autonomously with full control over the process from purchase to the final sale of the vouchers to the end user.

4.2.1 As per section 9 (1) of CGST Act, GST is chargeable on the supply of goods and/or services. As the transaction in vouchers is neither supply of goods nor supply of services, therefore, pure trading of vouchers in this case would not constitute either supply of goods or supply of services. Accordingly, such trading of vouchers would not be leviable to GST as per section 9 (1) of CGST Act.

4.3 Where vouchers are distributed using distributors/ sub-distributors/ agents on commission/ fee basis: In such cases, the transactions between the voucher issuer and the distributors/ sub-distributors/ agents are on principal-agency basis. These arrangements, as per contract/agreement between distributor/sub-distributor/agents and the voucher issuer may specify a set of obligations on such agents such as marketing & promotion and other related support activities for distribution of vouchers against a commission/fee or any other amount by whatever name called, for such purpose. In such cases, distributors/sub-distributors/ agents do not operate autonomously, do not own the vouchers and only act as agent of the voucher issuer. In such cases, GST would be payable by such distributor/sub-distributor/agent, acting as an agent of the voucher issuer, on the commission/fee or any other amount by whatever name called, for such purpose, as a supply of services to the voucher issuer.

Issue 3 -What would be GST treatment of additional services such as advertisement, co- branding, marketing & promotion, customization services, technology support services, customer support services etc.

5.1 There may be cases where additional services such as advertisement, co-branding, customization services, technology support services, customer support services, etc. are provided by either the distributor/ sub-distributor or by another person to the voucher issuer against a service fee/ service charge/ affiliate charge or any other amount, by whatever name called, as per contract/agreement between such service provider and the service recipient (voucher issuer). In such a case, the said service fee/ service charge/ affiliate charge or other amount for supply of such additional services to the voucher issuer as per the terms of contract/ agreement, would be liable to GST at the applicable rate in the hands of the said service provider.

Issue 4 -What would be the GST treatment of unredeemed vouchers (breakage).

6.1 Sometimes, vouchers remain unused/ unredeemed at the end of their expiry period. In such cases, the businesses generally make book adjustments and account the said amount on account of unredeemed vouchers in their statement of income. The value of such unredeemed vouchers accounted for in the statement of income is called breakage. There are ambiguities and doubts in respect of GST treatment of such breakage. Also, doubts are raised whether the amount attributed to the unredeemed voucher(breakage) can be considered as **"*monetary value***

of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person*"*.

6.2 As per section 9 (1) of the CGST Act, GST is leviable only on the supply of goods and/or services. In the case of breakage, there is no redemption of voucher and there is no supply of underlying goods and/or services. Therefore, there is no supply of goods and/or services on account of such unredeemed vouchers (breakage). Also, *"*consideration" under GST is defined under section 2 (31) of CGST Act, in relation to the supply of goods or services or both. As there is no underlying supply of goods and/or services in case of non-redemption of vouchers by the customer, the amount retained for unredeemed vouchers by the voucher issuer cannot be construed as consideration for any supply. Accordingly, such amount attributable to unredeemed vouchers (breakage) would not be taxable as per the provisions of section 9(1) of CGST Act.

6.3 Further, **Circular No. 178/10/2022-GST dated 03.08.2022** clarifies that agreement to do or refrain from an act should not be presumed to exist, and that there must be an express or implied agreement, oral or written, to do or abstain from doing something against payment of consideration, for a taxable supply to exist. Considering the principle laid out in the said circular, it emerges that where the voucher is issued for the purpose of redemption in respect of a supply of goods and/or services and there is no express or implied agreement, oral or written, between the issuer of voucher and redeemer for payment of any amount or charges by the redeemer to the voucher issuer in case of non-redemption of the voucher, it cannot be considered that non-redemption of voucher by the redeemer tantamounts to supply of services. Therefore, it appears that the amount attributable to non-redemption of voucher (breakage) would not constitute as a "*monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person".* Therefore, no GST appears to be payable on such amount attributable to non-redemption of voucher (breakage).

7. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

8. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

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HIGHLIGHTS

The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in broad and expansive spirit so as to 1nvest it with Significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.

— In Francis Coralie Mullin vs. UT of Delhi

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LEGAL GLOSSARY – because in law, every word matters!

Word/ Term	Pronunciation	Meaning	Usage
Admonish	Ad-mon-ish	To formally warn, caution, or reprimand, especially by a judge or authority, to prevent improper behavior or future violations	The judge admonished the witness to answer only what was asked and not offer unsolicited details.
Codicil	Kaw-duh-sil	A legal document that modifies, adds to, or explains an existing will, without completely rewriting it. It must be executed with the same formalities as the original will.	The deceased had added a codicil to his will to include a newly purchased property in the inheritance.
Concomitant	Kon-kom-i-tuhnt	It refers to something that naturally accompanies or is associated with another—often used in legal arguments to describe related circumstances or effects	The breach of contract and the concomitant financial loss were central to the plaintiff's claim.
Demurrer	Dih-mur-er	A formal objection raised by a party in a legal pleading, stating that even if the facts presented by the opposing side are true, they do not constitute a valid legal claim	The defendant filed a demurrer, arguing that the complaint failed to state a cause of action under the law.
Et Seriatim	Et seh-ree-ah-tim	A Latin phrase meaning "and in a series" or "one after another." It is often used in legal drafting to indicate points will be addressed in order, separately, or one by one	The petitioner responded to the allegations et seriatim, denying each claim individually.
Flagrant	Flay-gruhnt	It refers to something shockingly obvious or offensive, especially when it clearly violates law, ethics, or norms	The court condemned the official's flagrant abuse of power in awarding illegal contracts.
Gainsaid	Gain-sayd	To deny, contradict, or oppose something, especially a statement or claim.	The witness's testimony could not be gainsaid, as it was supported by substantial evidence.

Word/ Term	Pronunciation	Meaning	Usage
Gravamen	Grah-vuh-men	It refers to the essential or most serious part of a complaint or grievance in a legal dispute—the core issue being contested.	The gravamen of the plaintiff's claim was the unlawful termination without notice.
Lex Loci	Leks Low-sai	A Latin term meaning "the law of the place." It refers to the law that governs matters based on the location where a legal event, contract, or incident occurred	The contract was executed in Delhi, so the lex loci dictates that Delhi laws will apply.
Limbo	Lim-boh	A state of uncertainty or suspension, where no final decision has been made and a matter remains unresolved. Often used to describe pending legal issues or stalled proceedings	The case remains in limbo as the court has yet to issue a ruling.

IN THE HIGH COURT OF UTTARAKHAND

[Alok Kumar Verma, J.]

WRIT PETITION NO. 3532 OF 2024 (M/S)

In the matter of:

BM Services ... Petitioner

Vs.

Commissioner, State Goods and Services Tax,
Commissionerate, Dehradun ... Respondent

Date of Order: 23.12.2024

WHETHER CANCELLATION OF REGISTRATION ORDER CAN BE REVOKED BY MAKING AN OFFER TO PAY ALL THE DUES ON ACCOUNT OF TAX, INTEREST AND PENALTY?

Held – Yes - With the consent of learned counsel for both the parties, the present writ petition is disposed of with a direction that if the petitioner deposits outstanding dues of tax including interest and penalty, if any, and submits his application for reversal of the cancellation of GST registration within one week from today, the competent authority shall consider the application of the petitioner and pass an appropriate order as per law within a period of one week from the date of production of the certified copy of this order along with the application.

Present for Petitioner : Sh. Tarun Pande, Adv.

Present for Respondent : Sh. Mohit Maulekhi, Brief Holder

Order

1. The present Writ Petition has been filed under Article 226 of the Constitution of India with the following prayers:-

"(*i*) Issue a suitable writ, order or direction in the nature of certiorari calling the record of the case and quash the cancellation of GST Registration order dated 30/09/2023 (Annexure No. 3 to W.P) as petitioner is ready to pay all the balance tax, interest on it and late fee if any.

(ii) Issue a suitable writ, order or direction in the nature of mandamus permitting the petitioner to prefer an application U/S 30 of the UKGST/CGST Act 2017, for filing an application for revocation

of the cancellation of the GSTIN 05ALXPJ0293Q2Z9 of the petitioner and further direct the Respondent No. 2 to consider the application of the Petitioner in accordance with law.

(iii) Issue any other writ order or direction which this Hon'ble court deem fit and proper, in the circumstances of the present case.

(iv) Award the cost to the petitioner throughout."

2. Heard Mr. Tarun Pande, learned counsel for the petitioner (through video conferencing) and Mr. Mohit Maulekhi, learned Brief Holder for the respondents.

3. Mr. Tarun Pande, learned counsel for the petitioner submitted that the petitioner is ready to deposit all the outstanding dues of tax including interest and penalty, if any, and the petitioner shall move an application before the Competent Authority within a week from today.

4. Mr. Mohit Maulekhi, Brief Holder has sought one week's time to decide the application from the date of production of the application.

5. With the consent of learned counsel for both the parties, the present writ petition is disposed of with a direction that if the petitioner deposits outstanding dues of tax including interest and penalty, if any, and submits his application for reversal of the cancellation of GST registration within one week from today, the competent authority shall consider the application of the petitioner and pass an appropriate order as per law within a period of one week from the date of production of the certified copy of this order along with the application.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

[Dr. A.K.Jayasankaran Nambiar & Easwaran S., JJ.]

W.A.NO.258 OF 2025

In the matter of:

Joint Commissioner (Intelligence & Enfr.)

Thiruvananthapuram ... Petitioner

Vs.

M/s Laxmi Mobile Accessories ... Respondent

Date of Judgment: 05.02.2025

WHETHER A SINGLE SCN CAN BE ISSUED FOR MANY FINANCIAL / ASSESSMENT YEARS PUT TOGETHER?

Held - If a consolidated notice for various financial/assessment years is issued, the total amount of tax, penalty etc. determined as payable by the assessee may increase exponentially depending upon the number of financial/assessment years included in the consolidated notice.

Editor's Note: Please see Constitution Bench judgment in State of J & K & Ors. vs. Caltex (India) Ltd., AIR 1966 SC 1350

Present for Petitioner : Sri Muhammed Rafiq, Spl. Govt. Pleader

Present for Respondent : Sri K.S. Hariharan Nair & Divya Ravindran

JUDGMENT

Dr. A.K. Jayasankaran Nambiar, J.

The State, represented by the Joint Commissioner (Intelligence and Enforcement) and the Joint Commissioner, Tax Payer Services of the State GST Department are the appellants herein aggrieved by the judgment dated 28.01.2025 of the learned Single Judge in W.P. (C).No.2911 of 2025.

2. The brief facts necessary for disposal of this writ appeal are as follows:

> The respondent herein had challenged Ext.P1 show cause notice that sought to invoke Section 74 of the Central Goods and Services Tax Act [hereinafter referred to as the "CGST Act"] to demand differential tax, interest and penalty from it on an allegation of suppression of turnover during the financial years 2017-18 to 2023-24. The main ground of challenge against Ext. P1 show cause notice in the writ petition was that inasmuch as the appellants herein had issued a single consolidated notice for six different financial years, the respondent was prejudiced in that the time limit for submitting its reply to the show cause notice in respect of each of the assessment years in question would be circumscribed by the time limit prescribed in Section 74(10) of the

CGST/SGST Act for the earliest of the six financial years namely 2017-18. In particular, it was the case of the respondent/assessee that on account of the hasty action on the part of the appellants, the respondent/assessee was effectively denied an opportunity to cross-examine certain witnesses whose statements had been relied upon in the show cause notice issued to the respondent.

3. The learned Single Judge, who considered the matter, did not deem it necessary to entertain a challenge against the show cause notice on the ground of denial of opportunity to cross examine witnesses. In particular, it was noticed that although it was the contention of the respondent that an opportunity for cross examination was not being granted, there was nothing on record to assume that any procedure contrary to law would be adopted by the appellants herein. It was also observed that if an opportunity for cross examination, as required by law, was not granted, the same was a matter to be considered by the hierarchy of authorities under the CGST Act in adjudication proceedings before them. The learned Judge, however, found force in the contention of the respondent/assessee that issuing a composite order covering all the financial years from 2017-18 to 2023-24 would prejudice the respondent/assessee in relation to its contentions for those assessment yeas where the time limit prescribed under Section 74(10) of the CGST Act would not expire by 07.02.2025, which was the last date for passing orders in respect of assessment year 2017-18. The learned Judge therefore granted liberty to the appellants herein to pass appropriate orders for 2017-18 pursuant to Ext.P1 show cause notice within the period of limitation prescribed under Section 74(10) of the CGST Act, reserving the right to the authority to pass separate orders of determination for each of the other assessment years mentioned in the show cause notice after granting reasonable opportunity of hearing to the respondent/assessee in accordance with law.

4. In the appeal before us, the contention of the Department is essentially that the learned Judge ought not to have permitted the passing of separate orders for the financial years 2018-19 onwards since there is no provision envisaged under the CGST Act for issuing separate notices and orders for each financial year. It was further contended that in response to Ext.P1 show cause notice dated 29.07.2024, the respondent/assessee had filed replies only on 04.12.2024 along with statement of certain persons dated 03.12.2024, which statements were never recorded at the time of investigation. According to the appellants therefore, the request for cross examination of witnesses would only protract the proceedings and the learned Single Judge ought not to have permitted the passing of separate orders in relation to a single show cause notice.

5. We have heard Sri. Mohammed Rafiq, the learned Special Government Pleader for the appellants and Smt. Divya Ravindran, the learned counsel for the respondent/assessee.

6. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, we find ourselves in agreement with the view taken by the learned Single Judge more so in the backdrop of the Scheme that informs proceedings under Section 74 of the CGST Act. The provisions of Section 74 (1), (2), (9) and (10) of the CGST Act that are relevant in the instant case read as follows:

> "74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
>
> (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 utilised by reason of fraud, or any wilful-mis statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, 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 equivalent to the tax specified in the notice.
>
> (2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.
>
> xxxxxxxxxxxxx x x x

within five years from the date of erroneous refund."

It will be seen from the above extracted statutory provisions that quite contrary to what has been urged on behalf of the appellants, there is no mandate under Section 74 for the issuance of a consolidated show cause notice covering various assessment years. The provisions of Section 74(1) only require the proper officer to arrive at a subjective satisfaction regarding any of the specified factors which have led to an evasion of tax and on arriving at the said satisfaction, the proper officer is required to issue a show cause notice to the assessee concerned specifying the amount of tax/interest/penalty that is due from the assessee. Sub section (2) of Section 74 imposes a limit on the power of the proper officer with regard to the time within which he should issue the show cause notice under sub section (1) of Section 74. That time limit is at least six months prior to the time specified in sub section (10) for the issuance of an order of adjudication. Sub section (9) of Section 74 speaks about the determination of the amount of tax, interest and penalty by the proper officer and the issuance of an order quantifying such amounts. Sub section (10) specifies the period within which the order under sub section (9) should be passed as five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

7. It is clear from the said statutory provisions that the power of the proper officer under Section 74(1) is to determine whether any of the factors leading to tax evasion exist in relation to an assessee during any financial/assessment year and initiate proceedings under the said Section within the time frame contemplated under Section 74(1) of the CGST Act. The said exercise is to be conducted in relation to each of the years in which such pre-conditions exist for the invocation of the power under Section 74(1). While there may be cases where the data available with the proper officer is such that it suggests the existence of pre-conditions for more than one financial/assessment years, the proper officer should ideally issue separate show cause notices to cover the different financial/assessment years since the period available to the Department for adjudication of the show cause notices varies depending upon the due date for furnishing of annual return for that year. In our view, consolidated show cause notices covering multiple financial/assessment years can be issued only in circumstances where the statutory provision provides for a common period for initiation and completion of the adjudication. For instance, under Section 28 of the Customs Act, a show cause notice invoking the extended period of limitation of five years has to cover a prior period of five years ending with

the date of issuance of the show cause notice. Similar was the provision under Section 11A of the erstwhile Central Excise Act. Under both of the above provisions, the show cause notices issued, irrespective of whether it covered a single financial/assessment year or multiple years, had to be adjudicated within a fixed period of one year from the date of the show cause notice. The scheme of adjudication is different under the CGST Act. Under Section 74 of the CGST Act, the end termini for adjudication varies for each financial/assessment year, since it is not pegged to the date of the show cause notice but to a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to. Issuing a consolidated show cause notice covering various financial/assessment years would cause prejudice to an assessee who would not get the full period envisaged for adjudication under the Statute, if that period is circumscribed by the limitation period prescribed in relation to an earlier financial/assessment year. In other words, where, in a situation such as the present, the proximate expiry of the limitation period under Section 74(10) is only in relation to one of the six financial/assessment years, the contentions of the assessee and the opportunity available to an assessee for adducing evidence in relation to the other years cannot be rendered illusory by forcing upon the assessee the period of limitation prescribed under Section 74(1) for passing the final order in relation to the earliest financial/assessment year [2017-18]. The statutory period available for an assessee to put forth its contentions against the show cause notice in an effective manner cannot be curtailed by an unnecessary act on the part of the Department in issuing a consolidated show cause notice that includes therein a financial/assessment year in relation to which the period for passing a final order expires earlier.

8. There is yet another aspect of the matter. If a consolidated notice for various financial/assessment years is issued, the total amount of tax, penalty etc. determined as payable by the assessee may increase exponentially depending upon the number of financial/assessment years included in the consolidated notice. The determination of tax, penalty etc. would be in respect of all the financial/assessment years put together. That would go against the provisions of sub sections (9) and (10) of Section 74 which specifically refer to the “financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates” while stipulating the last date for passing the adjudication order. A consolidated notice would also result in a consolidated adjudication order covering several financial/assessment years and in the event of it being adverse to the assessee, the fee/pre- deposit required to be paid by an assessee for preferring a statutory appeal would also be higher. This could not have

been the Scheme of the statutory provisions which are expected to adhere to principles of fairness in taxation. In this context, it is useful to remind ourselves of the following observations of Justice H.R. Khanna in **CIT v. Simon Carves Ltd. - [(1976) 4 SCC 435]** as regards the nature of the quasi-judicial function exercised by assessing officers:

> "10. […] The taxing authorities exercise quasijudicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. We are wholly unable to subscribe to the law that unless those authorities exercise the power in a manner most beneficial to the revenue and consequently most adverse to the assessee, they should be deemed not to have exercised it in a proper and judicious manner."

We therefore see no reason to interfere with the impugned judgment of the learned Single Judge, and for the reasons stated therein as supplemented by the reasons in this judgment, we dismiss the Writ Appeal.

IN THE HIGH COURT OF CALCUTTA

[Rajarshi Bhardwaj, J.]

C.M.P. No. 18241 OF 2024

In the matter of:

Green Filed Agrotech … Petitioner

Vs.

The State of West Bengal & Ors. … Respondents

Date of Order: 14.02.2025

WHETHER REJECTION OF APPEAL BEING BEYOND THE PERIOD OF LIMITATION IN THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE IS JUSTIFIED?

Held – No - I am of the view that the petitioner has been able to sufficiently explain the delay in filing the appeal belatedly. In view thereof, I restore the aforesaid appeal to its original file and number and direct the Appellate Authority to hear out the same in accordance with law on merit within a period of two months from the date of communication of this order.

Present for Petitioner : Mr. Shiv Shankar Sharma

Present for Respondents : Mr. Anirban Raj, Md. T.M. Siddiqui, Mr. T. Chakraborty, Mr. Saptak Sanyal & Mr. D. Sahu

Order

Affidavit of service filed in Court today is taken on record.

The present writ petition has been filed, inter alia, questioning the purported rejection of the appeal under Section 107 of the West Bengal Goods and Service Tax Act, 2017 (hereinafter referred to as the said Act) vide form GST-APL 02 dated 26th June, 2024.

Mr. Sharma, learned advocate representing the petitioner submits that being aggrieved by the order dated 5th December, 2023 passed under Section 73(9) of the said Act, the petitioner had filed an appeal on 15th May, 2024 as would appear from Form GST APL 01.

By drawing attention of this Court to page 6 of the writ petition it is submitted that the aforesaid appeal was filed along with 10% pre deposit of the disputed amount of tax. A system generated provisional acknowledgement form as proof of submission of appeal was also issued. Since, the said appeal was filed beyond the time prescribed the same was accompanied by an application for condonation of delay. According to the petitioner, there was a delay of 42 days in filing the appeal.

Subsequently, on 15th May, 2024 the petitioner had received a notice as to why the appeal should not be rejected due to the delay as the same was filed beyond one month of the prescribed period as provided for under Section 107(1) read with Section 107(4) of the said Act.

Mr. Sharma by drawing attention of this Court to the order impugned submits that the Appellate Authority by ignoring the explanation given by the petitioner and by placing reliance on the proviso to sub- section (4) of Section 107 of the said Act had returned a clear finding that there is no power vested with the Appellate Authority to allow the appeal beyond one month after the time prescribed for filing the appeal. According to the petitioner, the petitioner has not only a statutory right to prefer an appeal but also has a right to seek condonation of delay in preferring an appeal. It would be apparent and clear from the above order that the Appellate Authority had failed to exercise jurisdiction vested in it while rejecting the appeal solely on the ground that it does not have the competence to condone the delay beyond one month of the time prescribed.

Mr. Siddiqui, learned advocate enters appearance on behalf of the respondents and opposes the petition. He, however, submits that since, the statute provides for the period for which delay can be condoned, there is no irregularity on the part of the Appellate Authority in refusing to condone the delay beyond the period of one month from the time prescribed.

Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case, it would appear that the appeal had been dismissed solely on the ground that the same had been filed beyond one month of the time prescribed for filing the appeal. The appeal therefore, was obviously barred by limitation. However, at the same time, the aforesaid could not prevent the petitioner from maintaining an application for condonation of delay by invoking the provisions of Section 5 of the Limitation Act, 1963. The issue whether the Appellate Authority is competent to condone the delay beyond one month from the prescribed period for filing of an appeal has already been conclusively decided by the Hon'ble Division Bench of this Court in the case of **S. K. Chakraborty & Sons Vs. Union of India** reported in **2023 SCC Online Calcutta 4759**.

Having regard to the aforesaid I am of the view that the Appellate Authority ought to have taken note of the explanation given in the application for condonation of delay under Section 5 of the Limitation Act, 1963.

Having regard to the aforesaid, while setting aside the order of rejection of appeal dated 26th June, 2024 as appearing in Form GST APL 02 and taking note of the fact that no fruitful purpose will be served by remanding the aforesaid matter on the issue of condonation of delay to the Appellate Authority and also considering the explanation given by the petitioner, I am of the view that the petitioner has been able to sufficiently explain the delay in filing the appeal belatedly. In view thereof, I restore the aforesaid appeal to its original file and number and direct the Appellate Authority to hear out the same in accordance with law on merit within a period of two months from the date of communication of this order.

Since no affidavit-in-opposition has been called for, the allegation made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

[Sanjeev Kumar, J.]

WP (C) No. 1413/2024

In the matter of:

Jatinder Singh … Petitioner

Vs.

Union Territory of J & K & Ors. … Respondents

Date of Judgment: 13.08.2024

WHETHER APPEALS WERE RIGHTLY REJECTED BEING OUT OF LIMITATION AS PER SECTION 107(1) OF THE CGST ACT?

Held – Yes - Be that as it may, the reasons put forth by the petitioner for seeking condonation of delay are only ipsi dixit of the petitioner and do not bring the case of petitioner under exceptional circumstances warranting exercise of extraordinary jurisdiction by this Court to condone the delay.

Present for Petitioner : Ms. Palvi Ghonkrokta, Advocate

Present for Respondent : Mr. D.C. Raina, AG & Mr. Syed Musaib, GA

JUDGMENT

Sanjeev J

1. The petitioners in all these petitions are dealers registered under Jammu & Kashmir Goods and Services Tax Act, 2017 [“the Act of 2017”] under different registration numbers. They were assessed by the respective adjudicating authority under Section 73/74 of the Act of 2017 and certain demands were raised against them. Feeling dissatisfied and aggrieved by the orders passed by the adjudicating authorities, the petitioners preferred statutory appeals before the Appellate Authority under Section 107 of the Act of 2017. The appeals preferred by the petitioners-assessees were not entertained and rejected indicating the reason for rejection as “delay in submission of appeals”

2. Since the Government is yet to constitute Appellate Tribunal, as such, the petitioners, feeling aggrieved by rejection of their appeals, are before us invoking extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India.

3. Learned Advocate General appearing for the respondents raises a preliminary objection to the maintainability of these petitions. He would argue that under Section 107 of the Act of 2017 any decision or order passed by the adjudicating authority may be appealed before the Appellate Authority within three months from the date of such decision or order and in terms of Subsection (4) of Section 107, the Appellate Authority is conferred discretion to condone delay of one month from the date of expiry of limitation period of three months prescribed under Subsection (1) of Section 107. He would, therefore, urge that the appeals preferred by the petitioners before the Appellate Authority after a gap of more than four months from the date of passing of the orders by the adjudicating authorities were patently time barred and the Appellate Authority committed no illegality or irregularity in rejecting such appeals.

4. Meeting the argument of the learned Advocate General, learned counsel appearing for the petitioners would submit that in the absence of specific exclusion of applicability of the Limitation Act, Section 29 of the Limitation Act would come into play and the Appellate Authority would be well within its power to condone the delay even beyond the period of four months by exercising its jurisdiction under Section 5 of the Limitation Act.

5. In view of the rival contentions and the law cited in support thereof by the learned counsel appearing on both the sides, a question of seminal importance has arisen for consideration, which reads thus:

> "Whether the Appellate Authority under Subsection (4) of Section 107 of the Act of 2017 is competent to condone the delay in filing an appeal against a decision or order passed under the Act by an adjudicating authority beyond a period of one months after the expiry of three months' period prescribed for filing appeal under Subsection (1) of Section 107 of the Act of 2017?

6. This question would bring forth the debate as to whether by the aid of Section 29 of the Limitation Act, Section 5 of the Limitation Act would be applicable to the appeals filed under Section 107 of the Act of 2017. Relevant extract of Section 107 of the Act of 2017 is reproduced hereunder:-

> 107. Appeals to Appellate Authority.-- (1) Any person aggrieved by any decision or order passed under this Act or the Central 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.

(2) The Commissioner may, of his own motion, or upon request from the Commissioner of central tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act or the Central Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorized officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

7. From a reading of Subsection (1) set out hereinabove, it is abundantly clear that any person, who is aggrieved by any decision or order passed under the Act of 2017 or the State GST Act by an adjudicating authority is entitled to file an appeal before the prescribed appellate authority within a period of three months from the date on which said decision or order is communicated to such person. Subsection (4) of Section 107, however, confers discretion on the appellate authority to condone the delay in filing appeal, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed period of three months. However, this discretion conferred upon the appellate authority is restricted to condoning the delay only for a maximum period of one month. Section 107 of the Act of 2017 is a complete Code in itself and by providing separate provision for condonation of delay, has, therefore, expressly excluded the applicability of Section 5 of the Limitation Act even by the aid of Section 29 thereof.

8. Section 29 of the Limitation Act, 1963, which was pressed into service by the learned counsel appearing for the petitioners to contend

the applicability of Section 5 of the Limitation Act to the proceedings under Section 107 of the Act of 2017, reads thus:-

> "29. Savings.--(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).
>
> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
>
> (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.
>
> (4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

9. From a reading of Subsection (2) of Section 29 of the Limitation Act, it is evident that where a special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and also for the purpose of determining any period of limitation prescribed for any appeal, suit or application by any special or local law, provisions contained in Sections 4 to 24 (inclusive) shall apply. However, the provisions contained in Sections 4 to 24, which include Section 5, shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law.

10. Indisputably, the Act of 2017 is a special legislation and prescribes period for filing appeal under Subsection (1) of Section 107, which is different from the period prescribed in the Limitation Act and, therefore, Sections 4 to 24 would prima facie be applicable. However, Sections 107(1) and 107(4) by prescribing a period of limitation and also the period upto which the appellate authority can condone the delay in filing the appeal, shall be

deemed to have completely and expressly excluded the applicability of Section 5 of the Limitation Act. The appellate authority was, thus, perfectly justified in rejecting the appeals having been preferred beyond the period of four months from the date of communication of the order of assessment passed by the adjudicating authority.

11. In the view we have taken, we are supported by a judgment of the Hon'ble Supreme Court in the case of Singh Enterprise v. Commissioner of Central Excise, Jamshedpur, (2008) 3 SCC 70. In the aforesaid appeal Hon'ble the Supreme Court was considering similar provisions contained in Section 35 of the Central Excise Act, 1944. Under Subsection (1) of Section 35, the period of limitation prescribed is sixty days from the date of communication of the impugned order. Proviso to Subsection (1) confers discretion on the Commissioner (Appeals) to entertain an appeal beyond the prescribed period of sixty days provided it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed period of sixty days. However, this discretion is also restricted to condone the delay of maximum period of thirty days. While interpreting Section 35 and considering the arguments of the appellant that under Section 5 of the Limitation Act, Commissioner Appeals was competent to condone the delay even beyond the period of thirty days prescribed by the proviso, Hon'ble Supreme Court in paragraph No.8 of the judgment held thus:-

> "8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the Limitation Act) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used

makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

12. Before we proceed further, we deem it appropriate to set out Section 35 of the Central Excise Act, 1944 for comparison purpose, which reads thus:

"35. APPEALS TO COMMISSIONER (APPEALS).

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."

13. Similar view was taken by the Hon'ble Supreme Court in the case of Commissioner of Customs and Central Excise v. Hongo India (P) Ltd. (2009) 5 SCC 791. In this case, a three Judge Bench of the Hon'ble Supreme Court was considering the period of limitation of 180 days under Section 35-H(1) of the Central Excise Act and the applicability of Section 5 of the Limitation Act to condone the delay beyond 180 days and in paragraph Nos.32 to 36 it concluded thus:

"32) As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In

other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

34) Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to High Court.

35. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In

other words, the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 support the conclusion that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by court under Section 5 of the Limitation Act. It is well settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act."

14. In the later decision of M/s Bengal Chemists and Druggists Association v. Kalyan Choudhary, (2018) 3 SCC 41, Hon'ble the Supreme Court again considered the same question in the light of Section 421(3) of the Companies Act, 2013, which prescribed a period of forty five days for filing an appeal from the orders of the Tribunal. The proviso appended to Subsection (3), however, conferred discretion on the appellate tribunal to entertain the appeal even after expiry of said period of forty five days provided it was satisfied that the appellant was prevented by sufficient cause for filing the appeal within that period. However, the discretion to condone the delay was restricted to a period not exceeding forty five days after the expiry of the prescribed period of limitation. A similar argument was raised before the Hon'ble Supreme Court but the same was turned down by holding that if the Court were to accept such argument, it would mean that notwithstanding that further period of forty five days had elapsed, the Appellate Tribunal may, if the facts so warrant, condone the delay. It was pointed out that this would render otiose the second time limit of 45 days, which is peremptory in nature. The observations of the Supreme Court contained in paragraph Nos. 5 and 6 of the judgment are relevant and are, therefore, set out below:-

"5) Another very important aspect of the case is that 45 days is the period of limitation, and a further period not exceeding 45 days is provided only if sufficient cause is made out for filing the appeal within the extended period. According to us, this is a peremptory provision, which will otherwise be rendered completely ineffective, if we were to accept the argument of learned counsel for the appellant. If we were to accept such argument, it would mean that notwithstanding that the further period of 45 days had elapsed, the Appellate Tribunal may, if the facts so warrant, condone the delay. This would be to render otiose the second time limit of 45

days, which, as has been pointed out by us above, is peremptory in nature.

6) We are fortified in this conclusion by the judgment of this Court in Chhattisgarh SEB v. Central Electricity Regulatory Commission, 2010 (5) SCC 23. The language of Section 125 of the Electricity Act, 2003, which is similar to the language contained in Section 421 (3) of the Companies Act, 2013, came up for consideration in the aforesaid decision. The issue that arose before this Court was whether Section 5 of the Limitation Act can be invoked for allowing the aggrieved person to file an appeal beyond 60 days plus the further grace period of 60 days.

This Court held that Section 5 cannot apply to Section 125 of the Electricity Act in the following terms:

"25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression "within a further period not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days."

The aforesaid judgment was reiterated and followed in ONGC v. Gujarat Energy Transmission Corporation Limited, 2017 (5) SCC 42 at Para 5.6"

The same line of reasoning is followed in some of the later judgments of the Hon'ble Supreme Court.

15. From the above enunciation of law by Hon'ble the Supreme Court consistently, the argument of learned counsel for the petitioners that by the aid of Section 29 of the Limitation Act, Section 5 is applicable to the appeal(s) filed under Section 107 of the Act of 2017 is without any substance and deserves to be rejected. The reliance placed by the learned counsel

for the petitioners on a three Judge Bench judgment of the Supreme Court in the case of Superintending Engineer/Dehar Power House Circle Bakhra Beas Management Board and another v. Excise and Taxation Officer, AIR ONLINE 2019 SC 1380 in reference to Section 48 of the Himachal Pradesh Value Added Tax Act, 2005 is clearly distinguishable. In the aforesaid case it was held that as per the scheme of the Himachal Pradesh VAT Act, 2005 the proviso contained in Section 45 provided for an appeal from every original order passed under the Act and the Rules framed thereunder. The period of limitation for filing such appeal was sixty days or such more extended period, as the Appellate Authority may allow for reasons to be recorded in writing. It was in the context of different provisions contained in Section 45 of the Himachal Pradesh Vat Act, it was concluded by the Hon'ble Supreme Court that there was nothing in the Scheme of Himachal VAT Act to exclude applicability of Section 5 of the Limitation Act, whereas Hon'ble Supreme Court in the case of Bengal Chemists and Druggists (supra) has clearly deducted from the Scheme of Central Excise Act the provisions of appeal which are in pari materia with the Act of 2017 and has authoritatively held the non-applicability of Section 5 of the Limitation Act.

16. The other judgment relied upon by the learned counsel for the petitioners is in the case of S.K.Chakrobarty v. Union of India rendered by the Calcutta High Court, which in view of the settled legal position adumbrated above, does not lay down correct position of law.

17. In view of the aforesaid, the question raised in these appeals is answered in favour of the respondents and against the appellant(s) and it is held that the appellate authority cannot entertain an appeal under Section 107 of the Act of 2017 against a decision or order of the adjudicating authority, if it is filed beyond the period of four months from the date such decision or order is communicated to the person aggrieved.

18. Subsection (1) of Section 107 prescribes period of limitation for presenting such appeal(s) as three months. However, Subsection (4) of Section 107 gives discretion to the appellate authority to condone the delay beyond the period of limitation prescribed under Subsection (1) provided it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months. However, such discretion is confined to condoning the delay to the maximum period of thirty days and not beyond that. By making such provision in Subsection (4), the legislature has foreclosed the further discretion of the appellate authority to condone the delay beyond the period of thirty days even by the aid of Section 29 of the Limitation Act. The scheme of the Act of 2017, in particular, provisions of Section 107(4) expressly exclude the applicability

of Section 5 of the Limitation Act. Viewed thus, the appellate authority was fully justified in rejecting the appeals of the petitioners.

19. This brings us to another question raised by the petitioners i.e. even if the appellate authority does not have power to condone the delay beyond the period of thirty days as prescribed under Subsection (4) of Section 107 of the Act of 2017, this Court, in the exercise of its extraordinary jurisdiction vested under Article 226 of the Constitution of India, can direct such condonation of delay, if it is satisfied that a case of exceptional nature is made out for such condonation of delay or that the interest of justice would warrant condoning the delay.

20. Under Article 226 of the Constitution of India, High Court has the power to issue certain writs for enforcement of fundamental rights and for any other purpose. This provision gives High Court wide discretionary power to ensure justice. In the context of condoning delay, if a statute expressly prohibits condonation of delay, it generally binds the Courts. However, such prohibition contained in the statute does not take away the extraordinary jurisdiction vested in the High Court under Article under Article 226 of the Constitution of India. The High Court can, thus, condone the delay in exceptional cases where it deems it necessary to prevent miscarriage of justice, even if statute prohibits such condonation. This is particularly relevant when dealing with fundamental rights or where strict application of the statute would result in gross injustice.

21. The periods of limitation are procedural in nature. Therefore, the prohibition contained in Section 107(4) of the Act of 2017 to condone delay beyond one month cannot come in the way of Constitutional Court exercising extraordinary jurisdiction to render substantial justice. Therefore, while a statutory prohibition is a strong consideration to be kept in mind, yet it does not bar the jurisdiction of the High Court to condone the delay if it is of the opinion that application of delay barring statute would result in gross injustice. Each case is, thus, required to be evaluated on its specific facts and circumstances.

22. So far as interpretation of taxation/fiscal statute is concerned, it is trite law that charging provisions would require literal or strict construction whereas machinery provision and the provisions for appeals and limitation period may not require strict or literal constructions. The principle always lean in favour of advancing the cause of justice where a clear case is made out for so doing, since justice and reasoning is at the heart of all legislation. While we do not dispute that where a statute prohibits condonation of delay beyond a particular period or does not provide for any such condonation,

this Court in the exercise of jurisdiction under Article 226 of the Constitution should not, on the drop of hat, exercise its jurisdiction under Article 226 of the Constitution of India and do something which is specifically prohibited by a statute or legislative enactment. Doing so without there being exceptional circumstances would render such statute or legislative enactment otiose. However, as stated above, the power vested in the High Court under Article 226 of the Constitution of India is extraordinary in nature and may be exercised in a particular case to ensure that the procedural laws do not cause miscarriage of justice.

23. Learned Advocate General appearing for the respondents fairly conceded to this legal position but submits that in all these cases the petitioners have not made out a case of exceptional nature as would warrant exercise of extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India to condone the delay despite their being clear prohibition to do so under Section 107(4) of the Act of 2017.

24. After stating the legal position on the two core issues raised by the parties, we proceed to examine each case on its facts and circumstances.

25. In the instant case, the impugned order was passed by the adjudicating authority on 12th December, 2023 and the same was communicated to the petitioner on the same day through GST Portal (Email/SMS). The order was communicated to the petitioner on his phone No.9419078500 and Email Id. gst7480@gmail.com. However, the appeal was filed after a period of five months and twenty two days. The petitioner had not filed any separate application for condonation of delay. However, in the memo of appeal, the petitioner has stated the reasons of delay as under:-

"a) period of delay:-

b) reason of delay:- Appellant was facing severe ill health and the records were maintained by the Accountant of the appellant, who have failed to convey the notice to the appellant."

26. Neither the petitioner has disputed the date of communication of the order nor has he placed on record any material before the appellate authority to demonstrate that during the period of limitation the petitioner was under such a disability, which prevented him from filing the appeal in time. If such is the reason given by the petitioner to seek condonation of delay for the period beyond thirty days, as prescribed under Section 107(4) of the Act of 2017, this Court cannot, by any stretch of reasoning, bring the case of the petitioner under exceptional circumstances or a case of extreme

nature to invoke its extraordinary jurisdiction and condone the delay despite there being statutory prohibition not to do so after a particular period. The petitioner has himself remained negligent and remissness in preferring the appeal within time and, therefore, must suffer its consequences. The assessment order passed by the adjudicating authority under the Act of 2017 cannot be kept open ended for indefinite period and the timelines prescribed in the statute are required to be respected and complied with.

27. In the instant case, the order under Section 74 of the Act of 2017 was passed by the adjudicating authority concerned on 2 nd September, 2023 and the same was communicated to the petitioner on the same day through GST Portal (Email/SMS). The order was communicated to the petitioner on his phone No.7006342469 and Email Id. owaisashraf7000@ gmail.com. The appeal was filed by the petitioner before the appellate authority on 3 rd April, 2024 i.e. after seven months and one day. There was, thus, a delay of three months and one day beyond the period of thirty days prescribed under Section 107(4) of the Act of 2017. In this case also, the petitioner had not moved any separate application seeking condonation of delay and rightly so, as the petitioner was aware that the condonation of delay beyond thirty days was not permissible in view of the express provisions of Subsection (4) of Section 107 of the Act of 2017.

28. In the memo of appeal the petitioner has only pleaded that he came to know of the passing of the order by the adjudicating authority only in February, 2024, when he came to know from the concerned bank authorities that his account has been ordered to be seized by the State Taxes Department on account of arrears of tax, interest and penalty. There is nothing said beyond this by the petitioner in the memo of appeal to justify the delay in filing of the appeal.

29. It is not the case of the petitioner that he was not communicated the order impugned by the adjudicating authority in time or that his appeal was within the prescribed period of limitation reckoned from the date of communication of the order. The petitioner also does not plead any legal disability, which prevented him from preferring the appeal in time.

30. In view of the aforesaid facts and circumstances, we are of the considered opinion that the case of the petitioner herein also does not fall under exceptional circumstances explained above, which would warrant interference by this Court in the exercise of extra ordinary writ jurisdiction conferred by Article 226 of the Constitution of India.

31. In the instant case, the order impugned in the appeal before the appellate authority was passed by the adjudicating authority on 16th July,

2022 under Section 74 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (Email/SMS). The order was communicated to the petitioner on his phone No.9797269625 and Email Id. syssca003@gmail.com.

32. The appeal was preferred by the petitioner before the appellate authority on 3rd February, 2023 i.e. after six months and eighteen days. There was, thus, a delay of two months and eighteen days after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. There is no separate application filed by the petitioner seeking condonation of delay. However, in the memo of appeal, the reasons given by the petitioner for delayed filing of the appeal is that the petitioner was out stationed for medical reasons as his father had suffered multiple cardiac arrests due to which he had to leave the valley for number of months for medical treatment outside the State.

33. The petitioner has not placed on record any documentary evidence in support of the aforesaid assertion nor has he given the dates during which his father remained under treatment outside the State. That being so, the casual remarks under paragraph 15(b) of the memo of appeal filed before the appellate authority cannot be a reason for seeking condonation of delay beyond the period of thirty days, as is prescribed under Subsection (4) of Section 107 of the Act of 2017. We, therefore, do not find it also a case of any exceptional nature, which would warrant exercise of extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India to condone the delay despite there being a statutory prohibition contained in Section 107(4) of the Act of 2017 for such condonation.

34. In the instant case, the order impugned in the appeal before the appellate authority was passed on 31st December, 2023 under Section 73 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (mail/SMS). The order was communicated to the petitioner on his phone No.9622653800 and Email Id. itclient15@gmail.com.

35. The appeal was preferred by the petitioner before the appellate authority after four months and eleven days of the communication of the order. There was, thus, a delay of eleven days after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. No separate application was filed by the petitioner seeking condonation of delay. However, in the memo of appeal, the petitioner has referred to his difficulties, which he faced on account of GST having been introduced in the Union Territory of J&K in the month of July, 2017 and that he had

initially problems in understanding its provisions. There is also reference to the interruption by lockdown imposed by the Government due to Covid-19. However, requisite facts have neither been pleaded nor substantiated in the memo of appeal.

36. Although, delay in this case is only of 11 days, yet in view of the clear prohibition contained in Section 107(4) of the Act of 2017, the appellate authority could not have condoned the delay. We also do not find it a case of exceptional nature to exercise extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India to condone the delay despite there being a statutory prohibition.

37. In the instant case, the order impugned in the appeal before the appellate authority was passed on 30th December, 2023 under Section 73 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (mail/SMS). The order was communicated to the petitioner on his phone No.9419088162 and Email Id. itclient15@gmail.com.

38. The appeal was preferred by the petitioner before the appellate authority after four months and eleven days of the communication of the order. There was, thus, a delay of eleven days after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. No separate application was filed by the petitioner seeking condonation of delay. However, in the memo of appeal, the petitioner has referred to his difficulties, which he faced on account of GST having been introduced in the Union Territory of J&K in the month of July, 2017 and that he had initially problems in understanding its provisions. There is also reference to the interruption by lockdown imposed by the Government due to Covid-19. However, requisite facts have neither been pleaded nor substantiated in the memo of appeal.

39. Although, delay in this case was only 11 days, yet in view of the clear prohibition contained in Section 107(4) of the Act of 2017, the appellate authority could not have condoned the delay. We also do not find it a case of exceptional nature to exercise extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India to condone the delay despite there being a statutory prohibition.

40. In the instant case, the order impugned in the appeal before the appellate authority was passed on 5th December, 2023 under Section 74 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (mail/SMS). The order was communicated

to the petitioner on his phone No.6006363212 and Email Id. mukmalik@yahoo.com.

41. The appeal was preferred by the petitioner before the appellate authority after five months and nine days of the communication of the order. There was, thus, a delay of one month and nine days after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. Neither specific request for condonation of delay was made nor any reasons given in the memo of appeal for belated filing of appeal, that, too, beyond the period of four months.

42. In view of the above, we also do not find it a case of exceptional nature to exercise extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India to condone the delay despite there being a statutory prohibition.

43. In the instant case, the order impugned in the appeal before the appellant authority was passed on 31st March, 2023. The said order was communicated to the petitioner on the same day through GST Portal (Email/SMS) on his Phone No.7006292515 and Email ID camoin90@gmail.com.

44. The appeal was filed by the petitioner before the appellant authority on 21st February, 2024 i.e. 10 months and twenty one days. There is, thus, delay of six months and twenty one days in filing the appeal before the appellate authority even after expiry of the period envisaged under Section 107(4) of the Act of 2017. Neither separate application for condonation of delay was filed nor any reason has been given for delayed filing of the appeal.

45. It is not the case of the petitioner that there was no communication of the order under appeal to the petitioner in time or that he filed the appeal within the prescribed period of limitation from the date of communication of the order. In the absence of any specific reason, which prevented the petitioner from filing the appeal in time, exercise of extra ordinary writ jurisdiction by this Court to condone the delay despite there being a statutory prohibition is not called for.

46. In the instant case, the order impugned in the appeal before the appellant authority was passed on 19th December, 2022 and the same was communicated to the petitioner on the same day through GST Portal (Email/SMS) on his Phone No.9858756786 and Email Id. taxinfo83@gmail.com.

47. The appeal was filed by the petitioner before the appellate authority after six months and twenty six days. There is, thus, delay of

two months and twenty six days in filing the appeal before the appellate authority after expiry of the period prescribed in Section 107(4) of the Act of 2017. A separate application was filed by the petitioner before the appellant authority for seeking condonation of delay on the ground that the petitioner was unwell on 15.03.2023 and was under treatment of a medical practitioner, who had advised him complete bed rest.

48. In the present case, the order impugned in the appeal is dated 19.12.2022 and, therefore, the petitioner being unwell on 15.03.2023 does not show any extraordinary circumstance, which prevented him from filing appeal in time. The reasons for delayed filing of appeal given by the petitioner are merely ipsi dixit of the petitioner and do not bring his case within exceptional circumstances warranting exercise of extraordinary jurisdiction by this Court to condone the delay

49. In the instant case the order impugned in the appeal filed before the appellate authority was passed on 1st January, 2024 and the same was communicated to the petitioner on the same day through GST Portal (Email/SMS). The appeal before the appellate authority was filed on 01.06.2024. There is thus, delay of about two months after the expiry of four months as envisaged in terms of Section 107 of the Act of 2017. A separate application was filed by the petitioner before the appellant authority for seeking condonation of delay on the ground that the appeal could not be filed on time and there was delay of two months, which occurred due to communication gap between the petitioner and his consultant, who was entrusted the job of filing returns on behalf of the petitioner and the petitioner came to know only when his bank account was seized under the orders of State Taxes Authorities.

50. It is not the case of the petitioner that there was no communication of the order under appeal to the petitioner in time or that he filed the appeal within the prescribed period of limitation from the date of communication of the order. The reasons given by the petitioner for seeking condonation of delay are only an ipsi dixit of the petitioner, which do not bring his case within the exceptional circumstances, which would warrant exercise of extra ordinary writ jurisdiction by this Court to condone the delay despite there being a statutory prohibition.

51. In the present case, the order impugned in the appeal filed before the appellate authority was passed on 1st December, 2023 and the same was communicated to the petitioner on the same day through GST Portal (SMS/ Email) on his phone No.7298497146 and Email Id. aoneengineers77@ gmail.com. The appeal before the appellate authority was filed on 26th

April, 2024. There is, thus, delay of four months and twenty five days. The condonation of delay in filing the appeal was sought on the ground that the appeal could not be filed in time due to severe health problems, unavoidable exigencies and death of father of the petitioner. However, no documents have been appended with the application seeking condonation of delay to substantiate the aforesaid assertion.

52. Neither medical certificates have been placed on record nor even the particular dates of encountering such problems and unavoidable exigencies have been indicated. The reasons stated for delayed filing of appeal by the petitioner are, therefore, ipsi dixit of the petitioner and do not bring the case of the petitioner under exceptional circumstances warranting exercise of extraordinary jurisdiction by this Court to condone the delay beyond the period specifically provided in the statute.

53. In the instant case, the order impugned in the appeal filed before the appellate authority was passed on 19th October, 2023 and the same was communicated to the petitioner on the same day through GST Portal (SMS/Email) on his phone No.9906699056 and Email Id. aminici786@gmail.com.

54. The appeal was filed on 27th April, 2024 after a delay of six months and eight days. Neither specific request for condonation of delay was made nor was any reason for delayed filing of the appeal stated by the petitioner in the memo of appeal. There is delay of two months and eight days even beyond the period of four months as envisaged under Section 107 of the Act of 2017.

55. We do not find it a case warranting exercise of extraordinary writ jurisdiction by this Court to condone the delay despite there being statutory prohibition to do so.

56. In the instant case, the order impugned in the appeal preferred before the appellate authority by the petitioner was passed on 12 th December, 2023 and the same was communicated to the petitioner on the same day through GST Portal (Email/SMS) on his Phone No.7006001932 and Email Id. arifmushtaqshah@gmail.com

57. The appeal was filed on 01.05.2024 i.e. after four months and twenty days. No specific application for condonation of delay was made. However, in the memo of appeal the reason given for delayed filing of the appeal is that son of the petitioner was facing severe health problem for the last several months and that he was being treated in Delhi. However, the petitioner has not given any date during which his son was being treated in Delhi hospital.

58. The order impugned in the appeal before the appellate authority was communicated to the petitioner on 12th December, 2023 and therefore, there was enough time for the petitioner to file appeal in time.

59. Be that as it may, the reasons put forth by the petitioner for seeking condonation of delay are only ipsi dixit of the petitioner and do not bring the case of petitioner under exceptional circumstances warranting exercise of extraordinary jurisdiction by this Court to condone the delay.

60. For the foregoing reasons, all these writ petitions are found to be without merit, hence dismissed.

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE
[Vivek Rusia & Binod Kumar Dwivedi, JJ.]

Writ Petition No. 6061 of 2023

In the matter of:
Paper Trade Links
Through Prop. Shir Sandeep Bhargava … Petitioner

Vs.

Union of India & Ors. … Respondents

Date of Order: 10.07.2025

WHETHER AN ORDER CREATING A DEMAND OF TAX, INTEREST AND PENALTY WITHOUT GIVING A CHANCE TO CROSS – EXAMINE THE PERSONS / WITNESSES IS JUSTIFIED?

Held – No - The impugned order is set aside. The matter is remanded back to the authority to proceed further at the stage of cross examination. Accordingly, the Writ Petition is disposed of.

Present for Petitioner : Mr. Piyush Parashar, Adv.

Present for Respondent : Mr. Romesh Dave, Adv. Mr. Himanshu Joshi, Adv.
Mr. Prasanna Prasad, Adv. & Mr. Anand Soni, Add. AG

ORDER

Per*:* Justice Vivek Rusia

The petitioner has filed the present petition challenging the order dated 16.01.2023 passed by respondent No.3 whereby the tax liability as well

as penalty has been imposed under the provisions of CGST Act, *inter alia* on the ground that the petitioner was not given any opportunity of cross-examination to the witnesses whose statements were relied in CGST Act.

2. The learned Authority has rejected the prayer for cross-examination only on the ground that they caused the delay in proceedings as well as they have made a statement after understanding the provisions of Section 70 of the CGST Act & their statements appears to be correct.

3. Shri Prasad, learned counsel appearing on behalf of the respondents No. 3 & 4 submits that this order is appealable, therefore, the present petition is not maintainable and the petitioner/assessee did not explain the reason for cross- examining the witnesses. Both the reasons are not acceptable. When the order suffers from principle of natural justice, then the Writ Petition is maintainable. The right of cross-examination is provided under the Evidence Act. Every witness who either give oral statement or give affidavit are always subjected to cross- examination as held by the Apex Court in the case of ***Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and Ors.*** reported in AIR 2010 SC 58. The Apex Court has held that the cross-examination is one part of the principles of natural justice. Relevant paras 23, 42 & 46 are as under:-

> "23. A Constitution Bench of this Court in State of M.P. v. Chintaman Sadashiva Vaishampayan, AIR 1961 SC 1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also: Union of India v.T.R. Varma, AIR 1957 SC 882; Meenglas Tea Estate v. Workmen, AIR 1963 SC 1719; M/s. Kesoram Cotton Mills Ltd. v. Gangadhar & Ors., AIR 1964 SC 708; New India Assurance Company Ltd . v . Nusli Neville Wadia and Anr., AIR 2008 SC 876; Rachpal Singh & Ors. v. Gurmit Singh & Ors., AIR 2009 SC 2448; Biecco Lawrie & Anr. v. State of West Bengal & Anr., AIR 2010 SC 142; and State of Uttar Pradesh v. Saroj Kumar Sinha, AIR 2010 SC 3131).
>
> 42. In pursuance of the said order, the original record was produced. However, the learned counsel remained unable to point out from the original record, any proceeding or event, by way of

which, it could be ascertained that the appellant was in fact, given an opportunity to cross-examine the witnesses, or to show that all the said witnesses were examined in the presence of the appellant. Further, he was also unable to satisfy this Court, with respect to the circumstances under which, the applications filed by the appellant on 28.2.2012, including the one to recall witnesses and permit him to cross-examine them, have been kept pending, without passing any order in relation to either one of them.

46. In view of the above discussion and considering the seriousness of the allegations, as the Scrutiny Committee has already conducted an inquiry in relation to this matter, the only grievance of the appellant is that there has been non- compliance with the principles of natural justice, and the fact that the applications filed by him, were not decided upon, we direct that before the submission of any report by the Scrutiny Committee, his application for calling the witnesses for cross-examination must be disposed of, and appellant must be given a fair opportunity to cross-examine the witnesses, who have been examined before the Committee. We further direct the Scrutiny Committee to pass appropriate orders in accordance with the law thereafter. In case, the Scrutiny Committee has already taken a decision, the same being violative of the principles of natural justice, would stand vitiated."

4. In view of the aforesaid, the impugned order is set aside. The matter is remanded back to the authority to proceed further at the stage of cross- examination. Accordingly, the Writ Petition is disposed of.

IN THE HIGH COURT OF MADRAS

[J. Nisha Banu and R. Sakthivel, JJ.]

CMP No. 18241 of 2024

In the matter of:

Emerald Haven Ralty Developers (Paraniputhur) (P) Ltd. … Petitioner

Vs.

S.V. Ramesh … Respondents

Date of Order : January 24, 2025

WHETHER RESPONDENT COULD BE PERMITTED TO WITHDRAW PRE-DEPOSIT AMOUNT MADE BY APPELLANT BEFORE APPELLATE TRIBUNAL UNDER RERA

ACT WHEN RESPONDENT'S APPLICATION FOR REFUND OF GST AMOUNTS WAS PENDING BEFORE TAX AUTHORITIES?

Held – Yes - On a perusal of the Sale and Construction Agreements entered into between the appellant/ Promoter and the first respondent, dated 10.02.2020, no where it has been specifically mentioned about the deduction of GST loss, in case of cancellation of purchase made by the first respondent. Furthermore, it is also to be taken into consideration that before the Appellate Court, the first respondent has filed an undertaking stating that on receipt of the GST amount received from the Department for the refund application submitted by him, he would pay the refunded amount to the appellant/ Promoter immediately. The Appellate Court, having been convinced by the said undertaking, permitted the first respondent to withdraw the pre-deposit amount of Rs.11,40,376/- deposited by the Appellant / Promoter, together with accrued interest and also directed the first respondent to intimate the progress of the refund application to the appellant/ Promoter once in two weeks.

Present for Petitioner : Mr. Satish Parasaran, Sr. Advocate
With Rahul Balaji

Present for Respondent : Mr. Devaraj & Siddharath Bhandari

ORDER

1. The appellant has approached this Court under Section 58 of the Real Estate (Regulation and Development) Act, read with Section 100 of the Civil Procedure Code against the judgment of the Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 07.08.2024 passed in Appeal No.18 of 2024, confirming the judgment passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai dated 26.04.2023 in C.C.P.No.233 of 2021.

2. The essential facts of the case would run thus:-

2.1.A flat bearing No.B-102, with undivided share of land measuring 1203 sq.ft and having carpet area of 1236 sq.ft., type 4 BHK 3T in the first floor, Block B, along with a balcony area of 101 square feet, in the residential cum commercial building complex known as TVS Emerald "Green Enclave" project was originally booked by the father of the first respondent for a base price of Rs.1,03,74,276/- *i.e.* Rs.17,98,485/- being the land cost and Rs.85,75,791/- being the civil construction cost. Pursuant to the same, construction agreements and sale agreements were entered into by and between the parties on 10.02.2020 and the expected delivery of the apartment was fixed during the month of October 2023.

2.2. Subsequently, the father of the first respondent has paid a sum of Rs.47,08,604/- to the appellant/Promoter towards the amount payable for the purchase of the flat. All of a sudden, the first respondent's father died on 05.09.2020, due to illness which ultimately resulted in huge medical expenses on the side of the first respondent. After the sudden demise of the first respondent's father, his mother decided to settle in Kerala itself and owing to reduction of 50% of salary of the first respondent due to COVID pandemic, the first respondent decided not to purchase the subject flat. Therefore, the first respondent sent an email dated 24.11.2020 to the appellant/Promoter requesting to sort out the issue raised by him.

2.3. In this regard, the appellant/Promoter has suggested the first respondent that instead of cancelling the 4 BHK flat, the first respondent shall prefer to purchase a 2 BHK flat, so that, the first respondent can save the cancellation fees, which is 10% of the total consideration, which has been already mentioned under the terms of the unregistered construction agreement. Therefore, the first respondent decided to swap the 4BHK apartment with a 2BHK apartment for a total consideration of Rs.59,50,821/-, wherein the appellant/Promoter's representatives have assured the first respondent that one reserved car parking will be part and parcel of the 2BHK flat. On 20.01.2021, the appellant/Promoter sent a letter to the first respondent, to confirm the provisional allotment of flat No.D-103 to the first respondent.

2.4. Meanwhile, after 20.01.2021, one Ms.Gayathri, staff of the appellant/Promoter's firm, visited the residence of the brother of the first respondent, who is the Power Agent of the first respondent and the new agreements, allotment letter, payment demand letter of newly allotted Unit D 103 along with Cancellation Agreement dated 19.01.2021 with respect to B-102 were handed over on 20.01.2021. In return, she has taken the unregistered original Construction and Sale Agreements dated 27.01.2020 with respect to B-102 and did not return the authorized copy of the signed cancellation agreement. When the same was questioned by the first respondent, he was informed that the same would be given to him, when the first respondent signs the unregistered Sale and Construction Agreements with respect to the newly allotted flat D 103.

2.5. Later when the first respondent perused the draft sale and construction agreements for flat D103, he realized that contrary to the discussion had with the appellant/Promoter's representatives at the time of swapping of the flats, the newly allotted flat D 103 did not have reserved covered car parking. Therefore, the first respondent did not agree with the terms of the Construction agreement and did not sign the agreements for

D 103 and *vide* email dated 28.02.2021, the first respondent has informed the appellant/ Promoter that he was not interested in purchasing the 2 BHK flat, if he is not provided with covered car parking. But then, there was no effective remedy provided from the side of the appellant/ Promoter to address the grievance of the first respondent. Again on 27.04.2021, the first respondent had sent an email to the appellant/ Promoter stating that he is not satisfied with the appellant/ Promoter's service and therefore, he is not interested in purchasing the 2 BHK flat and further requested for immediate return of his money paid in respect of Flat B 102.

2.6. In reply to the aforesaid email of the first respondent, the appellant/ Promoter sent an email dated 30.04.2021 stating that the first respondent shall have the choice of either swapping the flats (4BHk with 2BHK) and choose from the available units in 2 or 2.5 BHK or if not, he can continue with Flat No.B 102 or if he still prefers to withdraw from Flat No.B 102, then there will be 10% deduction charges as per the Agreement Clause. Again, the first respondent, *vide* email dated 01.05.2021 informed the appellant/ Promoter that the options given by the appellant/ Promoter are totally unacceptable. Despite covered car parking facilities being provided for certain 2 BHK flats, the appellant/ Promoter has deliberately misinterpreted that there were no covered car parking for 2 BHK and if the first respondent wanted a covered car parking, then he has to opt for 2.5 BHK or larger flats. Subsequently, on 08.05.2021, the appellant/ Promoter sent an email to the first respondent persuading him to opt for 2.5 BHK or larger flats for availing covered car parking facility and immediately, on the very same day, *i.e.* on 08.05.2021, the first respondent has informed the appellant/ Promoter that he is not interested in buying any flat in the appellant/ Promoter's project.

2.7. On 10.05.2021, the appellant/ Promoter sent an email to the first respondent requesting for the confirmation of cancellation charges and GST Loss, resulting in a total deduction of Rs.21,77,803/- and has further stated that upon confirmation of the same, payment will be processed within 30 days time. Aggrieved against the same, the first respondent sent a lawyer's notice dated 21.05.2021 to the appellant/ Promoter to refund the principal amount of Rs.47,08,604/- along with interest and compensation. In reply to to the same, the appellant/ Promoter on 26.06.2021 stated that as per the provisions of RERA, the appellant/ Promoter shall have the right to deduct the booking amount towards registrations and claims of the complainant, if cancellation charges are refuted on baseless grounds. Moreover, the deduction of GST loss for a sum of Rs.11,40,376/- cannot be permitted when the possession is not handed over and when construction of the said flats is under process. Thereafter, on 28.07.2021, an email was

sent from the side of the appellant / Promoter intimating to collect the final refund payment of Rs.25,30,801/- thereby attaching a copy of the scanned cheque No.872349 dated 27.07.2021 drawn on State Bank of India issued by the appellant/ Promoter, after deducting the cancellation charges and the GST loss.

2.8. Aggrieved against the above actions of the appellant/ Promoter, the 1st respondent filed a complaint in CCP No.233 of 2021 before the Tamil Nadu Real Estate Regulatory Authority, Chennai on 04.08.2021. Thereafter, on 06.08.2021, the power agent of the first respondent, who is the brother of the first respondent received a notice from the appellant / Promoter along with original cheque dated 27.07.2021 bearing No.872349 drawn on State Bank of India for a sum of Rs.25,30,801/- in favour of the first respondent. Without prejudice to his rights, the first respondent received the above said amount, which is part payment of his claim amount. The Tamil Nadu Real Estate Regulatory Authority, Chennai, *vide* order dated 26.04.2023 partly allowed the complaint filed by the first respondent, by awarding refund of an amount of Rs.11,40,376/- with interest pertaining to GST and in so far as 10% cancellation charges are concerned, the TNRERA held the same in favour of the appellant / Promoter by stating that the first respondent was terminating the Agreement and cancelling the allotment for personal reasons.

2.9. In this regard, both the appellant/Promoter as well as the first respondent filed separate appeal petitions against the order of the Tamil Nadu Real Estate Regulatory Authority, Chennai. The first respondent filed an appeal in Appeal No.63 of 2023 challenging the cancellation charges, which came to be dismissed at the admission stage itself. Whereas, the appellant / Promoter filed Appeal No.18 of 2024, challenged the order with regard to the refund granted towards GST to the first respondent. The Appellate Tribunal *vide* impugned order dated 07.08.2024 permitted the first respondent to withdraw the entire pre-deposit amount paid by the appellant/ Promoter by holding that the appellant/ Promoter did not take steps to apply for refund. Therefore, aggrieved against such order of the Appellate Tribunal, the appellant/Promoter has preferred the present Civil Miscellaneous Second Appeal before this Court.

3. Mr.Satish Parasaran, learned Senior Counsel, assisted by Mr.Rahul Balaji, learned counsel for the appellant/ Promoter presented the following substantial questions of law:-

(i) Whether an allottee is entitled to refund of amounts paid towards GST from the Promoter, when cancellation of apartment takes

place after the cut-off date for issuance of a credit note under Section 34 of the Central Goods and Services Tax Act, 2017?

(ii) Whether a promoter has the option of applying for refund of GST/ issuance of credit note after the cut-off date mentioned in Section 34(2) of the Central Goods and Services Tax Act, 2017?

(iii) Whether the liability to apply for refund of GST is on the promoter or the allottee in case of cancellation of an apartment, considering Section 54 of the Central Goods and Services Tax Act, 2017 read with Rule 89(2)(ka) of the Central Goods and Services Rules, 2017?

(iv) Whether an allottee can be permitted to withdraw the predeposit amount made by the Promoter before the Appellate Tribunal under the RERA Act, 2016 when the allottee's application for refund of GST amounts under Section 54 of the CGST Act, 2017 is pending before the tax authorities?

(v) Whether penalty for non-registration of a sale agreement/ construction agreement can be imposed when the allottee has not come forward for registration of the documents, which have otherwise been relied upon and recognised?

(vi) Whether the impugned judgment dated 07.08.2024 passed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in Appeal No.18 of 2024 is ex-facie contrary to the evidence on record?

(vii) Whether the impugned judgment dated 07.08.2024 passed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in Appeal No.18 of 2024 has arrived at a conclusion without any basis *i.e.,* a case of no evidence?

The learned Senior Counsel campaigned his views in support of the appellant/ Promoter in the following manner:

3.1. The learned counsel for the appellant/ Promoter did not dispute the aforesaid facts of the case. In so far as deduction of amounts already paid in respect of GST is concerned, the GST is computed and payable by the developer on demands raised by the developer on the customer and not based on the receipt of payments from customers. As on the date of the Agreement, the milestone completed was with respect to the "completion of the fourthfloor slab" and the appellant is required to raise such demand

on the customer up to the milestone completed by the appellant/ Promoter and the same to be reflected in the GSTR returns of the appellant/ Promoter for the said month. In accordance with the said requirement, the appellant/ Promoter raised demands upto the amounts in respect of the said milestone as per the schedule to the construction agreement between the parties and the same has also been disclosed in the GSTR-1 returns of the Appellant.

3.2. He further submitted that the GST amount in respect of the first respondent's apartment having already been disclosed and remitted/filed to the Authorities concerned by the Appellant/ Promoter in February 2020, a credit note pursuant to termination of the agreement with respect to the apartment booked in the Financial Year 2019-2020 could be issued by the Appellant/Promoter only till the month of September 2020 (Prior to Amendment in 2022) as per Section 34(2) of the Central GST Act. It is to be noted that the cancellation of the apartment was not confirmed by the first respondent even until May 2021, in spite of several reminders from the Appellant/Promoter. Due to the statutory time bar, the Appellant/ Promoter cannot issue a credit note for the GST on the amount paid by the first respondent. If the cancellation had been done by the 1st respondent before September 2020, then the Appellant/Promoter could have issued a credit note and refunded the GST amount to the first respondent, since the output tax liability of the Appellant/Promoter would have reduced.

3.3. It is further submitted that the above said issue was also recognised by the GST Council in its 48th Meeting, dated 17.12.2022, wherein the issue of refund of GST to buyers, who cancel their apartments when the construction is in progress has been discussed as thus:

"Measures for Facilitation of Trade:

2. Refund to Unregistered Persons: There is no procedure for claim of refund of tax borne by the unregistered buyers in cases where the contract/ agreement for supply of services, like construction of flat/house and long-term insurance policy, is cancelled and the time period of issuance of credit note by the concerned supplier is over. The Council recommended amendment in CGST Rules, 2017, along with issuance of a circular, to prescribe the procedure for filing application of refund by the unregistered buyers in such cases."

3.4. The learned Senior counsel further submitted that even for the subsequent sale of the same apartment, the Appellant/ Promoter is required

to remit/file the GST amounts/returns since service is being provided by the Appellant/ Promoter to the new buyer and an invoice is being issued in the name of the new buyer. Under the GST law, under such circumstances, no refund or adjustment is permitted to the Appellant/ Promoter. Therefore, the Appellant/ Promoter was entitled to deduct the amounts towards GST since the Appellant/ Promoter had remitted the GST amounts both the times and has not retained any part of it with itself, and is also unable to presently obtain a refund of the said amounts on account of the delay of confirmation of cancellation of the flat by the 1st respondent's.

3.5. It is the further submission of the learned Senior Counsel that it is open for the 1st respondent to approach the GST authorities for the refund of the said amounts, which option the 1st respondent has exercised during the pendency of the Appeal before the Tamil Nadu Real Estate Appellate Tribunal by filing an application dated 29.07.2024 for refund of GST. As this does not preclude the right of a recipient of service from filing an application for refund of tax amounts on a service that has been subsequently canceled, under Section 54 of the CGST Act, 2017, with specific reference to the same, Rule 89(2)(ka) of the CGST Rules, 2017 provides for a mechanism of refund of tax that a non-registered person can avail "in a case where the refund is claimed by an unregistered person, where the agreement or contract for supply of service has been cancelled or terminated and the time period of issuance of credit note by the concerned supplier is over."

3.6. The learned Senior Counsel further drew the attention of this Court to the Circular of the Central Board of Indirect Taxes and Customs, Ministry of Finance in Circular No.188/20/2022-GST dated 27.12.2022 which specifically deals with a case such as the present case. The relevant portion reads as follows:

> "Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to noncompletion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer."

3.7. The learned Senior Counsel stated that in the present case, during the pendency of the Appeal filed by the Appellant/ Promoter, the first respondent, pursuant to an affidavit of undertaking, filed an application as contemplated under Section 54 of the Act read with Rule 89(2)(ka). In spite of the opposition raised by the Appellant/ Promoter for the withdrawal of the pre-deposit, the Appellate Tribunal dismissed the Appeal and permitted the withdrawal of pre-deposit by the 1st respondent, which is perverse and the same needs the interference of this Court.

3.8. He also submitted that, in respect of imposition of penalty of Rs.1,00,000/-, the TNRERA failed to take into account the fact that the agreements entered into in February 2020 could not be registered for the sole reason that the impending COVID- 19 made it impossible for the agreements to be registered, and the 1st respondent himself was not in India at the relevant point of time.

3.9. The learned Senior Counsel concluded his arguments by stating that the the second respondent has made it clear before this Court that the Appellant/ Promoter is entitled to deduct GST charges before refunding the amounts, as the Appellant/ Promoter would not be able to file an application for a refund/ credit note. Further it was also clarified by the second respondent before this Court that the first respondent would be eligible to file an application claiming for refund. He contended that the Appellate Tribunal erred in allowing the first respondent to withdraw the deposit made by the appellant/promoter even after the first respondent having filed the application for refund with the Authorities, during the pendency of the appeal before the Tribunal. Hence, the learned Senior Counsel summarized the facts that the first respondent is only eligible for making an application for refund of GST before the competent Authorities.

3.10. Furthermore, the learned Senior Counsel submitted that the appellant/ Promoter never gave any consent before the Appellate Tribunal to pay the refund amount back to the first respondent nor for the first respondent to withdraw the pre-deposit amount. He also filed an additional written submission on 16.12.2024 before this Court to substantiate the above said submission and vehemently, argued that the order passed by the Appellate Tribunal was not a consent order. Therefore, the learned Senior Counsel seeks the interference of this Court to the judgment of the Tamil Nadu Real Estate Appellate Tribunal (‘Tribunal’), Chennai dated 07.08.2024 passed in Appeal No.18 of 2024, thereby setting aside the same and allow this appeal.

4. Mr.Devaraj, learned counsel appearing for the first respondent made the following submissions:

4.1. The main contentions raised by the learned counsel is that when the Appellant/ Promoter sent an email dated 10.05.2021 requesting the confirmation of cancellation charges and GST Loss, the said GST loss was added for the first time in the email, without assigning any valuable reasons and there was also no clause pertaining to such GST deduction in the unregistered Construction Agreement, which clearly shows the malafide attitude of the Appellant/ Promoter.

4.2. Even though the 1st respondent had informed his cancellation of flat i.e on 24.11.2020, till 10.05.2021, the appellant/ Promoter had not informed the first respondent about the deduction of GST loss. When the first respondent sought for returning the paid money, the appellant/ Promoter has come up with a statement that they will deduct GST loss charges Rs.11,40,376/- from the total amount paid by the 1st respondent. According to the learned counsel for the first respondent, the appellant/ Promoter had sold the 4 BHK flat to another purchaser and he also paid GST towards the same flat. Till date, the appellant/ Promoter has not produced any proof to substantiate the fact that he has paid two times GST for the very same flat B-102 to the 2nd respondent.

4.3. When Appeal No.18 of 2024 was filed before the Appellate Tribunal by the appellant / Promoter, on the date of 1st hearing *i.e.* on 12.04.2024, the Appellate Tribunal, after hearing both sides and noticing the order passed in Appeal No.63 of 2023 dated 11.10.2023, which was filed by the first respondent, did not admit the appeal No.18 of 2024 and was likely to dismiss the same. At that time, the learned counsel appearing for the appellant represented that as per Section 34 of the Central Goods and Services Tax Act, 2017 and the Circular No.188/20/2022-GST issued by the Government of India, Ministry of Finance dated 27.12.2022, the allottee has to apply for the refund of the GST paid by the Promoter within two years from the date of cancellation and the appellant would execute the Cancellation Deed within a week from that day. Thereafter, when the Appellate Tribunal asked the 1st respondent counsel about the amicable settlement, the learned counsel submitted before the Tribunal that the 1st respondent will apply for refund as per the new Circular issued by the 2nd respondent but the same shall be after the withdrawal of pre deposit made by the appellant/ Promoter before the Tribunal since it is the money of the first respondent lying with the appellant for more than 4 years. Considering the submission made by the learned counsel, the Appellate Tribunal ordered the first respondent to file an undertaking affidavit to that effect.

4.4. Thereafter, on 24.04.2023, the first respondent filed an Affidavit of undertaking dated 20.04.2024 stating that after the withdrawal of predeposit

amount, he will apply for the refund of GST and will refund the said amount immediately to the appellant. By orders dated 12.04.2024 and 24.04.2024, it clearly shows that it was upon the clear consent of the learned counsel for the appellant that he will execute the Cancellation deed afresh for the purpose of applying refund of GST application, since the earlier executed cancellation deed,dated 19.01.2021 got expired as on 24.04.2024 to apply as for refund of GST. Therefore, for the said purpose, the Appellate Tribunal has directed the appellant to give all relevant documents regarding GST paid by them before the 2nd respondent and at that time, before the Appellate Tribunal, Mr. Vishnu Mohan, learned counsel for the Appellant, undertook to handover all the relevant documents as mentioned in Para 2.1 of the Circular No.188/20/2022-GST dated 27.12.2022. Thereafter only the respondent had applied the refund application through his auditor and submitted the application before the Tribunal on 07.08.2024.

4.5. With regard to the argument of consent given by the Appellant/ promoter before the Appellate Tribunal, the learned counsel for the first respondent submitted that if the appellant has not really given consent on **12.04.2024** and 24.04.2024 before the Appellate Tribunal, then they should not give a fresh cancellation agreement and all necessary documents as agreed by the appellant / promoter on 24.04.2024. After agreeing the same and after application filed by the 1st respondent before the 2nd respondent as per the Undertaking, now, the learned counsel for the appellant/ Promoter has come up with a new stand that they have not given any consent on the day of hearing before the Appellate Tribunal.

4.6 According to the learned counsel for the first respondent, if the Appellant/ Promoter has not given consent, then, they should have challenged the order dated 12.04.2024 and 24.04.2024 instead challenging impugned dismissal judgment dated 07.08.2024. But the learned counsel for the appellant / Promoter has chosen to remain silent till 07.08.2024 and now has challenged the same that the 1st respondent is not entitled to get the pre-deposit amount once the refund application is pending before the 2nd respondent. Till date, there is no proof to show that the appellant had paid two times GST for the very same flat.

4.7. The main contention of the learned counsel for the first respondent is that the above circular is issued on 27.12.2022, when the Claim petition in C.C.P No.233 of 2021 is pending before the TNRERA. Even during the pendency of the claim petition, the appellant never raised that the circular is issued on 27.12.2022 to get refund through allottee and not come for amicable settlement. As per the GST Rules, the appellant/promoter has to get refund amount within 2 years of the execution of cancellation once the

construction agreement was canceled. According to the learned counsel for the first respondent, the appellant was squatting over this issue for more than two years from the date of cancellation of agreement i.e on 19.01.2021 which is in the custody of appellant which is admitted by the appellant in the email communication and they have suppressed the real fact and giving false information before this Court to get a favourable order.

4.8. The learned counsel for the first respondent further submitted that as per the unregistered Construction Agreement, the appellant/Promoter is entitled to deduct 10% of total sale consideration, which is already deducted by them. Now the appellant/ Promoter has challenged the GST refund which is unsustainable in law and facts and hence, prayed for dismissing the appeal.

5. Heard the learned Senior counsel appearing for the appellant/ Promoter as well as the learned Counsel appearing for the first respondent and the second respondent and perused the materials placed before this Court.

6. Perusal of records would go to show that the father of the first respondent has initially booked the apartment under the appellant/Promoter's Project. Due to the sudden demise of his father, the first respondent has decided to call off the proposal and also informed the appellant/ promoter, explaining his situation through email. It was the appellant/ Promoter, who has evinced interest in convincing the first respondent by stating that instead of wasting 10% of the sale consideration towards cancellation charges, it would be an apt thought for the first respondent to invest in a smaller apartment that would cost Rs.59,50,821/-. Since the first respondent has already paid Rs.47,08,604/- towards the earlier booked apartment, if he cancels the same, then a cancellation charge of 10% which amounts to Rs.10,37,427/- would be deducted from the total amount paid by the first respondent. Therefore, the appellant/ Promoter has advised the first respondent to invest the remaining amount *i.e.* Rs.12,42,217/- that shall be paid in order to complete the sale consideration of the newly alloted apartment.

7. It is for the appellant / Promoter to set the record straight before the first respondent, when he wanted to convince the first respondent on purchasing of an alternative apartment, with the points regarding cancellation charges as well as deduction of GST Loss. In the present case on hand, the appellant / Promoter has been insisting the first respondent through email regarding the deduction of 10% cancellation charges only and did not spill the beans with regard to deduction of GST loss. It was only

when the first respondent refused to purchase any other apartment under the appellant/ promoter's Project, the appellant/ Promoter has revealed about the further deduction of GST Loss which amounts to Rs.11,40,376/-.

8. Moreover, the primary contention raised by the learned Senior Counsel is that the appellant / Promoter is burdened as he is made to remit GST charges twice for the same apartment. But in order to substantiate the above contention, there is no valid proof submitted on the side of the appellant/ Promoter, where the appellant has paid two times GST before the Competent Authority for the very same apartment. As per the provisions of Section 104 of the Bharatiya Sakshya Adhiniyam, the burden of proof lies on the party who asserts the existence of any fact. This means that if a party claims that a certain fact is true, it is their responsibility to provide evidence supporting that claim. In the present case on hand, it is for the appellant/ Promoter to prove that he has paid GST two times for the same apartment before the competent Authority, which has not been done in the present case.

9. On a perusal of the Sale and Construction Agreements entered into between the appellant/ Promoter and the first respondent, dated 10.02.2020, no where it has been specifically mentioned about the deduction of GST loss, in case of cancellation of purchase made by the first respondent. Furthermore, it is also to be taken into consideration that before the Appellate Court, the first respondent has filed an undertaking stating that on receipt of the GST amount received from the Department for the refund application submitted by him, he would pay the refunded amount to the appellant/ Promoter immediately. The Appellate Court, having been convinced by the said undertaking, permitted the first respondent to withdraw the pre-deposit amount of Rs.11,40,376/- deposited by the Appellant / Promoter, together with accrued interest and also directed the first respondent to intimate the progress of the refund application to the appellant/ Promoter once in two weeks.

10. In the considered opinion of this Court, the Appellate Court has rightly dismissed the appeal filed by the appellant/ Promoter, thereby upholding the order passed by the learned member, TN RERA, which this Court finds no infirmity or reasons to interfere with the same. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed. Mr.Siddharath Bhandari, learned counsel appearing for the second respondent shall ensure that the application made by the first respondent for the refund of GST amount already paid, shall be processed and disposed of within a period of two months from the date of receipt of a copy of this judgment.

THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[R. MAHADEVAN, J]

CIVIL APPEAL NO. 9764 OF 2025
[Arising out of S.L.P. (C) No. 17995 of 2022]

M/S Asp Traders ... Appellant

Versus

State Of Uttar Pradesh & Ors. ... Respondents

Date of Judgement 24.07.2025

THE APPELLANT CONSIGNED 17850 KG OF DRY ARECANUT IN 255 BAGS TO A DELHI CUSTOMER. DURING TRANSIT, GOODS WERE TRANSHIPPED INTO ANOTHER VEHICLE LOADING ONLY 248 BAGS AND 7 BAGS WENT MISSING RESULTING IN DEFICIENCY OF 550 KG. THE VEHICLE WAS DETAINED AT JHANSI AND A NOTICE U/S 129(3) WAS SERVED ON 21.01.2022 ALLEGING THE DEFICIENCY AND THAT THE CUSTOMER WAS NON-EXISTENT AT THE GIVEN ADDRESS. THOUGH THE APPELLANT FILED REPLY ON 24.01.2022 BUT DUE TO BUSINESS EXIGENCY DEPOSITED THE DEMANDED TAX OF RS.7,20,440 IN FORM GST DRC-03 ON 27.01.2022 AND GOT THE GOODS RELEASED. NO FINAL ORDER U/S 129(3) WAS PASSED. ON 26.02.2022 APPELLANT MADE MULTIPLE REPRESENTATIONS SEEKING ORDER IN FORM GST MOV-09 FOR FURTHER STATUTORY REMEDY. IN RESPONSE MOBILE SQUAD OFFICIAL STATED NO FURTHER PROCEEDINGS DEEMED NECESSARY BEING THE REPLY FILED BY THE APPELLANT IS WITHDRAWN BY THEIR REPRESENTATIVE THROUGH ORAL REQUEST TO WHICH THE APPELLANT DENIED. APPELLANT FILED A WRIT PETITION BEFORE HIGH COURT WHICH GOT DISMISSED HOLDING THAT SINCE AN ORDER IN FORM GST DRC-05 HAS BEEN ISSUED, THE PROCEEDINGS U/S 129(3) STOOD CONCLUDED AND NO MANDAMUS CAN BE ISSUED TO THE OFFICER TO PASS ORDER U/S 129(3).

Held: The Supreme Court held that once a notice under Section 129(3) is issued and objections are filed, the proper officer is mandatorily required to pass a reasoned order (Form GST MOV-09 & DRC-07), even if tax is paid under protest. The High Court's refusal denied the appellant's statutory appellate remedy and procedural fairness. The order was set aside, and the officer was directed to issue a final order within one month after hearing the appellant.

R. Mahadevan, J.

Leave granted.

2. This appeal has been preferred by the appellant against the

final judgment and order dated 18.07.2022 passed by the High Court of Judicature at Allahabad[1] in Writ Tax No. 955 of 2022.

3. The relevant facts giving rise to the present appeal are as follows:

3.1. The appellant is a registered dealer in Red Arecanut operating from Channagiri, Davangere, Karnataka. On 14.01.2022, they consigned 17,850 kg of dry Arecanut valued at Rs.51,72,930/-, packed into 255 bags to one M/s. Diamond Trading Company, Delhi, through Vehicle No. UP-78-GN-7563 accompanied by E-Way bill No.141424463403.

3.2. During transit, the goods were transhipped and loaded onto another vehicle bearing Registration No. HR-38-U-0152 for onward journey to Delhi. However, only 248 bags were loaded onto the new vehicle, with 7 bags missing from the original consignment.

3.3. On 17.01.2022, the said vehicle was detained by the Mobile Squad at Lalitpur Bypass Road, Jhansi. The driver's statement was recorded in Form GST MOV-01. Following physical inspection, a report was generated in Form GST MOV-04 on 20.01.2022 alleging certain deficiencies. A detention order in Form GST MOV-06 dated 20.01.2022 was also issued.

3.4. Subsequently, a notice dated 21.01.2022 under section 129(3) of the Central Goods and Services Tax Act, 2017[2], was issued in Form GST MOV-07 highlighting the discrepancy of 7 missing bags and the resulting shortfall in quantity from 18220 kg to 17670 kg. It was further alleged that the consignee, M/s. Diamond Trading Company, was *prima facie* non-existent and that the address of the consignor was incorrect as per departmental records.

3.5. The appellant submitted a detailed reply dated 24.01.2022 to Respondent No.3, denying all allegations. However, in view of pressing business exigencies, the appellant deposited Rs.7,20,440/- towards IGST, as indicated in the show cause notice, through Form GST DRC-03 dated 27.01.2022. Accordingly, the detained goods were released under Form GST MOV-05 dated 27.01.2022.

3.6. Despite the release, no final order under Section 129(3) was passed by the Mobile Squad. Accordingly, on 26.02.2022, the appellant submitted a representation seeking an order in Form GST MOV-09, to

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1 Hereinafter referred to as "the High Court"

2 For short, "the CGST Act, 2017"

enable it to pursue statutory remedies. In response, by communication dated 03.03.2022, the Mobile Squad Official stated that one Mohd. Javed, the appellant's representative, appeared on 27.01.2022, orally requested withdrawal of the earlier reply dated 24.01.2022, and sought release of goods, and hence, no further proceedings were deemed necessary.

3.7. The appellant denied having made any oral request to withdraw the reply or abandon further proceedings. Asserting that the authorities are statutorily bound to pass a reasoned order under section 129(3), the appellant sent further communications dated 13.04.2022, 29.04.2022 and 13.05.2022, seeking a copy of the order, if any, passed under said provision.

3.8. Receiving no response, the appellant approached the High Court by filing Writ Tax No.955 of 2022 praying for the following reliefs:

(i) A direction to Respondent No. 3 to furnish a copy of the order passed under Section 129(3) in compliance with Section 129(4) of the U.P. GST Act, pursuant to notice dated 21.01.2022 in Form GST MOV-07;

(ii) A direction to Respondent No.3 to pass a speaking order under Section 129(3) after affording an opportunity of hearing.

3.9. By the impugned order, the High Court dismissed the writ petition with the following observations:

"6. Admittedly a notice under Section 129(3) of the CGST Act was issued by the respondent no. 3 to the petitioner. Pursuant thereto the petitioner deposited the amount on his own in Form GST DRC-03 and intimated it to the respondent no.3. Therefore, the respondent no. 3 has issued an order in form GST DRC-05. Thus, proceedings in respect of the aforesaid notice under Section 129(3) of the CGST Act stood concluded in terms of mandate of sub-section (5) of Section 129. Hence, relief sought by the petitioner cannot be granted since the matter is concluded as per legislative mandate.

7. Once the proceedings in respect of notice under Section 129(3) of the Act stood concluded in terms of Section 129(5) of the Act read with Rule 142(3) of the Rules, no mandamus can be issued to the respondent no. 3 to pass an order under Section 129(3) of the CGST/UPGST/IGST Act.

8. The contention of the petitioner that a copy of the order under Section 129(3) of the CGST/UPGST/IGST Act be provided to him, is wholly misconceived inasmuch as the proceedings stood concluded in terms of sub-section (5) of Section 129 read with Rule 142 (3) of the Rules and therefore, no mandamus contrary to law can be issued in exercise of powers conferred under Article 226 of the Constitution of India."

3.10. Aggrieved by the aforesaid order, the appellant has preferred the present appeal before this Court.

4. Mr. Pawanshree Agrawal, learned counsel appearing on behalf of the appellant, at the outset, submitted that it is a settled position in law that every show cause notice must culminate in a reasoned final order. Such an order is essential to enable the person affected to avail all statutory remedies.

4.1. It was further submitted that the payment of penalty cannot be treated as voluntarily under Form GST DRC-03, as no show cause notice or statement in Form GST DRC-01 was ever issued by the respondent authorities requiring the appellant to make such a deposit. The respondent authorities failed to follow the mandatory procedure prescribed under Rule 142 of the CGST Rules, 2017. The High Court, in the impugned order, erroneously recorded that the penalty was deposited voluntarily, whereas the appellant had consistently sought final adjudication and had, in fact, filed a reply to the notice issued under section 129(3) of the Act.

4.2. Without prejudice to the above, the learned counsel submitted that even if it is assumed that the penalty was paid voluntarily to secure release of the goods, Respondent No.3 was still under a statutory obligation to pass an order in Form GST MOV-09, in accordance with Section 129(3) of the CGST Act, 2017, and as clarified in Circular No.41/15/2018-GST dated 13.04.2018 issued by the CBIC, GST Policy Wing.

4.3. It was further submitted that Section 129 of the CGST / SGST Act governs the detention, seizure, and release of goods in transit. Under section 129(3), the proper officer is required to issue notice specifying tax and penalty payable and thereafter pass an order. This obligation to pass an order is independent of whether any payment has been made by the taxpayer. Section 129(5) merely states that the proceedings shall be deemed concluded upon payment of penalty, and does not dispense with the requirement of adjudication, once a notice under section 129(3) has been issued.

4.4. The learned counsel submitted that neither Section 129(5) nor Rule 142(5) permits dispensing with the adjudication process. While Rule 142(5) provides that detention/ seizure proceedings conclude on payment of penalty, it does not override the requirement to pass a formal order determining such penalty. For proper legal closure, a final order in Form GST DRC-07 and GST MOV-09 must be issued. The CBIC's circular dated 13.04.2018 being a binding departmental clarification, ought to have been considered by the High Court.

4.5. According to the learned counsel, an order must be passed under Section 129(3) even if the penalty amount is paid during the pendency of proceedings, so as to preserve the taxpayer's right of appeal under section 107 of the CGST Act, 2017, and the failure to pass such an order violates Article 265 of the Constitution, which mandates that no tax or penalty shall be levied or collected except by authority of law.

4.6. It was further submitted that the imposition of penalty has wider implications, including possible consequences in future adjudication or enforcement proceedings under the CGST Act, 2017. In the absence of a formal order, the appellant stands prejudiced, and the statutory right of appeal under Section 107 becomes illusory. However, the High Court erred in holding that no further order was necessary merely because the amount was paid during the pendency of the notice.

4.7. In light of the above submissions, the learned counsel prayed that the impugned order of the High Court be set aside, and appropriate directions be issued to the respondent authorities to pass final orders in Form GST MOV-09 and GST DRC-07, thereby preserving the appellant's right to appeal against the same under the CGST Act, 2017.

5. *Per contra*, Mr. Bhakti Vardhan Singh, learned counsel appearing on behalf of the respondents submitted that the vehicle bearing Registration No. UP78 GN 7563 transporting betel nuts from Nagpur to Delhi, was intercepted by the Assistant Commissioner, Mobile Squad Unit, Jhansi, on 17.01.2022. Upon examination of the documents, several discrepancies were found. Consequently, the goods and the vehicle were detained, and proceedings under the GST Act were initiated.

5.1. It was submitted that the statement of the driver was recorded in Form GST MOV-01, followed by physical inspection of the goods and issuance of Form GST MOV-04 dated 20.01.2022. A detention order in Form GST MOV-06 was issued on the same date. Thereafter, a show cause notice under Section 129(3) of the CGST Act, 2017 was issued on

21.01.2022 directing the owner of the goods and vehicle to submit a reply by 27.01.2022. In compliance, one Mohd. Taha Qureshi, proprietor of M/s. Diamond Trading Company appeared on 25.01.2022 and submitted a joint objection on behalf of the appellant herein, M/s.ASP Traders Co., the purchaser firm M/s. Diamond Trading Company, and the transporter, M/s Verma Roadways. On 27.01.2022, the authorised representative of the appellant Mohd. Javed, appeared and orally sought withdrawal of the earlier objections, and voluntarily deposited Rs.7,20,440/- via Form GST DRC- 03 as demanded in the notice. Upon this payment, the goods and vehicle were released under Form GST MOV-05 dated 27.01.2022. Hence, in terms of Section 129(5), the proceedings stood concluded.

5.2. The learned counsel further submitted that although Section 129(3) requires a notice followed by an order, Section 129(5) clearly stipulates that upon payment of the amount under Section 129(1), "all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded" and thus, no further order is necessary.

5.3. It was further argued that Rule 142(3) of the CGST Rules reinforces this position stating that if payment is made after issuance of the notice under Section 129(3) but before passing of the order, the proceedings shall stand concluded. Hence, no further adjudication is mandated.

5.4. The learned counsel contended that had the appellant intended to contest the notice, it could have avoided withdrawing objections and instead opted to secure release of goods by furnishing security under the Act. Thus, the High Court rightly declined to grant a mandamus directing the authorities to pass an order.

5.5. Finally, relying on the decision of this Court in ***Commissioner of Customs (Import) Mumbai v. Dilip Kumar & Co. and others***[3], it was argued that when a statute is clear and unambiguous, it must be applied in its literal sense. In the present case, Section 129(5) is explicit, and the appellant cannot now be permitted to reopen concluded proceedings. Accordingly, the High Court's decision is correct, and the present appeal deserves to be dismissed.

6. We have heard the learned counsel appearing for both sides and carefully perused the materials available on record.

7. Admittedly, the consignment transported by the appellant was

3 (2018) 9 SCC 1

detained by the Mobile Squad for alleged contraventions under the IGST/ CGST/SGST Act, 2017. Following inspection, a notice dated 21.01.2022 under Section 129(3) was issued to the appellant, directing the appellant to file objections. The appellant submitted a reply, but due to business exigencies, paid the tax and penalty amounting to Rs.7,20,440/- and uploaded the receipt in Form GST DRC-03 on 27.01.2022. Thereafter, the respondent authorities released the goods by passing discharge order in Form GST MOV-05 dated 27.01.2022. However, no formal order under Section 129(3) was passed. The appellant requested such an order, but the respondent authorities responded that in view of Section 129(5), no further order needs to be passed. Aggrieved, the appellant filed Writ Tax No.955 of 2022, which was dismissed by the High Court, accepting the stand of the respondents. Hence, the present appeal came to be filed.

8. The issue that arises for consideration in this appeal is whether, upon payment of tax and penalty by the appellant within the time stipulated in the notice under section 129(3), the proper officer is still mandatorily required to pass a final order under section 129(3), or whether the deeming fiction under section 129(5) dispenses with such requirement.

9. Before proceeding further, it is necessary to examine the relevant legal provisions applicable to the present case. The IGST Act, 2017, CGST Act, 2017 and SGST / UTGST Act, 2017 are interrelated parts of the Goods and Services Tax (GST) regime in India. All three enactments originate from the same constitutional amendment – 101st Amendment Act, 2016 – aimed at establishing a harmonized indirect tax structure under the philosophy of 'One Nation, One Tax'. While the tax base and compliance framework are integrated, the Acts are separate to reflect the federal distribution of taxing powers.

9.1. Notably, Section 20 of the IGST Act adopts the provisions of Section 129 of the CGST Act *mutatis mutandis*.

9.2. Section 129 of the CGST Act, 2017 outlines the mechanism for detention, seizure, and release of goods and conveyance in transit. Sub-section (1) authorizes detention and prescribes the conditions for release. Sub-section (3) requires the proper officer to issue a notice specifying the tax and penalty payable and thereafter pass an order. Sub-section (4) mandates that no tax or penalty shall be determined without providing an opportunity of hearing. Sub- section (5) provides that upon payment of the amounts under sub-section (1), all proceedings in respect of the notice shall be deemed to be concluded. For ease of reference, the said provisions are reproduced below:

*"*129. Detention, seizure and release of goods and conveyances in transit:

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

…….

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

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

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

(6) …."

9.3. Rule 142 of the CGST Rules, 2017 indeed reinforces and operationalizes the provisions of Section 129 of the CGST Act, 2017, particularly, with regard to the procedural aspects of issuance of notices, orders, and payment of tax and penalty in cases involving detention, seizure, and release of goods and conveyances in transit. Sub-rule (3) states that on payment of tax and penalty under section 129(1), intimation shall be given in Form DRC-03 and the proper officer shall issue an order in Form DRC-05 concluding the proceedings. Sub- rule (5) mandates uploading a summary of the final order in Form GST DRC-07. For the sake of reference, the said provisions are extracted below:

*"*142. Notice and order for demand of amounts payable under the Act.

…

(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

…

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax."

10. During the course of hearing, the learned counsel for the appellant drew our attention to Circular No.41/15/2018-GST dated 13.04.2018 issued by the Central Board of Indirect Taxes and Customs, GST Policy

Wing, and the same reads as under:

"Circular No. 41/15/2018-GST
CBEC-20/16/03/2017-GST
Government of India Ministry of Finance Department of Revenue
Central Board of Indirect Taxes and Customs GST Policy Wing
****

New Delhi, Dated the 13th April, 2018

To

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)/The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances –Reg.

Sub-section (1) of section 68 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") stipulates that the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount shall carry with him the documents and devices prescribed in this behalf. Sub-section (2) of the said section states that the details of documents required to be carried by the person in charge of the conveyance shall be validated in such manner as may be prescribed. Sub-section (3) of the said section provides that where any conveyance referred to in sub-section (1) of the said section is intercepted by the proper officer at any place, he may require the person in charge of the conveyance to produce the documents for verification, and the said person shall be liable to produce the documents and also allow the inspection of goods.

1.1 Rules 138 to 138D of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") lay down, in detail, the provisions relating to e-way bills…..

1.2 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.

2. In this regard, various references have been received regarding the procedure to be followed in case of interception of conveyances for inspection of goods in movement and detention, seizure and release and confiscation of such goods and conveyances. In order to ensure uniformity in the implementation of the provisions of the CGST Act across all the field formations, the Board, in exercise of the powers conferred under section 168 (1) of the CGST Act, hereby issues the following instructions:

(a) The jurisdictional Commissioner or an officer authorised by him for this purpose shall, by an order, designate an officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order.

(b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e- way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to http://mis. ewaybillgst.gov.in or the Mobile App or through SMS by sending EWBVER <EWB_NO> to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).

(c) ….

(d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV

01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB- 03 and upload the same on the common portal.

(e) Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.

(f) 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) ….

(j) 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 MOV 09 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 electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(k) 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 MOV 10, proposing confiscation of the goods and conveyance and imposition of penalty.

(l) …

(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.

(n) An order of confiscation of goods shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding three months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and

get the goods released. The order in FORM GST MOV-11 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 electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act. Once an order of confiscation of goods is passed in FORM GST MOV-11, the order in FORM GST MOV-09 passed earlier with respect to the said goods shall be withdrawn.

(o)..

(p)…

(q)…

(r)…

(s)…

(t)…

(u)…

(v) A summary of every order in FORM GST MOV-09 and FORM GST MOV-11 shall be uploaded electronically in FORM GST-DRC-07 on the common portal.

….

(Upender Gupta)
Commissioner (GST)"

This circular, which is binding on the department under Section 168 of the CGST Act, 2017 provides detailed instructions to ensure uniformity in implementation of procedures for interception, detention, seizure, and confiscation of goods in transit. It mandates that upon payment of tax and penalty under Section 129 (1), the proper officer must issue the release order in Form GST MOV-05. Additionally, the officer is required to pass a formal order of demand in Form GST MOV-09 and upload it on the common portal. A summary of this order must be uploaded in Form GST DRC-07, so that the demand is recorded in the taxpayer's electronic liability register.

11. In the present case, upon payment of the tax and penalty demanded in the notice dated 21.01.2022 issued under Form GST MOV-07,

Respondent No.3 released the goods and vehicle by passing a discharge order dated 27.01.2022 in Form GST MOV-05. However, no final order was passed, pursuant to the said notice dated 21.01.2022 issued under Section 129(3) of the CGST Act.

12. The appellant has categorically pleaded that due to business exigencies, they paid the tax and penalty and secured the release of the goods and vehicle detained. This payment, however, cannot be construed as an admission of liability for the alleged contraventions of the Act. It was further stated that the payment was made under protest, and the appellant had intended to contest the matter. Therefore, the proper officer was bound to pass a speaking order under section 129(3), to enable the appellant to exercise of their statutory right of appeal.

12.1. In contrast, the respondent authorities asserted that the payment was made voluntarily by the appellant prior to the passing of an order under Section 129(3), and that the appellant's authorised representative had withdrawn the objections earlier filed. Accordingly, they stated that in terms of section 129(5), all proceedings stood concluded, and no further order was required to be passed.

13. To appreciate the rival submissions, it is relevant to refer to the discharge order dated 27.01.2022 issued under Form GST MOV- 05 by Respondent No.3 which reads as under:

"Commercial Tax Department, Uttar Pradesh
Office AC (Mobile Squad) - 2, Jhansi
FORM GST MOV-05

No. : 21-22/HA000326
MOV-05 No.: 212210583051054
MOV-05 dated 27.01.2022

DISCHARGE ORDER

Ref. FORM GST MOV-02S./Dated 212210283051049 / 18.01.2022

The goods being transported from vehicle No. HR38U0152 were checked by the undersigned on 18.01.2022 and after investigation, in the detention order FORM GST MOV-06 on 20.01.2022 and in the notice FORM GST MOV-07, the vehicle in-charge was served on the 21.01.2022.

• *Appeared the goods owner, the proposed due tax and penalty have been paid in* the proceedings.

In the light of the above, the goods and the vehicle are hereby being released on 27.01.2022 at 01:20 PM.

Sd/-
Santosh Kumar Tiwari-II
AC (Mobile Squad)-2, Jhansi

Acknowledgment

I hereby duly declare that I have obtained a copy of the said discharge order.

Sd/- (Shakil)
Signature Owner/Vehicle Incharge"

13.1. Evidently, the discharge order merely records that the detained goods and vehicle were released upon payment of the proposed tax and penalty. It makes no mention of any withdrawal of objections or of the conclusion of proceedings initiated under Section 129(3) of the CGST Act, 2017.

14. It is a well settled principle that every show cause notice must culminate in a final, reasoned order. While Section 129(5) of the CGST Act, 2017 provides that proceedings shall be deemed to be concluded upon payment of tax and penalty, this deeming fiction cannot be interpreted to imply that the assessee has agreed to waive or abandon the right to challenge the levy – a right that is protected by the very enactment itself. The term "conclusion" as used in Section 129(5) merely signifies that no further proceedings for prosecution will be initiated. It does not absolve the responsibility of the proper officer to pass an order concluding the proceedings. Therefore, the proper officer is duty-bound to pass a formal order in Form GST MOV-09 and upload a summary thereof in Form GST DRT 07 as mandated under Rule 142(5) and the Circular dated 13.04.2018, so as to enable the taxpayer to avail the appeal remedy as per law.

15. In the present case, payment was made under protest, and objections had already been filed by the appellant. Once objections are filed, adjudication is not optional, it becomes imperative to pass a speaking order to justify the demand of tax and penalty, to safeguard the right of appeal under Section 107 of the CGST Act, 2017. The language of section

129(3) is categorical in stating that the officer "shall issue a notice… and thereafter, pass an order". The use of the words "and thereafter" reinforces the mandatory nature of passing a reasoned order, regardless of payment, particularly where protest or dispute is raised.

16. Although the respondents claim that the objections were orally withdrawn and that the payment was made voluntarily by the appellant, no written material has been placed on record to substantiate the same. As between a written reply and an oral submission contrary to such written submission/reply, the written reply would prevail, and the authorities are duty-bound to consider that reply and pass speaking orders addressing each and every contention. Significantly, the GST payment portal permits payments only through Form GST DRC-03, which is automatically classified as a voluntary payment, and does not provide any mechanism for an assessee to indicate that the payment is being made under protest. In the absence of such an option, payments made under commercial compulsion or business necessity – such as for securing release of detained goods – may be erroneously construed as voluntary, resulting in undue prejudice. Under such circumstances, the written objections become significant to understand the intention of the assessee/owner or transporter. Upon such payment, the system auto-generates Form GST DRC-05, thereby concluding the proceedings without any formal adjudication. Such procedural limitations cannot be allowed to defeat the rights of the taxpayer, particularly where the detention of goods is ultimately found to be unlawful. We are, therefore, of the considered opinion that the payment made by the appellant in the present case cannot be treated as voluntary, and the absence of a mechanism to record protest should not operate to the detriment of the assessee, especially when objections were already on record and the payment was clearly necessitated by business exigences.

16.1. Further, the payment by an assessee will not absolve the responsibility of the proper officer to pass an order justifying the demand of tax and penalty. The assessee, even by election, cannot be treated to have waived his right against the illegality committed by the proper officer or acquiesced to the demand, as by the constitutional mandate under Article 265 of the Constitution, no tax can be levied or collected except with the authority of law. There is not only a bar against levy but also against collection. Therefore, the action of the proper officer must always be justifiable and fall within the four corners of law, as it is well settled that there can be no acquiescence in tax.

16.2. A waiver, as settled, is an abandonment of a right by express terms or by implication. It is an act by which a party elects to abandon his right to pursue a particular remedy with full knowledge of its existence,

making the other party to alter his position or legal status. Acquiescence, on the other hand, will imply the conduct of a party, who refrains from taking any action for a long period of time, despite the knowledge of the violation of his right, thereby precluding his future right to agitate the issue, as it would be hit by laches. It will be useful to refer to the following judgments on waiver and acquiescence:

(i) Sha Mulchand & Co. Ltd. v. Jawahar Mills Ltd.[4]

"12. The appeal Court, it will be observed, reversed the decision of the trial Judge and decided the appeal against the Company on two grounds only, namely, (1) that the Company had by the conduct of its two members abandoned its right to challenge the forfeiture, and (2) that the form of the order could not be supported as one validly made under section 38 of the Indian Companies Act. The learned Attorney-General, appearing in support of this appeal, has assailed the soundness of both these grounds. The learned Attorney-General contends, not without considerable force, that having, in agreement with the trial Court, held that no plea of acquiescence, waiver or estoppel had been established in this case, the appeal Court should not have allowed the Mills to raise the question of abandonment of right by the Company, inasmuch as no such plea of abandonment had been raised either in the Mills' affidavit in opposition to the Company's application or in the Mills' grounds of appeal before the High Court. Apart from this, the appeal Court permitted the Mills to make out a plea of abandonment of right by the Company as distinct from the pleas of waiver, acquiescence and estoppel and sought to derive support for this new plea from the well known cases of Prendergast v. Turton 62 E.R. 807, Clark & Chapman v. Hart 6 H.L.C. 632; 10 E.R. 1443] and Jones v. North Vancouver Land and Improvement Co. [1910] A.C.317. A perusal of the relevant facts set out in the several reports and the respective judgments in the above cases will clearly indicate that apart from the fact that some of them related to collieries which were treated on a special footing, those cases were really cases relating to waiver or acquiescence or estoppel. Indeed in Clarke's case [6 H.L.C. 632; 10 E.R. 1443], while Lord Chelmsford referred to the decision in Prendergast's case 62 E.R. 807, as a case of abandonment of right, Lord Wensleydale read it as an instance of acquiescence and estoppel. Unilateral act or conduct of a person, that is to say act or conduct of one person

4 MANU: SC/011/1952: AIR 1953 SC 98

which is not relied upon by another person to his detriment, is nothing more than mere waiver, acquiescence or laches, while act or conduct of a person amounting to an abandonment of his right and inducing another person to change his position to his detriment certainly raises the bar of estoppel. Therefore, it is not intelligible how, having held that no plea of waiver, acquiescence or estoppel had been established in this case, the appeal Court could, nevertheless, proceed to give relief to the Mills on the plea of abandonment by the Company of its rights. If the facts on record were not sufficient to sustain the plea of waiver, acquiescence or estoppel, as held by both the Courts, we are unable to see how a plea of abandonment of right which is an aggravated form of waiver, acquiescence or laches and akin to estoppel could be sustained on the self-same facts. Further, whatever be the effect of mere waiver, acquiescence or laches on the part of a person on his claim to equitable remedy to enforce his rights under an executory contract, it is quite clear, on the authorities, that mere waiver, acquiescence or laches which does not amount to an abandonment of his right or to an estoppel against him cannot disentitle that person from claiming relief in equity in respect of his executed and not merely executory interest. (See per Lord Chelmsford in Clarke's case 6 H.L.C. 632 : 10 E.R. 1443). Indeed, it has been held in The Garden Gully United Quartz Mining Company v. Hugh McLister L.R. 1 App. Cas. 39, that mere laches does not disentitle the holder of shares to equitable relief against an invalid declaration of forfeiture. Sir Barnest Peacock in delivering the judgment of the Privy Council observed at pages 56-57 as follows:

> "There is no evidence sufficient to induce their Lordships to hold that the conduct of the plaintiff did amount to an abandonment of his shares, or of his interest therein, or estop him from averring that he continued to be the proprietor of them. There certainly is no evidence to justify such a conclusion with regard to his conduct subsequent to the advertisement of the 30th of May, 1869. In this case, as in that of Prendergast v. Turton 62 E.R. 807, the plaintiff's interest was executed. In other words, he had a legal interest in his shares and did not require a declaration of trust or the assistance of a Court of Equity to create in him an interest in them. Mere laches would not, therefore, disentitle him to equitable relief : Clarke and Chapman v. Hart 6 H.L.C. 632 : 10 E.R. 1443. It was upon the ground of abandonment, and not upon that of mere laches, that Prendergast v. Turton 62 E.R. 807, was decided."

13. Two things are thus clear, namely, (1) that abandonment of right is much more than mere waiver, acquiescence or laches and is something akin to estoppel if not estoppel itself, and (2) that mere waiver, acquiescence or laches which is short of abandonment of right or estoppel does not disentitle the holder of shares who has a vested interest in the shares from challenging the validity of the purported forfeiture of those shares. In view of the decision of the Courts below that no case of waiver, acquiescence, laches or estoppel has been established in this case it is impossible to hold that the principles deducible from the judicial decisions relied upon by the appeal Court have disentitled the Company to relief in this case. The matter does not rest even here. Assuming, but not conceding, that the principle of piercing the veil of corporate personality referred to in Smith, Stone & Knight v. The Birmingham Corporation (1939) 4 All E.R. 116, can at all be applied to the facts of the present case so as to enable the Court to impute the acts or conduct of Govindaraju Chettiar and Sundara Ayyar to the Company, we have yet to inquire whether those acts or conduct do establish such abandonment of rights as would, according to the decisions, disentitle the plaintiff from questioning the validity of the purported declaration of forfeiture. There can be no question that the abandonment, if any, must be inferred from acts or conduct of the Company as such or, on the above principles, of its two members subsequent to the date of the forfeiture, for it is the right to challenge the forfeiture that is said to have been abandoned. In order to give rise to an estoppel against the Company, such acts or conduct amounting to abandonment must be anterior to the Mills' changing its position to its detriment. The resolution for forfeiture was passed on the 5th September, 1941. The five thousand forfeited shares were allotted to 14 persons on the 16th November, 1941, and it is such allotment that made it impossible for the Mills to give them back to the Company. In order, therefore, to sustain a plea of abandonment of right or estoppel, it must be shown that the Company or either of its two members had done some act and/or had been guilty of some conduct between the 5th September, 1941, and the 16th November, 1941. No such act or conduct during such period has been or can be pointed out. On being pressed advocate for the Mills refers us to the conduct of Sundara Ayyar in opposing O.P. No. 10 of 1942 filed by the Mills and O.P. No. 11 of 1942 by the Income-tax authorities for restoring the Company to the register of companies and it is submitted that such conduct indicates that Sundara Ayyar had accepted the validity of the forfeiture. This was long after the Mills had reallotted the forfeited shares. Further, a perusal of paragraph 9 of the affidavit in opposition filed by Sundara

Ayyar in O.P. No. 10 of 1942 will clearly show that he not only did not accept the forfeiture as valid but actually repudiated such forfeiture as wholly beyond the competence of the Board of Directors of the Mills. The reason for opposing the restoration of the Company may well have been that Sundara Ayyar desired, at all cost, to avoid his eventual personal liability as a shareholder and director of the Company. In any case, Sundara Ayyar did make it clear that he challenged the validity of the purported forfeiture of shares by the Mills and in this respect this case falls clearly within the decision in Clarke's case [6 H.L.C. 632 : 10 E.R. 1443], relied upon by the appeal Court. The only other conduct of Sundara Ayyar relied on by learned advocate for the Mills in support of the appeal Court's decision on this point is that Sundara Ayyar proceeded with his suit against Palaniappa Chettiar even after his suit as well as his appeal had been dismissed as against the Mills. In that suit Sundara Ayyar sued the Mills as well as Govindaraju Chettiar and the Official Receiver of Salem representing the latter's estate and Palaniappa Chettiar. In the plaint itself the validity of the forfeiture was challenged. The claim against Palaniappa Chettiar was in the alternative and it was founded on the agreement of the 30th June, 1939. The suit was dismissed as against the Mills only on the technical ground that Sundara Ayyar had no locus standi to maintain the suit. The contention of the Company that the forfeiture was invalid and the claim for rectification of the share register of the Mills by restoring the name of the Company cannot possibly have been affected by this decision. Sundara Ayyar's claim against Palaniappa Chettiar was based on the agreement of 1939 and it was formulated as an alternative personal claim. In view of the clear allegation in the plaint that the forfeiture was invalid and not binding on the Company, the continuation of the suit by Sundara Ayyar to enforce his personal claim against Palaniappa Chettiar cannot be regarded as an abandonment by Sundara Ayyar of the right of the Company. It must not be overlooked that the Company stood dissolved on that date and Sundara Ayyar had no authority to do anything on behalf of the Company. In our opinion there is no evidence of abandonment of the Company's right to challenge the validity of the purported forfeiture.

……

22. In the first place, waiver and abandonment are in their primary context unilateral acts. Waiver is the intentional relinquishment of a right or privilege. Abandonment is the voluntary giving up of one's rights and privileges or interest in property with the intention of never

claiming them again. But except where statutory or other limitations intervene, unilateral acts never in themselves effect a change in legal status because it is fundamental that a man cannot by his unilateral action affect the rights and interests of another except on the basis of statutory or other authority. Rights and obligations are normally intertwined and a man cannot by abandonment per se of his rights and interests thereby rid himself of his own obligations or impose them on another. Thus, there can be no abandonment of a tenancy except on statutory grounds (as, for example, in the Central Provinces Tenancy Act, 1920) unless there is acceptance, express or implied, by the other side. It may, for example in a case of tenancy, be to the landlord's interest to keep the tenancy alive; and so also in the case of shares of a company. It may be to the interests of the company and the general body of shareholders to refrain from forfeiture if, for example, the value of unpaid calls exceeds the market value of the shares. Such a position was envisaged in Garden Gully United Quartz Mining Co. v. Hugh Mc Lister (1875) 1 App. Cas. 39. So also with waiver. A long catena of illustrative cases will be found collected in B. B. Mitra's Indian Limitation Act. Thirteenth Edition, pages 447 and 448.

23. This fundamental concept brings about another repercussion. Unless other circumstances intervene, there is a locus poenitentiae in which a unilateral abandonment or waiver can be recalled. It would be otherwise if the unilateral act of abandonment in itself, and without the supervention of other matters, effected a change in legal status. In point of fact, it is otherwise when, as in the statutory example I have quoted, the law intervenes and determines the tenancy. It is, therefore, in my opinion, fundamental that abandonment and waiver do not in themselves unilaterally bring about a change in legal status. Something else must intervene, either a statutory mandate or an act of acceptance, express or implied, by another person, or, as Lord Chelmsford put it in Clarke & Chapman v. Hart (1858) 10 E.R. 1443, acts which are equivalent to an agreement or a licence, or an estoppel in cases where an estoppel can be raised."

(ii) Bhau Ram v. Baij Nath Singh and Ors.[5]

"7. It seems to us, however, that in the absence of some statutory provision or of a well-recognised principle of equity, no one can be

5 MANU/0031/SC/1961: AIR 1961 SC 1327

deprived of his legal rights including a statutory right of appeal. The phrase "approbate and reprobate" is borrowed from Scotch Law where it is used to express the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (per Scrutton, L.J., in Verschures Creameries v. Hull and Netherlands Steamship Co. [[1921] 2 K.B. 608.]. The House of Lords further pointed out in Lissenden v. C.A.V. Bosch Ltd. [[1940] A.C. 412.] that the equitable doctrine of election applies only when an interest is conferred as an act of bounty by some instrument. In that case they held that the withdrawal by a workman of the compensation money deposited by the employer could not take away the statutory right of appeal conferred upon him by the Workmen's Compensation Act. Lord Maugham, after pointing out the limitations of the doctrine of approbate and reprobate observed towards the conclusion of his speech:

"It certainly cannot be suggested that the receipt of the sum tendered in any way injured the respondents. Neither estoppel nor release in the ordinary sense was suggested. Nothing was less served than the principles either of equity or of justice." (pp. 421-422).

……

12. It seems to us that a statutory right of appeal cannot be presumed to have come to an end because the appellant has in the meantime abided by or taken advantage of something done by the opponent under the decree and there is no justification for extending the rule in Tinkler's case (1849) 4 Ex. 187 : 154 E.R. 1176 to cases like the present. In our judgment it must be limited only to those cases where a person has elected to take benefit otherwise than on the merits of the claim in the lis under an order to which benefit he could not have been entitled except for the order. Here the appellant, by withdrawing the pre-emption price has not taken a benefit de hors the merits. Besides, this is not a case where restitution is impossible or inequitable. Further, it seems to us that the existence of a choice between two rights is also one of the conditions necessary for the applicability of the doctrine of approbate and reprobate. In the case before us there was no such choice before the appellant and, therefore, his act in withdrawing the pre-emption price cannot preclude him for continuing his appeal. We, therefore, overrule the preliminary objection. The appeal will now be set down for hearing on merits. The costs of this hearing will be costs in the appeal."

Therefore, it is clear that there must be much more than an abandonment of a right to plead waiver or acquiescence. The payment, by itself, cannot be treated as a waiver or abandonment, especially when the appellant has clearly objected to the demand and when there is a statutory mandate to pass an order and a corresponding right to appeal.

17. Furthermore, the respondents' reliance on section 129(5) to avoid issuing a final order under section 129(3), in our view, is a non-starter and overlooks the statutory scheme. Where objections are filed or payment is made under protest or compulsion, adjudication is indispensable. The invocation of the decision in ***Dilip Kumar & Co.*** (regarding strict interpretation of exemption) by the respondents is entirely misplaced, as the issue involved herein pertains not to tax exemption, but to compliance with due process and procedural safeguards.

18. The principles of natural justice mandate that when a taxpayer submits a response to a show cause notice, the adjudicating authority is required to consider such response and render a reasoned, speaking order. This is not a mere procedural formality, but a substantive safeguard ensuring fairness in quasi- judicial proceedings. The right to appeal under Section 107 of the CGST Act, 2017, is predicated upon the existence of a formal adjudication. An appeal can lie only against an 'order', and in the absence of a reasoned order passed under Section 129(3) of the Act, the taxpayer is effectively deprived of the statutory remedy of appeal. Such a deprivation undermines the foundational principles of fairness, due process, and access to justice, rendering the right of appeal illusory or nugatory. It is now settled law that failure to issue a speaking order in response to a show cause notice creates a legal vacuum. Any consequential action including imposition of tax or penalty, would then be unsupported by authority of law, thereby potentially violating Article 265 of the Constitution of India, which prohibits the levy or collection of tax except by authority of law.

18.1. In this context, useful guidance may be drawn from the decision in ***M/s. Kranti Associates (P) Ltd & Anr. v. Masood Ahmed Khan & Ors.***[6], wherein, this Court emphasized that fairness, transparency, and accountability are inseparable from the duty to provide reasons. The Court held that failure to furnish reasons violates the principles of natural justice and renders the right of appeal or judicial review illusory. In paragraph 51 of the judgment, the Court distilled the following key principles:

> "a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

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6 (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852 : 2010 SCC OnLine SC 987 at page 504

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi- judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

19. Therefore, even assuming that the payment was made by the appellant, voluntarily or otherwise, the proper officer could not be absolved of the statutory obligation to pass a reasoned order in Form GST MOV-09 and upload the corresponding summary in Form GST DRC-07. Compliance with these procedural requirements is essential not only for ensuring transparency and accountability in tax administration, but also for safeguarding the taxpayer's appellate rights under the CGST Act, 2017. Such adherence is in consonance with the constitutional mandate under Article 265 of the Constitution of India.

20. In view of the foregoing discussion, and taking into account that objections were filed, payment was stated to have been made under protest due to business exigencies, and the appellant seeks to challenge the levy, the proper officer was under a clear statutory obligation to pass a final order under section 129(3) in Form GST MOV-09 and DRC-07. The refusal by the High Court to direct the passing of such an order, has the effect of frustrating the appellant's statutory right to appeal and is contrary to well established legal principles governing tax adjudication and procedural fairness.

21. Accordingly, the impugned order passed by the High Court is set aside. Respondent No.3 is directed to pass a reasoned final order

under section 129(3) of the CGST Act, 2017, in Form GST MOV-09, after granting an opportunity of being heard as mandated under Section 129(4), and upload the summary thereof in Form GST DRC-07 within a period of one month from the date of receipt of a copy of this judgment. Thereafter, it shall be open to the appellant to pursue appropriate legal remedies against such order, in accordance with law.

22. This appeal stands allowed on the above terms. No order as to costs.

Connected miscellaneous application(s) shall stand closed.

Seeks to extend the due date for furnishing FORM GSTR-1 for the month of December, 2024 and the quarter of October to December, 2024, as the case may be

NOTIFICATION

No. 01/2025 – CENTRAL TAX

New Delhi, the 10th January, 2025

G.S.R.....(E).- In exercise of the powers conferred by the first proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 –Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely:–

In the said notification, after the fifth proviso, the following proviso shall be inserted, namely:-

"Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act for the tax period December, 2024, shall be extended till the thirteenth day of January, 2025 and for the registered persons who are required to furnish return under proviso of the said sub-section, for the tax period October to December, 2024, shall be extended till the fifteenth day of January, 2025."

[F. No. CBIC-20001/10/2024-GST]
(Raushan Kumar)
Under Secretary

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 09/2024 –Central Tax, dated the 12th April 2024, published in the Gazette of India, Extraordinary vide number G.S.R. 246(E), dated the 12th April 2024.

Seeks to extend the due date for furnishing FORM GSTR-3B for the month of December, 2024 and the quarter of October to December, 2024, as the case may be

NOTIFICATION
No. 02/2025 – CENTRAL TAX

New Delhi, the 10th January, 2025

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), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return in FORM GSTR-3B electronically, through the common portal, by the registered persons, as specified under-

(i) sub-section (1) of section 39, for the month of December 2024, till twenty-second day of January, 2025:

(ii) proviso to sub-section (1) of section 39,for the quarter of October,2024 to December,2024, for the class of registered persons mentioned in column (2) of the Table given below, till the date mentioned in the corresponding entry in column (3) of the said Table, namely: -

TABLE

S. No.	Class of registered persons	Due Date
1	2	3
1.	Registered persons 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.	Twenty-fourth day of January, 2025
2.	Registered persons 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 ofJammu and Kashmir, Ladakh, Chandigarh or Delhi.	Twenty-sixth day of January, 2025

[F.No. CBIC-20001/10/2024-GST]
(Raushan Kumar)
Under Secretary

Seeks to extend the due date for furnishing FORM GSTR-5 for the month of December, 2024

NOTIFICATION
No. 03/2025 – CENTRAL TAX

New Delhi, the 10th January, 2025

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), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return by a non-resident taxable person, in FORM GSTR-5, under sub-section (5) of section 39 of the said Act read with rule 63 of the Central Goods and Services Tax Rules, 2017 for the month of December, 2024 till the 15th day of January, 2025.

[F.No. CBIC-20021/2/2025-GST]
(Raushan Kumar)
Under Secretary to the Government of India

Seeks to extend the due date for furnishing FORM GSTR-6 for the month of December, 2024

NOTIFICATION
No. 04/2025 – CENTRAL TAX

New Delhi, the 10th January, 2025

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), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the month of December, 2024 till the 15th day of January, 2025.

[F. No. CBIC-20021/2/2025-GST]
(Raushan Kumar)
Under Secretary to the Government of India

Seeks to extend the due date for furnishing FORM GSTR-7 for the month of December, 2024

NOTIFICATION
NO. 05/2025–CENTRAL TAX

New Delhi, the 10th January, 2025

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), the Commissioner , on the recommendations of the Council, hereby extends the time limit for furnishing 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 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 month of December, 2024, till the 12th day of January, 2025.

[F.No.CBIC-20021/2/2025-GST]
(Raushan Kumar)
Under Secretary to Government of India

Seeks to extend the due date for furnishing FORM GSTR-8 for the month of December, 2024

NOTIFICATION
No. 06/2025 – CENTRAL TAX

New Delhi, the 10th January, 2025

G.S.R.....(E).- In exercise of the powers conferred by first proviso to sub-section (4) of section 52 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the statement, containing the details of outward supplies of goods or services or both, effected through an e-commerce operator, in FORM GSTR-8, under sub-section (4) of section 52 of the said Act read with rule 67 of the Central Goods and Services Tax Rules, 2017 for the month of December, 2024 till the 12th day of January, 2025.

[F.No. CBIC-20021/2/2025-GST]
(Raushan Kumar)

Central Tax Notification to amend CGST Rules, Central Goods and Services Tax (Amendment) Rules, 2025

NOTIFICATION
No. 07/2025 – Central Tax

New Delhi, the 23rd January, 2025

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 (Amendment) Rules, 2025.

(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), with effect from a date to be notified, after rule 16, the following rule shall be inserted, namely: -

"16A. Grant of temporary identification number. - Where a person is not liable to registration under the Act but is required to make any payment under the provisions of the Act, the proper officer may grant the said person a temporary identification number and issue an order in Part B of FORM GST REG-12.".

3. In the said rules, with effect from a date to be notified, in rule 19, in sub-rule (1), after the words, letters and figures "FORM GST REG-10", the words, letters and figures "or in the intimation furnished by the composition taxpayer in FORM GST CMP-02" shall be inserted.

4. In the said rules, with effect from a date to be notified, in rule 87, in the sub-rule (4), after the words "common portal", the words, figures and letters "as per rule 16A" shall be inserted.

5. In the said rules, with effect from a date to be notified, for FORM REG-12, the following form shall be substituted, namely:–

"FORM GST REG-12
[See rule16(1), 16A]

Reference Number - **Date**:

To
(Name):
(Address):

Temporary Registration Number/Temporary Identification Number

Order of Grant of Temporary Registration/Suo Moto Registration/ Temporary Identification Number

Whereas the undersigned has sufficient reason to believe that you are liable for registration under the Act, and therefore, you are hereby registered on a temporary basis. The particulars of the business as ascertained from the business premises are given as under:

PART A

Details of person to whom temporary registration granted			
1.	Name and Legal Name, if applicable		
2.	Gender		Male/Female/Other
3.	Father's Name		
4.	Date of Birth		DD/MM/YYYY
5.	Address of the Person	Building No./Flat No.	
		Floor No.	
		Name of Premises/ Building	
		Road/ Street	
		Town/City/Locality/Village	
		Block/ Taluka	
		District	
		State	
		PIN Code	
6.	Permanent Account Number of the person, if available		
7.	Mobile No.		
8.	Email Address		

9.	Other ID, if any (Voter ID No./ Passport No./ Driving License No./ Aadhaar No./Other)	
10.	Reasons for temporary registration	
11.	Effective date of registration/ temporary ID	
12.	Registration No. /Temporary ID	

13. Details of Bank Accounts (s) [Optional]

Total number of Bank Accounts maintained by the applicant (Upto 10 Bank Accounts to be reported)	

Details of Bank Account 1

Account Number																
Type of Account							IFSC									
Bank Name																
Branch Address	To be auto-populated (Edit mode)															

Note – Add more bank accounts.

(Upload of Seizure Memo /Detention Memo/ Any other supporting documents)

<< You are hereby directed to file application for proper registration within ninety days of the issue of this order>>

Signature

Place <<Name of the Officer>>:

Date: Designation/Jurisdiction:

Note: A copy of the order will be sent to the corresponding Central/ State Jurisdictional Authority.

PART B

Whereas the undersigned has sufficient reason to believe that you are liable to make any payment under the Act, and therefore, you are hereby granted a temporary identification number as per the following details:

Details of person to whom temporary identification number has been granted			
1.	Name and Legal Name, if applicable		
2.	Gender		Male/Female/Other
3.	Father's Name		
4.	Date of Birth		DD/MM/YYYY
5.	Address of the Person	Building No./ Flat No.	
		Floor No.	
		Name of Premises/ Building	
		Road/ Street	
		Town/City/Locality/Village	
		Block/ Taluka	
		District	
		State	
		PIN Code	
6.	Permanent Account Number of the person, if available		
7.	Mobile No.		
8.	Email Address		
9.	Other ID, if any (Voter ID No./ Passport No./ Driving License No./ Aadhaar No./Other)		
10.	Effective date of temporary ID		
11.	Temporary ID		

12. Details of Bank Accounts (s) [Optional]

Total number of Bank Accounts maintained by the applicant (Upto 10 Bank Accounts to be reported)	

Details of Bank Account

Account Number																
Type of Account							IFSC									
Bank Name																
Branch Address	To be auto-populated (Edit mode)															

Note – Add more bank accounts.

Signature

Place <<Name of the Officer>>:

Date: Designation/Jurisdiction:

Note: A copy of the order will be sent to the corresponding Central/ State Jurisdictional Authority.".

[No. CBIC-20001/15/2024-GST]
(Raushan Kumar)
Under Secretary to Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), *vide* number G.S.R. 610(E), dated the 19th June, 2017 and were last amended, *vide* number G.S.R. 626(E), dated the 8th October, 2024.

Central Tax Notification for waiver of the late fee

NOTIFICATION
NO. 08/2025 – CENTRAL TAX

New Delhi, dated the 23rd January, 2025

S.O.....(E).– In exercise of the powers conferred by section 128 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 waives the amount of late fee referred to in section 47 of the said Act

in respect of the return to be furnished under section 44 of the said Act, for the financial years 2017-18 or 2018-19 or 2019-20 or 2020- 21 or 2021-22 or 2022-23, which is in excess of the late fee payable under section 47 of the said Act upto the date of furnishing of FORM GSTR-9 for the said financial year, for the class of registered persons, who were required to furnish reconciliation statement in FORM GSTR-9C along with the annual return in FORM GSTR-9 for the said financial year but failed to furnish the same along with the said return in FORM GSTR-9, and furnish the said statement in FORM GSTR-9C, subsequently on or before the 31st March, 2025: Provided that no refund of late fee already paid in respect of delayed furnishing of FORM GSTR-9C for the said financial years shall be available.

[No. CBIC-20001/15/2024-GST]
(Raushan Kumar)
Under Secretary to Government of India

Under Secretary to Government of India Seeks to bring rules 2, 8, 24, 27, Seeks to bring rules 2, 8, 24, 27, 32, 37, 38 of the CGST (Amendment) Rules, 2024 in to force

NOTIFICATION
No. 09/2025–Central Tax

New Delhi, the 11th February, 2025.

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 sub-rule (1) of rule 1 of the Central Goods and Services Tax (Amendment) Rules, 2024 (hereinafter referred to as rules), issued vide notification No. 12/2024-Central Tax, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 376(E), dated the 10th July, 2024, the Central Government hereby appoints the following dates as mentioned in column (3) of the table below, on which the provisions of rules specified in column (2) of the said table, shall come into force, namely: –

TABLE

S. No.	Rules	Date
1	2	3
1.	Rules 2, 24, 27 and 32 11th day of February, 2025	Twenty-fourth day of January, 2025
2.	Rules 8, 37 and clause (ii) of rule 38 1st day of April, 2025	Twenty-sixth day of January, 2025

[No.CBIC-20006/21/2024-GST]
(Raushan Kumar)
Under Secretary to the Government of India.

Seeks to amend notification No. 02/2017-Central Tax.

Notification
No. 10/2025 – Central Tax

New Delhi, the 13th March, 2025

G.S.R.....(E).– In exercise of the powers conferred by section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 02/2017-Central Tax, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification, in Table, -

(i) for serial number 7 and the entries relating thereto, the following shall be substituted, namely: -

"7.	Alwar	Districts of Alwar, Khairthal-Tijara, Kotputli-Behror, Bharatpur, Deeg, Dholpur, Dausa, Karauli, Sawaimadhopur, Sikar and Jhunjhunu in the state of Rajasthan.”;

(ii) for serial number 23, and the entries relating thereto, the following shall be substituted, namely:-

“23.	Chennai	Outer Districts of Viluppuram, Kallakurichi, Thiruvannamalai, Vellore, Tirupathur, Ranipet, Tiruvallur, Kanchipuram, Chengalpattu and areas covered under Pallavaram Cantonment Board excluding Chennai Corporation Zone Nos. I to XV (from Ward No. 1 to 200 in existence as on 01.04.2017) and St. Thomas Mount Cantonment Board in the State of Tamil Nadu”;

(iii) for serial number 49 and the entries relating thereto, the following shall be substituted, namely: -

“49.	Jaipur	Districts of Jaipur, Ajmer, Beawer and Tonk in the state of Rajasthan.”;

(iv) for serial number 53 and the entries relating thereto, the following shall be substituted, namely: -

"53.	Jodhpur	Districts of Jodhpur, Phalodi, Nagaur, Didwana-Kuchaman, Pali, Sirohi, Jalore, Barmer, Balotra, Jaisalmer, Bikaner, Churu, Ganganagar and Hanumangarh in the state of Rajasthan.";

(v) for serial number 63, and the entries relating thereto, the following shall be substituted, namely:-

"63.	Madurai	Districts of Madurai, Ramanathapuram, Sivagangai, Virudhunagar, Tuticorin, Tirunelveli, Tenkasi, Kanyakumari, Theni, Dindigul (except D. Gudalur Village of Palayam Firka of Vedasandur Taluk) in the State of Tamil Nadu. The territorial waters and the seabed and sub soil underlying such waters from where the nearest point of the appropriate baseline is located in the state of Tamil Nadu and the Union territory of Puducherry.";

(vi) for serial number 100 and the entries relating thereto, the following shall be substituted, namely:-

"100.	Tiruchirapalli	Districts of Tiruchirappalli, Perambalur, Ariyalur, Karur, Pudukottai, Thanjavur, Thiruvarur, Nagapattinam, Mayiladuthurai, Cuddalore, and D. Gudalur village of Palayam Firka of Vedasandur Taluk of Dindigul District in the State of Tamil Nadu.";

(vii) for serial number 102 and the entries relating thereto, the following shall be substituted, namely:-

"102.	Udaipur	Districts of Udaipur, Salumbar, Rajsamand, Bhilwara, Chittorgarh, Pratapgarh, Dungarpur, Banswara, Bundi, Baran, Kota and Jhalawar in the state of Rajasthan.";

[F. No. CBIC-20016/8/2025-GST]
(Raushan Kumar)
Under Secretary to the Government of India.

Note: - The principal notification No. 02/2017-Central Tax, was published in the Gazette of India, Extraordinary, vide number G.S.R. 609(E), dated the 19th June, 2017 and was last amended by notification No. 27/2024-Central Tax, published in the Gazette of India, Extraordinary, vide number G.S.R. 729(E), dated the 25th November 2024.

Seeks to notify Central Goods and Services Tax (Second Amendment) Rules 2025

NOTIFICATION
No. 11/2025–Central Tax

New Delhi, the 27th March, 2025.

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, 2025.

(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,–

(a) in rule 164, –

(i) in sub-rule (4), after the words “after payment of the full amount of tax”, the words “related to period mentioned in the said sub-section and” shall be inserted.

(ii) after sub-rule (4), the following Explanation shall be inserted, namely: -

“Explanation, - No refund shall be available for any tax, interest, and penalty, which has already been discharged for the entire period, prior to the commencement of the Central Goods and Services Tax (Second Amendment) Rules, 2025, in cases where a notice or statement or order mentioned in sub-section (1) of section 128A, includes a demand of tax, partially for the period mentioned in the said sub-section and partially for a period other than mentioned in the said sub-section.”.

(b) in rule 164, in sub-rule 7, after the first proviso, the following proviso shall be inserted, namely: -

“Provided further that where the notice or statement or order mentioned in sub-section(1) of section 128A of the Act includes demand of tax, partially for the period mentioned in the said

subsection and partially for the period other than that mentioned in the said sub-section, the applicant instead of withdrawing the appeal, shall intimate the appellate authority or Appellate Tribunal that he does not wish to pursue the appeal for the period mentioned in the said sub-section and the relevant authority shall, after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as he thinks just and proper.

,– For the removal of doubt, it is clarified that the appeal application shall be deemed to have been withdrawn to the extent of the sa id i ntimat ion for t he period from the 1st July, 2017 to the 31st March, 2020 or part thereof, for the purpose of sub-clause (3) of section 128A."

[No. CBIC-20016/12/2025-GST]
(Raushan Kumar)
Under Secretary to the Government of India.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, subsection (i), vide number G.S.R. 610(E), dated, the 19th June 2017 and was last amended, vide number G.S.R. 72(E), dated the 23rd January, 2025.

Seeks to appoint common adjudicating authority for Show cause notices issued by officers of DGGI

NOTIFICATION
No. 31/2024–Central Tax

New Delhi, the 13th December, 2024.

S.O…(E).— In exercise of the powers conferred by section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Indirect Taxes and Customs, hereby appoint officers mentioned in column (4) of the Table below for passing an order or decision in respect of notices mentioned in column (3) of the said Table issued to the noticees mentioned in column (2) of the said Table by the officers of Directorate General of Goods and Services Tax Intelligence under sections 73, 74, 122, 125 and 127 of Central Goods and Services Tax Act, 2017 (12 of 2017), namely

TABLE

S. No.	Name of Noticee and Address	Show Cause Notice Number, Date and Issuing Authority	Name of the Adjuticating Authority
(1)	(2)	(3)	(4)
1	M/s Sushil Kumar Munish Kumar & Co. (Prop. Gopal), GSTIN-24AQXPG1593M1Z6, A/501, Sun Square, Nr. Old Highcort Income Tax, Navrangpura, Ahmedabad, Gujarat, 380009; and others	15/2024-DGGI Hqrs. Dated 04.08.2024 by Joint Director, DGGI, Hqrs	Additional Commissioner or Joint Commissioner, CGST and Central Excise, Chandigarh Commissionerate [holding the charge of adjudication of DGGI cases].
2	M/s Aggarwal Enterprises (Prop. Monika Garg), GSTIN - 06AEOPG1782K1Z7, SH No. SCF 9b, Anaj Mandi, Sirsa, Sirsa, Haryana, 125055; and others	16/2024-DGGI Hqrs. Dated 04.08.2024 by Joint Director, DGGI, Hqrs	
3	M/s Ahuja Cotspin Pvt. Ltd., GSTIN - 03AAJCA0093R1ZF, Ground Floor, Shop No. 3, B-Vi-I, 1/A, Block-6, Ghati Balmiki, State Bank Of India, Madhopuri, Ludhiana-141008, Punjab; and others	17/2024-DGGI Hqrs. Dated 04.08.2024 by Joint Director, DGGI, Hqrs	
4	M/s BST Textile Mills Pvt. Ltd, GSTIN - 05AACCB7130P1ZL, Plot No. 9, Sector No. 9, lie Pantnagar, Sidcul, Rudrapur, Udham Singh Nagar, Uttarakhand, 263153; and others	18/2024-DGGI Hqrs. Dated 04.08.2024 by Joint Director, DGGI, Hqrs	
5	M/S Rana Polycot Ltd., GSTIN - 03AAACR7623M1ZB, Ambala-Chandigarh Road, Village Alamgir, Sas Nagar, Punjab, 140507; and others	19/2024-DGGI Hqrs. Dated 04.08.2024 by Joint Director, DGGI, Hqrs	
6	M/s. Garg Acrylics Limited, GSTIN - 03AAACG3332N1ZU, 1230/1, Kanganwal Road, V.P.O. Jugiana, Ludhiana, Punjab, 141120; and others	20/2024-DGGI Hqrs. Dated 04.08.2024 by Joint Director, DGGI, Hqrs	

7	M/s. S. T. Cottex Exports Pvt. Ltd., GSTIN - 03AAECS5993F1Z8, B-Xxx891, Sherpur Road, Behind Petrol Pump, Ludhiana, Punjab, 141009; and others	21/2024-DGGI Hqrs. Dated 04.08.2024 by Joint Director, DGGI, Hqrs	
8	DURGA COTTON FACTORY, GSTIN - 03AMWPG6219P1ZG, Near Roshan Cotspin, Mandi Killianwali, Sri Muktsar Sahib, Punjab-151211; and others	15/2024-25 dated 09.07.2024 by Additional Director DGGI Ludhiana Zonal Unit	
9	GOPIMAL KAUR SAIN INDUSTRIES (P) LTD, GSTIN - 03AAFCG1369Q1ZA, Plot No 15-15A, Mahavir Jain Colony, Sunder Nagar, Ludhiana, Punjab, 141001; and others	17/2024-25 dated 15.07.2024 by Deputy Director DGGI Ludhiana Zonal Unit	
10	Nahar Spinning Mills Limited, GSTIN - 03AAACN5710D1Z6, 371 to 373, 375 to 378, 381, 425, 427, RK Road, Industrial Area A, Ludhiana, Punjab, 141003. ; and others	19/2024-25 dated 19.07.2024 by Additional Director DGGI Ludhiana Zonal Unit	
11	Nahar Industrial Enterprises Limited, GSTIN - 03AACCN3563A2Z2, B3-8, A-4, Focal Point, Phase-IV, Ludhiana, Punjab, 141010; and others	23/2024-25 (GST) dated 23.07.2024 by Additional Director DGGI Ludhiana Zonal Unit	
12	M/s Sharmanji Yarns Pvt Ltd, GSTIN - 03AAHCS6629R1ZP, Village Lakhowal, Lakhowal Road, Kohara, Ludhiana, Punjab, 141112; and others	117-155/2024-GST, dated 09-07-2024 by Additional Director DGGI Chandigarh Zonal Unit	

[F. No- CBIC-20010/27/2024-GST]
(Raushan Kumar), Under Secretary.

Regularizing payment of GST on co-insurance premium apportioned by the lead insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer.

Circular No. 244/01/2025-GST

North Block, New Delhi
Dated the 28th of January, 2025

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Regularizing payment of GST on co-insurance premium apportioned by the lead insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer – reg.

Based on the recommendations of the GST Council in its 53rd meeting held on 22nd June, 2024, at New Delhi, and in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, the following clarification is being issued through this Circular:

2. On the recommendations of the 53rd meeting of the GST Council held in New Delhi on 22nd June, 2024, the following activities or transactions were included in Schedule III of the CGST Act, 2017 as activities or transactions which shall be treated neither as a supply of goods nor as a supply of services:

a) Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the Central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

b) Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium

paid by the insurer to the reinsurer, subject to the condition that the Central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

The above provisions were enacted vide Finance (No. 2) Act, 2024 and have been brought into force on 01.11.2024 vide Notification No. 17/2024-Central Tax dated 27.09.2024.

3. In its 53rd meeting, the GST Council further recommended that the payment of GST on the activities or transactions, as specified in paragraph 2 above, may be regularized for the past period, i.e. from 01.07.2017 to the effective date of amendments in the CGST Act, , on 'as is where is' basis.

4. Thus, as recommended by the 53rd GST Council, the payment of GST on the activities or transactions specified in paragraph 2 above is regularized for the period 01.07.2017 to 31.10.2024, on 'as is where is' basis.

5. Difficulties, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours sincerely,
(Sachin Jain)
Joint Secretary, TRU-II

Clarifications regarding applicability of GST on certain services.

Circular No. 245/02/2025-GST

North Block, New Delhi
Dated the 28th of January, 2025

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services – reg.

Based on the recommendations of the GST Council in its 55th meeting held on 21st December 2024, at Jaisalmer, and in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, clarifications on various issues are being issued through this Circular, as under:

2. Applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated 18.08.2023 directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.1 Representations have been received seeking clarification on the applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated 18.08.2023 directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.2 Regulated Entities (REs) such as banks and non-banking financial companies (NBFCs) have been instructed, vide RBI instructions dated 18.08.2023, to discontinue the use of penal interest for non-compliance with loan terms. As per the instructions, instead of penal interest, REs are to levy penal charges for non-compliance with loan terms. The intent of levying penal charges is essentially to inculcate a sense of credit discipline. These instructions are effective from 01.01.2024, and do not apply to credit cards, external commercial borrowings, trade credits and structured obligations which are covered under product specific directions.

2.3 It is being viewed by certain field formations that penal charges so levied are in the nature of payment/consideration for tolerating an act or situation. Similar issues were examined in Circular No. 178/10/2022-GST dated 03.08.2022, wherein it has already been clarified that certain payments such as liquidated damages for breach of contract are not a consideration for tolerating an act or situation. They are rather amounts recovered to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere *'events'* in a contract. It has been further clarified that the essence of a contract is its *'performance'* and not its *'breach'*, meaning thereby that parties enter into a contract for execution and not for its breach.

2.4 Penal charges levied by REs, in compliance with RBI directions dated 18.08.2023, are essentially in the nature of charges for breach of terms of contract and hence, fall within the ambit of the above clarification.

2.5 Thus, as recommended by the 55th GST Council, it is hereby clarified that no GST is payable on the penal charges levied by Regulated Entities, in

compliance with RBI directions dated 18.08.2023, for non-compliance with material terms and conditions of loan contract by the borrower.

3. Whether GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 is available to payment aggregators in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services?

3.1 Representations have been received seeking clarity on the applicability of GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 to Payment Aggregators (PAs) in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services.

3.2 The matter has been examined. Payment Aggregators (PAs) are entities that facilitate e- commerce sites and merchants to accept various payment instruments from their customers without the need for the e-commerce sites and merchants to create a separate payment integration system of their own. In the process, PAs receive payments from customers, pool and transfer them on to the merchants within a specified time period.

3.3 The exemption under Sl. No. 34 of notification No. 12/2017-CT(Rate) dated 28.06.2017 is available to acquiring banks. For the purpose of the said exemption entry, the term 'acquiring bank' has been explained as under:

> "acquiring bank" means any banking company, financial institution including non- banking financial company or any other person, who makes the payment to any person who accepts such card.

3.4. Clause 8 of the RBI's Guidelines on Regulation of Payment Aggregators and Payment Gateways dated 17.03.2020, pertaining to 'Settlement and Escrow Account Management' makes it clear that the PAs receive payments from customers in an escrow account, and are obligated to do the final settlement with the merchant within time periods specified by RBI. Therefore, the RBI regulated PAs, involved in the settlement process of making payments to the merchant, are covered by the second part of the definition of acquiring bank, i.e. *"any other person, who makes the payment to any person who accepts such card"* and hence, fall within the definition of acquiring bank, for the purpose of the exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017, as they make

the payment to the merchants who accept credit cards, debit cards, charge cards or other payment card services.

3.5 Further, the RBI's Guidelines dated 17.03.2020 clearly distinguish between Payment Aggregators and Payment Gateways (PGs), keeping in view their role vis-à-vis handling funds. PAs are defined as entities who receive payments from customers, pool and transfer them on to the merchants within a specified time period. On the other hand, PGs are defined as entities that provide technology infrastructure to route and facilitate processing of an online payment transaction without any involvement in handling of funds.

3.6 Thus, as recommended by the 55th GST Council, it is hereby clarified that GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 is available to RBI regulated Payment Aggregators (PAs) in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services, as PAs fall within the definition of *'acquiring bank'* given in the Explanation to the said exemption entry. It is also clarified that this exemption is limited to payment settlement function only, which involves handling of money, and does not cover Payment Gateway (PG) services.

4. Regularizing payment of GST on research and development services provided by Government Entities against consideration in the form of grants received from Government Entities.

4.1 The GST Council, in its 54th meeting held on 09.09.2024 recommended exempting research and development services provided by Government Entities or research associations, universities, colleges or other institutions, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, against consideration in the form of grants. The same has been exempted w.e.f. 10.10.2024 vide notification No. 08/2024-CT(Rate) dated 8.10.2024.

4.2 There were certain interpretational issues with respect to the taxability, or otherwise, of supply of research and development services by Government Entities against grants received from the Government Entities like DRDO, CSIR, SERB etc. These issues now stand resolved, for the period starting from 10.10.2024, with the issuance of notification No. 08/2024-CT(Rate) dated 08.10.2024 which specifically exempted research and development services provided by Government Entities or research associations, universities, colleges or other institutions, notified

under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, against consideration in the form of grants.

4.3 Accordingly, for the past period, the Council, in its 55th meeting, has recommended to regularize payment of GST on the supply of research and development services by Government Entities against grants received from the Government Entities for the period 01.07.2017 to 09.10.2024 on *'as is where is'* basis.

4.4 Thus, as recommended by the 55th GST Council, the payment of GST on the supply of research and development services by Government Entities against grants received from the Government Entities is regularized for the period 01.07.2017 to 09.10.2024, on *'as is where is'* basis.

5. Regularizing payment of GST on skilling services provided by Training Partners approved by the National Skill Development Corporation.

5.1 On the recommendations of the 54th meeting of the GST Council held in New Delhi on 09.09.2024, the entry at Sl. No. 69 of the Notification No. 12/2017-CTR dated 28.06.2017 was amended vide Notification No. 08/2024 dated 08.10.2024, to synchronize it with the new regulatory framework for skill development under NCVET.

5.2 As a result of the aforesaid amendment, the earlier exemption available to the skilling services provided by Training Partners approved by National Skill Development Corporation was withdrawn. The amended exemption was restricted to the skilling services provided by Training Bodies accredited with an Awarding Body that is recognized by the NCVET. Later, it was informed by the Ministry of Skill Development and Entrepreneurship, Government of India, that since NSDC is the implementing agency for skilling schemes of the Government of India, as well as other skill development programs, hence, the withdrawal of the tax exemption to Training Partners approved by NSDC would adversely impact the skilling ecosystem significantly.

5.3 Accordingly, the GST Council, in its 55th meeting, has recommended that the earlier exemption to skilling services provided by Training Partners approved by the National Skill Development Corporation may be restored. The said exemption has been reinstated by amending Notification No. 12/2017-CT(Rate) dated 28.06.2017 vide Notification No. 06/2025-CT(Rate) dated 16.01.2025 with effect from 16.01.2025.

5.4 Further, for the past period, the GST Council has recommended to regularize payment of GST on services provided by Training Partners

approved by the National Skill Development Corporation, which were exempt prior to 10.10.2024, for the period 10.10.2024 to 15.01.2025 on *'as is where is'* basis.

5.5 Thus, as recommended by the GST Council, the payment of GST on services provided by Training Partners approved by the National Skill Development Corporation, which were exempt prior to 10.10.2024, is regularized for the period 10.10.2024 to 15.01.2025, on *'as is where is'* basis.

6. Applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters.

6.1 Representation has been received seeking clarification on the applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters, New Delhi.

6.2 MCD is receiving the services such as housekeeping, civil maintenance, furniture maintenance and horticulture, from facility management agency, for the upkeep of their office. MCD has sought clarification as to whether such services received by them are exempt from GST in terms of *Sr. No.3A of the notification No. 12/2017-CTR dated 28.06.2017.*

6.3 The said entry at *Sr. No. 3A of notification No. 12/2017-CTR dated 28.06.2017* provides exemption to composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Government or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of The Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of The Constitution of India.

6.4 However, in the instant case, MCD is receiving the services of facility management such as housekeeping, civil maintenance, furniture maintenance and horticulture agency for the upkeep of their office. These services are not supplied in relation to performing any functions entrusted to a Municipality under Article 243W of The Constitution of India. Such services are not covered under the scope of entry at *Sr. No. 3A* of the *notification No. 12/2017-CTR dated 28.06.2017.*

6.5 Thus, as recommended by the 55th GST Council, it is hereby clarified that GST is applicable on the services provided by facility

management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of entry at *Sr. No. 3A of the notification No. 12/2017-CTR dated 28.06.2017*.

7. Whether Delhi Development Authority (DDA) is a local authority as per section 2(69) of the CGST Act, 2017?

7.1 Representation has been received from DDA seeking clarification whether DDA is a 'local authority' as per section 2(69) of CGST Act, 2017.

7.2 As per entry at Sr. No. 5 of notification No. 13/2017-CTR dated 28.06.2017, services supplied by local authority to a business entity are taxable on Reverse Charge (RCM) basis.

7.3 Local authority under section 2(69) of the CGST Act, 2017 has been defined as a "*Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund"*

7.4 It means an authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority.

7.5 It is seen that DDA does not meet the requirement of local authority as per section 2(69) of the CGST Act, 2017. Thus, as recommended by the 55th GST Council, it is hereby clarified that DDA cannot be treated as local authority under GST law.

8. Regularizing payment of GST on Reverse Charge (RCM) basis on renting of commercial property by unregistered person to a registered person for taxpayers registered under composition levy.

8.1 Based on the recommendations of the 54th GST council held on 09.09.2024, renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person was brought under reverse charge basis.

8.2 The said recommendation was notified vide notification No.09/2024-CTR dated 08.10.2024 effective from 10.10.2024 by *inserting an entry at Sr. No. 5AB of the notification No. 13/2017-CTR dated 28.06.2017* thereby prescribing payment of GST on reverse charge basis on renting of

immovable property other than residential dwelling (commercial property) by unregistered person to registered person.

8.3 Various representations from different sectors were received requesting to bring the service of renting of commercial property by unregistered person to registered person under Forward Charge basis.

8.4 55th GST Council in its meeting held on 21.12.2024 recommended that taxpayers registered under composition levy may be excluded from the entry at Sr. No. 5AB of the notification No. 13/2017-CT(Rate) dated 28.06.2017. The same has been notified vide notification No. 07/2025-CT(Rate) dated 16.01.2025. The Council further recommended that payment of GST on reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to a registered person for taxpayers registered under composition levy may be regularized on *'as is where is'* basis for the intervening period (i.e., date of effect of notification No. 09/2024-CTR dated 08.10.2024 to date of issuance of amending notification No. 07/2025-CT(Rate) dated 16.01.2025).

8.5 Thus, as recommended by the 55th GST Council, payment of GST on Reverse Charge (RCM) basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person under composition levy is hereby regularized for the period from 10.10.2024 to 15.01.2025 on '*as is where is'* basis.

9. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility.

9.1 The GST Council, in its 54th meeting recommended to exempt supply of services by way of providing metering equipment on rent, testing for meters/ transformers/ capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of **transmission and distribution** of electricity provided by electricity **transmission and distribution** utilities to their consumers. Thereafter, entry at Sr. No. 25A was inserted in the notification No. 12/2017- CTR dated 28.06.2017 vide notification No. 08/2024-CTR dated 08.10.2024, with effect from 10.10.2024.

9.2 In its 55th meeting, the GST Council recommended that the entry at Sr. No. 25 and 25A may be aligned and the same has been brought into effect vide notification No. 6/2025-CTR dated 16.01.2025. Accordingly, these incidental or ancillary services to the supply of **transmission or**

distribution of electricity supplied by **transmission or distribution utilities** are now covered under the said exemption entry. Further, it was also recommended that the intervening period i.e., 10.10.2024 (effective date of entry at Sr. No. 25A in notification No. 12/2017-CTR dated 28.06.2017) up to 15.01.2025 (till the date of amending notification No. 06/2025 CTR dated 16.01.2025) may be regularised on '*as is where is'* basis.

9.3 Thus, as recommended by the 55th GST Council, the payment of GST on certain incidental or ancillary services to the supply of transmission or distribution of electricity, as mentioned in Para 9.1 above, supplied by an electricity transmission or distribution utility is regularized for the period 10.10.2024 to 15.01.2025, on *'as is where is'* basis.

10. Regularizing the payment of GST on services provided by M/s Goethe Institute/Max Mueller Bhawans.

10.1 Goethe Institute/Max Mueller Bhawan have six institutes across India which provide linguistic and cultural training to young Indians preparing for their stay in Germany.

10.2 They are registered under GST at Delhi, Mumbai, Chennai, Bengaluru, Kolkata, and Pune. Prior to 1st April, 2023, the Institutes did not collect GST from their students nor did they pay GST to Government as they were under the bonafide belief that their activities are exempt from GST.

10.3 55th GST Council has recommended to regularize the payment of GST on services provided by Goethe Institutes/Max Mueller Bhawans for the period from 01.07.2017 to 31.03.2023 on *'as is where is'* basis.

10.4 Thus, as recommended by the 55th GST Council, payment of GST on services supplied by Goethe Institute/Max Mueller Bhawans is hereby regularized for the period from 01.07.2017 to 31.03.2023 on *'as is where is'* basis.

11. Difficulties, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours sincerely,
(Sachin Jain) Joint Secretary, TRU-I

Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C

Circular No. 246/03/2025-GST

North Block New Delhi,
Dated the 30th January, 2025

To,

All the Principal Chief Commissioners/ Chief Commissioners All the Principal Directors General/ Directors General

Madam/Sir,

Subject: Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C- reg.

Representations have been received seeking clarification regarding levy of late fee payable for delay in furnishing of reconciliation statement in FORM GSTR-9C. It has been requested to clarify whether late fee under section 47 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") will be leviable where reconciliation statement in FORM GSTR-9C is not furnished by the registered person alongwith the annual return in FORM GSTR-9 but is filed subsequently beyond the due date of furnishing of annual return.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act, hereby clarifies the issues as below.

3. Prior to 01.08.2021, sub-section (2) of section 44 of CGST Act provided that a registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 of the CGST Act **shall furnish the annual return under sub-section (1) of the said section along with a copy of the audited annual accounts and a reconciliation statement**. From 01.08.2021 onwards, with the omission of the requirement of getting accounts audited in accordance with the provisions of sub-section (5) of section 35 of the CGST Act, sub-section (1) of section 44 of CGST Act provides for **furnishing of annual return which may include a self-certified reconciliation statement**, reconciling the value of supplies declared in the return furnished for

the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed. Further, before 01.08.2021, sub-rule (3) of rule 80 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") provided that accounts shall be audited as per sub-section (5) of section 35 of the CGST Act in case the aggregate turnover of a registered person exceeded two crore rupees in a financial year and such taxpayer shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C. From 01.08.2021 onwards, sub-rule (3) of rule 80 of CGST Rules provides that taxpayer with aggregate turnover during a financial year exceeding five crore rupees, shall furnish a self- certified reconciliation statement as specified under section 44 of the CGST Act in FORM GSTR-9C along with the annual return in FORM GSTR-9 on or before the thirty-first day of December following the end of such financial year.

3.1 Therefore, on a combined reading of section 44 of CGST Act with rule 80 of the CGST Rules, it can be concluded that both pre and post amendment, the provisions mandated that registered persons required to furnish an annual return in FORM GSTR-9 for a financial year shall also furnish along with it, a duly certified or self-certified reconciliation statement in FORM GSTR-9C, which reconciles the value of supplies declared in FORM GSTR-9 furnished for the said financial year with the audited annual financial statement. It is also mentioned that a reconciliation statement in FORM GSTR-9C is required to be filed only if the aggregate turnover of the said registered person during a financial year exceeds the specified threshold limit.

3.2 Sub-section (2) of section 47 of the CGST Act provides for a levy of a late fee for failure to furnish the return under section 44 of the CGST Act by its due date, which is to be computed at the specified rate, for each day for which such failure continues, subject to a maximum amount. As per the discussions above, in cases where reconciliation statement in FORM GSTR-9C is not required to be furnished, annual return under section 44 of CGST Act consists only of FORM GSTR-9 and in cases where a reconciliation statement in FORM GSTR-9C is required to be furnished, the annual return under section 44 of CGST Act consists of the return in FORM GSTR-9 along with a reconciliation statement in FORM GSTR-9C. Therefore, in cases where the reconciliation statement in FORM GSTR-9C is required to be furnished along with the annual return in FORM GSTR-9, the furnishing of annual return under section 44 of the CGST Act, may not be said to be complete, unless both return in FORM

GSTR-9 and reconciliation statement in FORM GSTR-9C are furnished. If only return in FORM GSTR-9 is furnished and reconciliation statement in FORM GSTR-9C is required but not furnished, annual return under section 44 of CGST Act cannot be said to have been furnished.

3.3 In view of the above, it is clarified that late fee under sub-section (2) of section 47 of the CGST Act, is leviable for the delay in furnishing of complete annual return under section 44 of the CGST Act, i.e. both FORM GSTR-9 and FORM GSTR-9C (where FORM GSTR- 9C is also required to be furnished) and the late fee shall be payable for the period from the due date of furnishing of the said annual return upto the date of furnishing of the complete annual return i.e. FORM GSTR-9 and FORM GSTR-9C. It is also to be noted that late fee is not separately leviable for delayed furnishing of FORM GSTR-9 and delayed furnishing of FORM GSTR-9C, but has to be calculated for the period from the due date of furnishing of annual return under section 44 of the CGST Act till the date of furnishing of complete annual return i.e.:

i. in cases where FORM GSTR-9C is not required to be furnished, the date of furnishing of FORM GSTR-9;

ii. in cases where FORM GSTR-9C is required to be furnished along with FORM GSTR-9,

   a. the date of furnishing of FORM GSTR-9, if FORM GSTR-9C is furnished alongwith FORM GSTR-9; or

   b. the date of furnishing of FORM GSTR-9C, if FORM GSTR-9C is furnished subsequent to furnishing of FORM GSTR-9.

4. It is further mentioned that vide notification No. 08/2025-Central Tax dated 23.01.2025, the late fee in respect of delayed filing of complete annual return for any financial year upto FY 2022-23 has been waived, which is in excess of the late fee payable under sub-section (2) of section 47 of CGST Act upto the date of furnishing of return in FORM GSTR-9 for the said financial year, if the reconciliation statement in FORM GSTR-9C is furnished on or before 31st March 2025. Accordingly, in cases where reconciliation statement in FORM GSTR-9C was required to be furnished along with the return in FORM GSTR-9, but was not furnished so for any financial years upto FY 2022-23, and has been furnished subsequently on or before 31st March, 2025, then no additional late fee shall be payable for delayed furnishing of FORM GSTR-9C which is in excess of the late fee

payable under section 47 upto the date of furnishing FORM GSTR-9 for the said financial year. Further, no refund shall be admissible in respect of any amount of late fee already paid in respect of delayed furnishing of FORM GSTR-9C for the said financial years.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board.

Yours faithfully,
Gaurav Singh Commissioner (GST)

Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 55th meeting held on 21st December, 2024, at Jaisalmer.

Circular No. 247/04/2025-GST

North Block, New Delhi
Date: 14th February, 2025

To.

The Principal Chief Commissioners/Principal Directors General,
The Chief Commissioners/ Directors General.
The Principal Commissioners/Commissioners of Central Excise & Central Tax

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 55th meeting held on 21st December, 2024, at Jaisalmer-reg.

Madam/Sir,

Based on the recommendations of the GST Council in its 55th meeting held on 21st December, 2024, at Jaisalmer, in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, the Board hereby clarifies the following issues through this circular for the purpose of uniformity in their implementation:

1. Clarification regarding classification and GST rate on pepper of genus Piper

1.1 References were received seeking clarification on the classification and applicable GST rate on supply of pepper of the genus Piper and whether supply of dried pepper by an agriculturist is exempt from GST.

1.2 Based on the recommendations of the GST Council in its 55th meeting, it is hereby clarified that pepper of genus Piper, whether green (fresh), white or black, is covered under HS 0904 and attracts 5% GST vide S. No. 38 of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017.

1.3 As regards applicability of GST on supply of dried pepper by an agriculturist from their plantations, Section 23 (1) (b) of the CGST Act provides that an agriculturist, as defined in Section 2(7) of the CGST Act, to the extent of supply of produce out of cultivation of land is not liable to take registration.

1.4 As per the recommendation of the GST Council, it is hereby clarified that an agriculturist supplying dried pepper is not liable to be registered under Section 23(1) of the CGST Act is exempt from GST.

2. Clarification regarding raisins supplied by an agriculturist

2.1 Reference was received seeking clarification on the applicable rate on supply of raisins by agriculturists.

2.2 As per the recommendation of the GST Council, it is hereby clarified that an agriculturist supplying raisins is not liable to be registered under Section 23(1) of the CGST Act is exempt from GST.

3. Clarification on GST rate on ready to eat popcorn

3.1 Representations were received seeking clarification regarding appropriate classification and applicable GST rate on ready to eat popcorn.

3.2 On the recommendation of the Council, it is hereby clarified that ready to eat popcorn which is mixed with salt and spices are classifiable under HS 2106 90 99. It is also hereby clarified that such ready to eat popcorn mixed with salt and spices classifiable under HS 2106 90 99 attracts 5% GST if other than pre-packaged and labelled vide S. No. 101A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017 and 12% GST if sold as packaged and labelled vide S. No. 46 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017, as it has the essential character of namkeens. However, when

the popcorn is mixed with sugar thereby changing its character to sugar confectionary (e.g. caramel popcorn), it would be classifiable under HS 1704 90 90 attracting 18% GST vide S. No. 12 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017

3.3 Further, in view of the prevailing genuine doubts regarding the applicability of GST rate on ready to eat popcorn mixed with salt and spices, as recommended by the Council the issue for past period up to 14.2.2025 is hereby regularized on 'as is where is' basis.

4. Fly ash based Autoclaved Aerated Concrete Blocks

4.1 References were received regarding the classification and applicable GST rate on autoclaved aerated concrete (AAC) blocks containing at least 50% fly ash content as raw material.

4.2 Fly ash bricks, fly ash aggregates and fly ash blocks classifiable under HS 6815 attract 12% GST vide S. No. 176B of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. Articles of cement, of concrete or of artificial stone, whether or not reinforced classifiable under HS 6810 attract 18% GST vide S.No. 181 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.

4.3 As per the recommendation of the GST Council, it is hereby clarified that autoclaved aerated concrete (AAC) blocks containing more than 50% fly ash content will fall under HS 6815 and attract 12% GST.

5. Effective date of amended entry regarding ground clearance

5.1 Representations were received that there are different views in some jurisdictions regarding the effective date of amended entry 52B in notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017.

5.2 Prior to the 50th GST Council meeting, vide entry at S.No. 52B in the notification No. 01/2017- Compensation Cess (Rate) dated 28.06.2017, motor vehicles of engine capacity exceeding 1500 cc, popularly known as SUVs, including utility vehicles attracted 22% Compensation Cess.

5.3 Following the 50th GST Council meeting, vide notification No. 03/2023- Compensation Cess (Rate) dated 26.07.2023, the entry 52B was substituted to provide that the cess will be applicable to all motor vehicles known as utility vehicles by whatever name called, with engine capacity exceeding 1500cc, length exceeding 4000mm and ground clearance of

170mm and above. Further, a new explanation was added that ground clearance means ground clearance in unladen condition.

5.3 As per the recommendation of the GST Council, it is hereby clarified that the amendment carried out vide notification No. 03/2023-Compensation Cess (Rate) dated 26.07.2023 will apply on or after 26.7.2023.

6. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Limatula Yadell) 212025
Joint Secretary (TRU-I)

Various issues related to availment of benefit of Section 128A of the CGST Act, 2017

Circular No. 248/05/2025-GST

North Block, New Delhi,
Dated: 27th March 2025

To,

All the Principal Chief Commissioners/ Chief Commissioners
All the Principal Directors General/ Directors General

Madam/Sir,

Subject: Various issues related to availment of benefit of Section 128A of the CGST Act, 2017-reg.

Based on the recommendations of the GST Council made in its 53rd and 54th meetings, a new section 128A was inserted in the Central Goods and Services Tax Act,2017 (hereinafter referred to as CGST Act, 2017) and Rule 164 has been inserted in the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as CGST Rules, 2017) w.e.f. 1st November 2024 to provide for waiver of interest or penalty or both relating to demands raised under Section 73 for the period from 1st July 2017 to 31st March 2020. In this regard, circular No. 238/32/2024-GST dated 15th October 2024 has also been issued clarifying various issues related to implementation of the said provisions.

2. Representations have been received from trade and industry highlighting certain issues being faced in availing the benefit provided under section 128A of the CGST Act, 2017 such as eligibility of cases for benefit under section 128A, where payment has been made through GSTR-3B instead of DRC-03 and treatment of withdrawal of appeals filed by the taxpayer against consolidated adjudication order covering periods beyond the one specified under section 128A of the CGST Act, 2017 for the purpose of availing the said benefit.

3. Accordingly, in view of the difficulties being faced by the trade and industry 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, 2017, hereby clarifies the issues detailed hereunder.

4. Unless otherwise specified, all the sections mentioned in this circular refer to sections of the CGST Act, 2017 and all the rules mentioned herein refer to the rules of CGST Rules, 2017.

4.1 Issue 1: Whether the cases where tax has been paid through return in FORM GSTR-3B instead of through FORM GST DRC-03, prior to the notification of section 128A i.e.1st November 2024, would be eligible for the benefit under section 128A of the CGST Act?

4.1.1 Representations have been received seeking clarification as to whether cases where payment has been made through FORM GSTR 3B, before coming into force of section 128A into force, i.e. 1st November 2024, are eligible for benefit provided under said section.

4.1.2 The matter has been examined. Vide circular No. 238/32/2024-GST dated 15th October, 2024, it was clarified that any amount paid towards the said demand prior to the date notified under sub-section (1) of section 128A i.e. 1st November 2024, shall be considered as payment made towards the amount payable under sub- section (1) of Section 128A, as long as the said amount has been paid prior to 1st November 2024 and was intended to be paid towards the said demand.

4.1.3 Further, rule 164 (1) provides that in order to avail the benefit under section 128A, payments are to be made in FORM GST DRC-03 towards the tax demanded in respect of a notice or a statement mentioned in section 128A (1) (a) and rule 164(2) provides that tax payment shall mandatorily be made only by crediting the amount in the electronic liability register against the debit entry created in respect of orders mentioned in clauses (b) and (c) of sub-section (1) of section 128A. The said sub-rule

also provides the procedure to be followed for cases where payment has already been made through FORM GST DRC-03.

4.1.4 From the examination of the above provisions, it is clarified that a taxpayer who has made the payment through FORM GSTR-3B before the date of coming into force of section 128A i.e. 01st November 2024, shall also be eligible to avail the benefit under the said section. However, any taxpayer who intends to avail the benefit of the said provision on or after the said section comes into force, i.e.1st November 2024 shall be required to make payments necessarily through the modes as prescribed under rule 164 of the CGST Rules.

4.1.5 Therefore, it is clarified that the cases where the payment of tax has been made through FORM GSTR 3B prior to the issuance of demand notice and/or adjudication order before the date 1st November 2024, shall also be eligible for benefit under section 128A of the CGST Act, subject to verification by the proper officer.

4.2 Issue 2: Whether (i) the entire amount of tax demanded is required to be discharged and (ii) the appeal is required to be withdrawn for the entire period, where notices/statements/orders issued to taxpayers, pertains to period covered partially under Section 128A and partially by those outside it.

4.2.1 In cases where the notice/statement or order etc. pertains to the period partially covered under Section 128A and partially beyond the said period, Rule 164 (4) and proviso to Rule 164(7) have been amended to allow the taxpayer to file an application under FORM SPL-01 or FORM SPL-02 as the case may be after making payment of his tax liability for the periods covered under section 128A. The taxpayer after filing FORM SPL-01 or FORM SPL-02 as the case may, shall intimate the appellate authority or Tribunal his intent to avail the benefit of Section 128A and that he does not intend to pursue the appeal for the period covered under the said Section i.e. FY 2017-18 to 2019-20. The Appellate Authority or Appellate Tribunal as the case may, shall after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as it thinks just and proper.

4.2.2. Clarification issued vide point 6 of the Table at para 4 of circular No. 238/32/2024-GST dated 15th October 2024 is accordingly withdrawn.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board.

Yours faithfully,
(Gaurav Singh)
Commissioner (GST)

DELHI SALES TAX CASES

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HIGHLIGHTS

The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in broad and expansive spirit so as to 1nvest it with Significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.

— In Francis Coralie Mullin vs. UT of Delhi

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LEGAL GLOSSARY – because in law, every word matters!

Word/ Term	Pronunciation	Meaning	Usage
Admonish	Ad-mon-ish	To formally warn, caution, or reprimand, especially by a judge or authority, to prevent improper behavior or future violations	The judge admonished the witness to answer only what was asked and not offer unsolicited details.
Codicil	Kaw-duh-sil	A legal document that modifies, adds to, or explains an existing will, without completely rewriting it. It must be executed with the same formalities as the original will.	The deceased had added a codicil to his will to include a newly purchased property in the inheritance.
Concomitant	Kon-kom-i-tuhnt	It refers to something that naturally accompanies or is associated with another—often used in legal arguments to describe related circumstances or effects	The breach of contract and the concomitant financial loss were central to the plaintiff's claim.
Demurrer	Dih-mur-er	A formal objection raised by a party in a legal pleading, stating that even if the facts presented by the opposing side are true, they do not constitute a valid legal claim	The defendant filed a demurrer, arguing that the complaint failed to state a cause of action under the law.
Et Seriatim	Et seh-ree-ah-tim	A Latin phrase meaning "and in a series" or "one after another." It is often used in legal drafting to indicate points will be addressed in order, separately, or one by one	The petitioner responded to the allegations et seriatim, denying each claim individually.
Flagrant	Flay-gruhnt	It refers to something shockingly obvious or offensive, especially when it clearly violates law, ethics, or norms	The court condemned the official's flagrant abuse of power in awarding illegal contracts.
Gainsaid	Gain-sayd	To deny, contradict, or oppose something, especially a statement or claim.	The witness's testimony could not be gainsaid, as it was supported by substantial evidence.

Word/ Term	Pronunciation	Meaning	Usage
Gravamen	Grah-vuh-men	It refers to the essential or most serious part of a complaint or grievance in a legal dispute—the core issue being contested.	The gravamen of the plaintiff's claim was the unlawful termination without notice.
Lex Loci	Leks Low-sai	A Latin term meaning "the law of the place." It refers to the law that governs matters based on the location where a legal event, contract, or incident occurred	The contract was executed in Delhi, so the lex loci dictates that Delhi laws will apply.
Limbo	Lim-boh	A state of uncertainty or suspension, where no final decision has been made and a matter remains unresolved. Often used to describe pending legal issues or stalled proceedings	The case remains in limbo as the court has yet to issue a ruling.

IN THE COURT OF SUPREME COURT OF INDIA
[Chief Justice & Sanjay Kumar, J]

SLP (Civil) Diary No.6332/2025

Central Board of Indirect Taxes and Customs ... Petitioner(s)

Versus

M/s Aberdare Technologies Private Limited & ORS. ... Respondent(s)

Date of Order: 21.03.2025

CORRECTION OF HUMAN ERRORS WHETHER ALLOWED TO BE CORRECTED?

Held – YES – Right to correct mistakes in the nature of arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction.

Present for Petitioner(s) : Mr. Raghavendra P Shankar, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Karan Lahiri, Adv.
Mr. Prakash Gautam, Adv.
Mr. Anilendra Kant Srivastava, Adv.

Present for Respondent(s):

UPON hearing the counsel, the Court made the following

ORDER

Delay condoned.

We are not inclined to interfere with the impugned judgment which is, in fact, just and fair, as there is no loss of revenue. Hence, the present special leave petition is dismissed.

The petitioner, Central Board of Indirect Taxes and Customs, must re-examine the provisions/timelines fixed for correcting the ***bonafide*** errors. Time lines should be realist as lapse/defect invariably is realized when input tax credit is denied to the purchaser when benefit of tax paid is denied. Purchaser is not at fault, having paid the tax amount. He suffers because he is denied benefit of tax paid by him. Consequently, he has to make double payment. Human errors and mistakes are normal, and errors are also made by the Revenue. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do

business and should not be denied unless there is a good justification and reason to deny benefit of correction. Software limitation itself cannot be a good justification, as software are meant ease compliance and can be configured. Therefore, we exercise our discretion and dismiss the special leave petition.

Decisions of the High Courts in *Bar Code India Limited v. Union of India and others*[1] and *Yokohama India Private Limited v. State of Telangana*[2]", *prima facie,* do not lay down good law in this regard. Ratio therein may be examined in another case.

Pending application(s), if any, shall stand disposed of.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
[Sanjay Kumar & K.v. Viswanathan, JJ]

SPECIAL LEAVE PETITION (CIVIL) Diary No. 6334/2025

[Arising out of impugned final judgment and order dated 02-07-2024 in WP No. 783/2022 passed by the High Court of Judicature at Bombay]

The Union Of India & Ors. ... Petitioner(s)

Versus

Brij Systems Ltd & Ors. ... Respondent(s)

FOR ADMISSION and I.R. AND IA No. 65989/2025 - CONDONATION OF DELAY IN FILING

Date : 24-03-2025

This matter was called on for hearing today.

For Petitioner(s) : Mr. Raghavendra P Shankar, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Karan Lahiri, Adv.
Mr. Aditya Dixit, Adv. Mr. Digvijay Dam, Adv. Ms. Misha Kumar, Adv.

For Respondent(s) : Mr. Ayush Agarwala, Adv.
Mr. Kunj Mehra, Adv. Mr. Prakash Jha, Adv. M/s. PBA Legal, AOR

UPON hearing the counsel, the Court made the following

O R D E R

Delay condoned.

We do not find any merit in the present special leave petition, as we have already dismissed SLP (C) No. 7903/2025, **titled "*Central Board of Indirect Taxes and Customs v. M/s Aberdare Technologies Private Limited and Ors.*".**

However, it appears that on account of mistakes or errors getting noticed on the input tax credit, and the input tax credit being subsequently denied to the purchaser, the Revenue has been taking the stand that rectification is not possible after expiry of the period prescribed under Sections 37(3) and 39(9) of the Central Goods and Services Tax Act, 2017. In order to resolve the issue, we deem it appropriate to issue notice to the Central Board of Indirect Taxes and Customs.

It may be noticed that, in all these cases, it is accepted by the Revenue that there is a clerical/arithmetical mistake which is not being permitted to be corrected. Invariably, such mistakes come to the notice of the seller, who has to fill up the online form(s), etc., after the input tax credit is denied to the purchaser(s).

We appoint Mr. Arvind P. Datar, learned Senior Advocate, as an

***Amicus Curiae* to assist this Court in the present case.**

Re-list in the week commencing 28.04.2025.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
[K.R. Shriram & Jitendra Kumar, JJ.]

WP-7912-2024

M/s Aberdare Technologies Private Limited & Ors. Petitioner

Vs.

Central Board of Indirect Taxes and Customs ... Respondent

Date of Order: 29.07.2024

WHETHER ERROR WITH NO LOSS OF REVENUE TO THE STATE IN THE GST RETURNS FILED SHOULD BE ALLOWED TO BE CORRECTED?

Held – YES.

a) that such request of technicalities should not be rejected which defeat the requirement of justice – reliance on Sun Dychemicals vs. Asstt. Com. (ST) & Ors. (Mad. HC)

b) That contrary interpretation of sub-section 37 r/w sub-section 9 and 10 of Section 39 would lead to absurdity and for bringing a regime that GST Returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to GST regime.

That where there is no deliberate error and no undue benefit has been gained by the dealer, and it is subsequently noticed that incorrect columns were filed, the dealer should be permitted to rectify the same. Reliance is placed on Mahalaxmi Infra Cont. Ltd. (Jharkhand High Court) and Star Engineers Pvt. Ltd. vs. Union of India.

It was emphasized that technical deadlines should override justice, especially when there is no loss to revenue. The ruling stands on the principle of natural justice.

Present for Petitioner :

Present for Respondent :

Order

P.C. :

1 On 1st July 2024, the following order came to be passed:

"1. Mr. Chandrashekhar states that he shall appear for Respondent No.1. Ms. Vyas at the request of this Court agrees to appear for Respondent Nos.2 and 3. As regards Respondent No.4, Mr. Sarda, on instructions, states have been served some time in May 2024.

2. Petitioner has filed GST returns within time but after some time in December 2023, realised that there were certain errors with no loss of Revenue to the State. The time prescribed under Section 39(9) of CGST Act states the rectification of such omission or incorrect particulars have to be made on or before 30th day of November, following the end of the financial year to which such details pertained. Mr. Sarda states that because they had missed the deadline, Petitioner made a request in writing to the concerned authorities to permit rectification which has not been granted.

3. Ms. Vyas in fairness informed the Court that there is a judgment

of this Court in Writ Petition No.15368 of 2023 pronounced on 14th December 2023, Star Engineers (I) Pvt. Ltd. vs. Union of India & Ors. where the Court has held that if there is no loss of Revenue, amendment / rectification of the Form GSTR-1 should be permitted even if it is made after 30th November. Ms. Vyas requests the matter be stood over by atleast three weeks to enable her to take instructions and file a response affidavit, if advised.

4. Respondents shall file an affidavit-in-reply and serve a copy thereof upon Petitioner's Advocate by 19th July 2024.

5. Stand over to 22nd July 2024."

2 There is no dispute that there were certain errors with no loss of revenue to the State in the GST returns filed. Paragraphs 7 to 23 of ***Star Engineers (I) Pvt Ltd. Vs. Union of India & ors.***[1] reads as under:

"7. Mr. Raichandani, learned Counsel for the petitioner would submit that it was arbitrary for the Deputy Commissioner of State Tax to reject the request of the petitioner to amend or rectify the Form GSTR- 1 filed by the petitioner for the period July 2021, November 2021 and January 2022, either Online or by manual means. It is contended that it is not in dispute and as clear from the impugned letter, that there was no loss of revenue to the Government exchequer, however, on a pure technical ground the provisions of GSTR Portal prohibited any adjustment post the due date, the petitioner's request has been rejected. It is submitted that such technicalities ought not to defeat the requirement of justice. In support of his submissions, Mr. Raichandani has placed reliance on the decision of Madras High Court in M/s. Sun Dye Chem Vs. Assistant Commissioner (ST) & Ors.; decision of learned Single Judge of the Madras High Court in the case of Pentacle Plant Machineries Pvt. Ltd. Vs. Office of GST Council & Ors.; decision of the Division Bench of Orissa High Court in Shiva Jyoti Construction Vs. The Chairperson, Central Board of Excise & Customs and Ors., the decision of Jharkhand High Court in Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council and ors. It is submitted that each of these decisions have taken a view that an inadvertent error on the part of the assessee if takes place in filing the details leading to the mismatch of credit, the assessee ought not to be prejudiced from availing the credit, which they otherwise legitimately are entitled to and to that effect the rectification of error ought to be permitted. Accordingly, in such cases a relief was granted to the petitioner. It is, thus, Mr.Raichandani's submission

that the prayer of the petitioner that it be permitted to amend or rectify the Form GSTR-1 for the period in question ought to be granted.

8. On the other hand, Ms. Vyas, learned Counsel for the Revenue while not disputing the factual matrix would submit that no fault can be found in the impugned communication as the provisions of the GST Act itself would not permit the State Tax Officer to accept the request as made by the petitioner for amendment / rectification of Form GSTR-1 which was filed by the petitioner for the period in question. Ms. Vyas has also fairly stated that if the request as made by the petitioner is to be accepted, there is no loss of revenue whatsoever to the public exchequer.

9. Having heard learned Counsel for the parties and having perused the record, there is much substance in the contention as urged on behalf of the petitioner. At the outset we are required to note that insofar as filing of GST returns are concerned, the provisions of Sections 37, 38 and 39 of the Central Goods and Services Tax / Maharashtra Goods and Service Tax, 2017 (for short 'CGST / MGST, 2017') are attracted. Section 37 provides for furnishing details of outward supplies. Section 38 provides for furnishing details of inward supplies. Section 39 provides for furnishing of returns. Sub-section (3) of Section 37 provides that any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under Section 42 or Section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period. The proviso below sub-section (3) stipulates that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under Section 39 for the month of September, following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier. It would be necessary to note the provisions of Section 37 which reads thus:-

> Section 37 Furnishing details of outward supplies
>
> 37. (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying

tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed :

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period :

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein :

Provided also that any extension of time limit notified by the Commissioner of central tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under subsection (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of Such error or omission, in the return to be furnished for such tax period :

Provided that no rectification of error or omission in respect of the details furnished under sub-Section (1) shall be allowed

after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier: [Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.]

Explanation.—For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period."

10. We may also observed that Section 38 provides for communication of details of inward supplies and input tax credit which in sub-section (1) mandates that the details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed. Sub-section (2) provides for the ingredients of auto-generated statement.

11. Section 39 provides for furnishing of returns under which it is clearly provided that a return is required to be furnished electronically indicating the inward and outward supplies of goods and services or both, input tax credit availed, tax payable, tax paid or such other particulars in such form and manner, and within such time, as may be prescribed. Sub-section (9) although provides for rectification of any omission or incorrect particulars, the proviso therein precludes the assessee from any such rectification or omission or incorrect particulars being allowed after 30thday of November following the end of financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier. Sub- section (10) provides for extension of time in the event the assessee has not furnished the return for one or more previous tax period or has not furnished the details of outward supplies as per sub- section (1) of section 37 in the said tax period. Sub-section (9) and (10) of Section 39 are required to be noted which read thus:-

"Section 39. Furnishing of returns -

*(1) -(7)***************

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub- section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars 6[in such form and manner as may be prescribed], subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the 7[thirtieth day of November] following 8[the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods 9[or the details of outward supplies under sub- section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section

(1) of section 37 for the said tax period."

12. Having considered the statutory ambit of Section 37, 38 and 39, we are of the clear opinion that the provisions of sub-section (3)

of Section 37 read with Section 38 and sub-sections (9) and (10) of Section 39 need to be purposively interpreted. We cannot read sub- section (3) of Section 37 to mean that the assessee would be prevented from placing the correct position and having accurate particulars in regard to all the details in the GST returns being filed by the assessee and that there would not be any scope for any bonafide, and inadvertent rectification / correction. This would pre-supposes that any inadvertent error which had occurred in filing of the returns, once is permitted to be rectified, any technicality not making a window for such rectification, ought not to defeat the provisions of sub-section (3) of Section 37 read with the provisions of sub-section (9) of Section 39 read de hors the provisos.

13. In our opinion, the proviso ought not to defeat the intention of the legislature as borne out on a bare reading of sub- section (3) of Section 37 and sub-section (9) of Section 39 in the category of cases when there is a bonafide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue whatsoever in permitting the correction of such mistake. Any contrary interpretation of sub-section (3) of Section 37 read with sub-sections (9) and (10) of Section 39 would lead to absurdity and / or bring a regime that GST returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to the GST regime, wherein every aspect of the returns has a cascading effect. This is necessarily required to be borne in mind when considering the cases of inadvertent human errors creeping into the filing of GST returns.

14. Applying such principles to the facts of the present case, in our opinion, the State Tax Officer had all materials before it which went to show that there was nothing illegal and / or that what had happened at the end of the petitioner was that the invoices generated by the petitioner under the bill-to-ship-to-model for delivery of goods to third party vendors of BAL of which input tax credit for the invoices in question, were not availed by BAL due to error of credit not being reflected in the GSTR-1, as the petitioner had mentioned GSTIN of third party instead of GSTIN of BAL. This is also accepted by the State Tax Officer in the impugned communication.

15. As a result of the above discussion, in our opinion, the State Tax officer ought to have granted the petitioner's request to rectify /

amend the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means.

16. We also find that the petitioner's reliance on the decision as noted by us is quite apposite. In Sun Dye Chem Vs. Assistant Commissioner (supra), learned Single Judge of the Madras High Court considered a similar case wherein an error was committed by the petitioner in filing of details relating to credit. The error was to the effect that what should have figured in the CGST/SGST column was inadvertently reflected in the IGST column. It was not the case of the department that the error was deliberate and was intended to gain any undue benefit by the petitioner and in fact, by reason of the error, the customers of the petitioner were denied credit which they claim to be legitimately entitled to. It was also an error which was not initially noted by the petitioner, and on account of the error, the customers of the petitioner would be denied credit which they claimed to be legitimately entitled to, owing to the fact that the credit stands reflected in the wrong column. It is in these circumstances, after examining the relevant provisions which we have already discussed, the learned Single Judge observed that in the absence of an enabling mechanism, the assessee should not be prejudiced from availing credit which they are otherwise legitimately entitled to. The Court observed that an error committed by the petitioner is an inadvertent human error and the petitioner should not be prevented from rectifying the same and accordingly, allowed the petition.

17. A similar view was taken in the Pentacle Plant Machineries Pvt. Ltd. (supra) which also followed the decision in Sun Dye Chem (supra).

18. We also note that the Division Bench of the Orissa High Court in Shiva Jyoti Construction (supra) was considering the case wherein the petitioner had prayed for a relief that the petitioner be permitted to rectify the GST returns filed in September 2017 and March 2018 which was filed inadvertently in Form-B2B instead of Form B2C as was wrongly filed under the GSTR-1 in order to get input tax credit benefit by a third party namely M/s. Odisha Construction Corporation Ltd. The last date for filing of return was 31 March 2019 and the rectification should have been carried out by 13 April 2019. The petitioner contended that an error came to be noticed after the said third party held up the running bill amount of the petitioner by informing it of the error on 21 January 2020.

The petitioner contended that thereafter it was making a request to the department to correct the GSTR-1 form, but it was not allowed. It is in these circumstances, the Court considering the fact that in permitting the petitioner to rectify such error, there was no loss of revenue whatsoever to the department, that it was only about the ITC benefit which was to be given to the customer of the petitioner, failing which a prejudice would be caused to the petitioner. The Division Bench referring to the decision in Sun Dye Chem (supra) granted the prayer of the petitioner for setting aside the letter of rejection as impugned in the proceedings and permitting the petitioner to resubmit the corrected returns in Form - B2B under GSTR-1 for the period in question.

19. The Division Bench of the Jharkhand High Court in Mahalaxmi Infra Contract Ltd. (supra) has taken a similar view wherein the Division Bench after considering the rival contentions and the scheme of the legislation, allowed the petition considering the fact that there was no loss of revenue, if such rectification as prayed for by the petitioner was to be granted.

20. On the interpretation of the provisions as made by us and the common thread running through the decisions as noted above, it would lead us to observe that the GST regime as contemplated under the GST Law unlike the prior regime, has evolved a scheme which is largely based on the electronic domain. The diversity, in which the traders and the assessees in our country function, with the limited expertise and resources they would have, cannot be overlooked, in the expectation the present regime would have in the traders / assessees complying with the provisions of the GST Laws. There are likely to be inadvertent and bonafide human errors, in the assessees adopting themselves to the new regime. For a system to be understood and operate perfectly, it certainly takes some time. The provisions of law are required to be alive to such considerations and it is for such purpose the substantive provisions of sub-section (3) of Section 37 and sub-section (9) of Section 39 minus the proviso, have permitted rectification of inadvertent errors.

21. We may also observe that the situation like in the present case, was also the situation in the proceedings before the different High Courts as noted by us above, wherein the errors of the assessee were inadvertent and bonafide. There was not an iota of an illegal gain being derived by the assessees. In fact, the scheme of the

GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assessees. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties.

22. It is considering such object and the ground realities, the law would be required to be interpreted and applied by the Department. This necessarily would mean, that a bonafide, inadvertent error in furnishing details in a GST return needs to be recognized, and permitted to be corrected by the department, when in such cases the department is aware that there is no loss of revenue to the Government. Such freeplay in the joint requires an eminent recognition. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly. Such approach would also foster the interest of revenue in the collection of taxes.

23. In the aforesaid circumstances, we have no manner of doubt that the petition is required to be allowed. It is accordingly allowed by the following order:-

ORDER

(I) The respondents are directed to permit the petitioner to amend / rectify the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means within a period of four weeks from today.

(II) Petition stands disposed of in the above terms. No costs."

3 The facts of this case before us is almost identical in as much as, there is no loss to revenue if, petitioner is permitted to amend the GST returns filed.

4 In the circumstances, we direct respondents to open the portal within one week from the date of this order being uploaded and inform petitioner to enable them to amend / rectify Form GSTR-1 and GSTR-3B within one week. If the portal is not opened for whatever reasons, petitioner shall file application to amend / rectify Form GSTR-1 and GSTR-3B manually and respondent nos.2 and 3 are directed to accept and process the same in accordance with law. If these respondents are going to take a stand contrary to petitioner's interest, they shall give notice to petitioner

atleast five working days in advance and give personal hearing.

5 Petition disposed.

IN THE COURT OF SUPREME COURT OF INDIA
[Chief Justice, Sanjay Kumar & K.V. Viswanathan, JJ]

SLP (Civil) Diary No.6334/2025

Armour Security (India) Ltd. ... Petitioner(s)

Versus

East Commissionerate & Ors. ... Respondent(s)

Date of Order: 24.03.2025

i) clause (b) of sub-section (2) of Section 6 of CGST Act and the equivalent State enactments bars the limitation of any proceedings on the “same subject matter”.

ii) Intelligence based enforcement action can be initiated by any one Central or State tax administration despite the taxpayer having been assigned to other administration.

iii) parallel proceedings not to be initiated by other tax administrators

Held – YES – Right to correct mistakes in the nature of arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of corrections.

Present for Petitioner(s) : Mr. Raghavendra P Shankar, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Karan Lahiri, Adv., Mr. Aditya Dixit, Adv.
Mr. Digvijay Dam, Adv., Ms. Misha Kumar, Adv.

Present for Respondent(s): Mr. Ayush Agarwala, Adv.
Mr. Kunj Mehra, Adv.
Mr. Prakash Jha, Adv.
M/s. PBA Legal, AOR

JUDGMENT

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:-

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1. This matter was notified for admission on 06.03.2025. After hearing the learned Counsel appearing for the petitioner at length, and upon a threadbare examination of the reasoning assigned by the High Court, we decided to dismiss the Special Leave Petition. However, considering the nature of the issue involved, we thought it appropriate to assign reasons,

and accordingly reserved the order.

2. This petition arises from the judgment and order passed by the High Court of Delhi dated 07.02.2025 in W.P.(C) No. 1082 of 2025 ("**Impugned Order**"), by which the High Court dismissed the writ petition filed by the petitioner herein, and declined from interdicting the summons dated 16.01.2025 and 23.01.2025 respectively, issued to the petitioner under Section 70 of the Central Goods and Services Tax Act, 2017 (for short, "**the CGST Act**") by the Commissioner, Central Good and Services Tax, Delhi East Commissionerate (respondent no. 1).

A. FACTUAL MATRIX

3. The petitioner is a public limited company, incorporated under the Companies Act, 2013 and is registered with the Delhi GST authorities *vide* GSTIN: 07AADCA5862E2ZS. The company is engaged, *inter alia*, in the business of providing security services.

4. On 18.11.2024, the petitioner received a show cause notice issued under Section 73 of the CGST Act from the respondent no. 2 for tax period April 2020-March 2021. The show cause notice raised a demand of Rs. 1,24,92,162/- (aggregate of CGST, SGST, IGST) alongwith the applicable interest and penalty under Sections 50 and 74 of the CGST Act respectively. The said show cause notice was served on the ground that – (i) net tax under declared due to non- reconciliation of turnovers in other returns and e-way bill information; (ii) excess claim of ITC.

5. On 16.01.2025, a search was conducted at the registered premises of the petitioner under Section 67(2) of the CGST Act by the officers of respondent no. 1. A *panchnama* was drawn seizing electronic gadgets and documents. Thereafter, summons under Section 70 of the CGST Act was issued to four directors of the petitioner company requiring them to produce documents.

6. On 23.01.2025, the petitioner received one another summons under Section 70 of the CGST Act issued by the officer of respondent no. 1, directing one of the directors of the petitioner to produce relevant documents. The petitioner *vide* letter dated 24.01.2025 submitted a letter addressed to the respondent no. 1 stating that the petitioner is being investigated by the respondent no. 2, on similar grounds, including ITC claimed from cancelled suppliers. The petitioner also sought release of the seized electronic devices and documents.

7. Aggrieved by the summons dated 16.01.2025 and 23.01.2025 respectively, the petitioner preferred a writ petition before the High Court of Delhi on the ground that as the respondent no. 2 had already made the investigation in respect of the same issue and the respondent no. 1 does not have the jurisdiction in view of Section 6(2)(b) of the CGST Act.

B. IMPUGNED ORDER

8. The High Court dismissed the writ petition preferred by the petitioner and thereby declined to interfere with the summons issued to the petitioner on 16.01.2025 and 23.01.2025 respectively. The Court held that the expression "any proceeding" in Section 6(2)(b) cannot be construed to include a search or investigation. The High Court took the view that a summons or investigation pursuant to a search constitutes only a precursor to the formal proceedings. It distinguished such summons from assessment, noting that summons is primarily intended to elicit information.

9. The High Court noted that the intent of the statute is to prevent parallel proceedings relating to assessment, particularly those initiated under Sections 73 and 74 respectively of the CGST Act or any other analogous provisions. At the stage of issuing summons, the authorities are merely engaged in gathering information from the assessee based on the material collected thus far, as it is not yet possible to determine the specific course of action the authority intends to pursue.

10. Lastly, the High Court considered the decision of the High Court of Jharkhand in ***Vivek Narsaria* v. *State of Jharkhand***, reported in **2024 SCC OnLine Jhar 50**, which was relied upon by the petitioner to fortify his submissions. The Court held that the facts of the said case were distinguishable from those of the present matter. In ***Vivek Narsaria*** (*supra*), both the State and Central GST authorities were conducting parallel inquiries, requiring the assessee to reverse the input tax credit. The Court observed that the search in the present case could not be construed as related to prior assessments or the pending proceedings, as it was conducted subsequent to those events.

C. SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Sridhar Potaraju, the learned Senior Counsel appearing for the petitioner, would argue that Section 6(2)(b) of the CGST Act expressly prohibits parallel proceedings on the same subject matter by both the State and the Central GST authorities. He submitted that the summons issued by the respondent no. 1 concerning the subject matter i.e., availability of input tax credit in respect of cancelled dealers is barred under Section 6(2)

(b), as the respondent no. 2 had already issued show cause notices on the same subject matter.

12. Mr. Potaraju submitted that the petitioner does not dispute the jurisdiction and authority of the Central GST authorities in respect of subject matters not covered by the show cause notices issued by the State authority. He further contended that the High Court erred in interpreting Section 6(2)(b) as being limited to proceedings under Sections 73 and 74 respectively, or other similar provisions. Consequently, the High Court erroneously held that the statutory bar under Section 6(2)(b) does not apply to summons issued under Section 70 of the CGST Act.

13. Mr. Potaraju drew the Court's attention to Section 146 of the CGST Act to submit that that the common GST portal reflects complete records and status of all proceedings initiated by either the State or Central GST authorities. Accordingly, both the authorities are privy to any proceedings on any given subject matter. In the present case, the summons issued by the respondent no. 1 clearly specify the subject matter, which is evidently identical to that already under consideration of the respondent no. 2.

14. Further advancing his submission, Mr. Potaraju underscored the importance of harmony as a foundational principle of cooperative federalism, upon which the GST regime is structured. He submitted that once either the State or Central authority initiates proceedings, the other is expected to act in aid of those proceedings and provide all necessary inputs to ensure their effective culmination. However, the simultaneous exercise of jurisdiction in the form of a parallel investigation on the same subject matter, he argued, runs contrary to the principle of harmony.

15. Mr. Potaraju relied upon D.O. F.No. CBEC/20/43/01/2017-GST (Pt.) dated 05.10.2018, issued by the Central Board of Excise & Customs, Ministry of Finance, to fortify his submission that the mandate of Section 6 of the CGST Act envisages a harmonious exercise of powers by the State and Union authorities. The Circular reads thus;

"Dear Colleague,

It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa.

2. In this regard, GST Council in its 9th meeting held on

16.01.2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:-

"viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain"

3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.

4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case. to its logical conclusions.

5. Similar position would remain in case of intelligence based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.

6. It is also informed that GSTN is already making changes in the IT system in this regard."

16. By relying on the decision in the ***Chief Commissioner of Central Goods and Service Tax* v*. Safari Retreats Pvt. Ltd.***, reported in **(2025) 2 SCC 523**, Mr. Potaraju further submitted that the CGST Act is a special statute and constitutes a self-contained code. As such, its provisions must be interpreted in a literal, plain, and strict manner. A literal reading of Section 6(2)(b), he argued, clearly envisages a bar on the initiation of any proceedings by a proper officer under the CGST Act on the same subject matter where proceedings have already been initiated by a proper officer under the SGST Act.

17. Mr. Potaraju submitted that the legislature has consciously employed the phrase "any proceedings", which, in his view, is intended to encompass *all* proceedings initiated under the relevant GST enactment. The use of the word "any" in conjunction with "proceedings" reflects the legislative intent to give the provision a broad and inclusive scope. To buttress this submission, he relied on the decision in ***K.P. Mohammed Salim* v*. CIT***, reported in **(2008) 11 SCC 573**. Furthermore, Section 6 of the CGST Act, is part of Chapter II of the Act which deals with Administration. As a *sequitur*, it ought to apply to all the "proceedings" contemplated under the subsequent provisions.

18. Lastly, Mr. Potaraju emphasized that officers under the GST regime are governed by the provisions set out in Chapter II of the CGST Act. He pointed out that the term "proper officer," as defined in Section 2(91) of Chapter I, refers to any officer assigned with *any function* under the Act. The CGST Act, he argued, does not draw distinctions or impose limitations on the exercise of powers by a proper officer. Rather, the definition operates as an overarching provision, uniformly applicable across the various Chapters of the Act.

19. In such circumstance referred to above, he prayed that there being merit in the present appeal, the same may be allowed and the Impugned Order passed by the High Court may be set aside and the summons dated 16.01.2025 and 23.01.2025 respectively be declared as having been issued without jurisdiction.

D. ANALYSIS

20. Having heard the learned Counsel appearing for the petitioner and having gone through the materials on record, the only question that falls for our consideration is whether the action of respondent no. 1, as complained of, amounts to an "initiation of proceedings" in respect of the "same subject matter" for the purposes of Section 6(2)(b) of the CGST Act.

I. Whether issuance of summons can be regarded as "initiation of proceedings" within the meaning of Section 6(2)(b) of the CGST Act?

21. One of the principal contentions raised by the petitioner herein for the purpose of assailing the Impugned Order is that the issuance of summons amounts to "initiation of proceedings" within the meaning of Section 6(2)(b) of the CGST Act.

a. Contrary Views of different High Courts on the issue

22. Before we proceed to answer the aforesaid contention canvassed on behalf of the petitioner, it would be appropriate to first refer to the decisions of various High Courts and the cleavage of opinion that have been expressed as regards the scope of "initiation of proceedings" within the meaning of Section 6 of the CGST Act.

i. Decisions interpreting the contours of "proceedings" in contrast to "inquiry" or investigation

23. The High Court of Allahabad in ***G.K. Trading* v*. Union of India & Ors.***, reported in **2020 SCC OnLine All 1907**, examined the interplay between Sections 6 and 70 respectively of the CGST Act. The petitioner had received summons from the State GST authorities to explain two instances of availed input tax credit. Simultaneously, the petitioner was also summoned by the Central GST authorities to tender a statement in connection with the inquiry being undertaken by the Central GST authorities. Subsequent summons required the petitioner to produce various documents; however, he failed to furnish the requisite information.

The High Court held that the term "inquiry" as used in Section 70 of the CGST Act is not synonymous with "proceedings" under Section 6(2)(b). The Court clarified that proceedings under Section 6(2)(b) include actions relating to assessment, demand, and penalty, such as those initiated under Sections 73 or 74 respectively of the Act. Moreover, the Court interpreted the phrase "same subject matter" in Section 6(2)(b) to refer to the *same cause of action* concerning the same dispute being adjudicated before a proper officer. In the Court's view, the reference to "subject matter" implies an adjudicatory proceeding founded on an identical cause of action. The relevant observations read as under:

> "*10. The words "subject-matter", "proceedings" and "inquiry" have not been defined either under the State GST Act or the Union Territory GST Act or the CGST Act. Therefore, these words have to be interpreted in the context of the aforesaid Acts. The word "inquiry" in section 70 has a special connotation and a specific purpose to summon any person whose attendance* may be considered necessary by the proper officer either to give evidence or to produce a document or any other thing. It cannot be intermixed with some statutory steps which may precede or may ensue upon the making of the inquiry or conclusion of inquiry. The process of inquiry under section 70 is specific and unified by the very purpose

for which provisions of Chapter XIV of the Act confers power upon the proper officer to hold inquiry. The word "inquiry" in section 70 is not synonymous with the word "proceedings", in section 6(2)(b) of the UPGST Act/CGST Act.

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12. Provisions of section 70 has been enacted for collecting evidence in matters involving tax evasion which may also lead to confiscation. After inquiry is completed and materials for tax not paid or short- paid or erroneously refunded or input-tax credit wrongly availed or utilized, by reason of fraud or wilful misstatement or suppression of facts or otherwise are found, then it may lead to demands and recovery under section 73 or section 74, as the case may be. When action for assessment, demand and penalty, etc., including action under section 73 or 74 is taken, that shall amount to proceedings referable to section 6(2)(b) of the Act but the inquiry under section 70 is not a proceeding referable to section 6(2)(b) of the Act.

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17. Thus, section 6(2)(b) of the CGST Act prohibits separate initiation of proceedings on the same subject-matter by the proper officer under the CGST Act when proceeding on the same subject-matter by the proper officer under the State Act has been initiated, whereas section 70 of the UPGST/CGST Act merely empowers the proper officer to summon any person in any inquiry. The word "proceedings" used in section 6(2)(b) is qualified by the words "subject- matter" which indicates an adjudication process/ proceedings on the same cause of action and for the same dispute which may be proceedings relating to assessment, audit, demands and *recovery, and offences and penalties, etc. These proceedings are subsequent to inquiry under section 70 of the Act. The words "in any inquiry" used in section 70 of the Act is referable to the provisions of Chapter XIV, i. e., section 67 (power of inspection, search and seizure), section 68 (inspection of goods in movement), section 69 (power to arrest), section 71 (access to business premises) and section 72 (officers to assist proper officers). Therefore, proper officer under the UPGST Act or the CGST Act may invoke power under section 70 in any inquiry. Prohibition of section 6(2)(b) of the CGST Act shall come into play only when any proceeding on the same subject- matter has already*

been initiated by a proper officer under the UPGST Act."

(Emphasis supplied)

24. The High Court of Madras in ***Kuppan Gounder P.G. Natarajan* v*. Directorate General of GST Intelligence***, reported in **2021 SCC OnLine Mad 17053**, dealt with a challenge to summons issued by the respondent on the ground that the appellant's company fell within the state jurisdiction under the SGST Act, and the respondent is an authority with the central jurisdiction. The Court held that the scope of Sections 6(2)(b) and 70 respectively, are different and distinct, as the former deals with any proceedings on a same subject matter, whereas, the latter deals with power to summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot interchangeably be used to say that there is a bar to invoke the power under Section 70 of the CGST Act. The Court referred to the proceedings under Section 67, 68, 69, 71 and 72 respectively as "inquiry". It was further observed that the prohibition under Section 6(2)(b) shall come into play when any proceedings on the same subject matter had already been initiated by a proper officer of another tax authority. The relevant observations read as under:

"*31. We need to take note of the word "inquiry" occurring in Section 70 of the CGST Act and the proper officer has power to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in any inquiry, in the same manner, as provided in the case of a Civil Court. The bar contained under Section 6(2)(b) of the CGST Act is with regard to any proceedings initiated by a proper officer on a subject matter, on the same subject-matter, the proper officer under the Central Act cannot initiate any action referred.*

32. In our considered view, the scope of Section 6(2)(b) and Section 70 is different and distinct, as the former deals with any "proceedings on a subject matter/same subject matter" whereas, Section 70 deals with power to summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondent to invoke the power under Section 70 of the CGST Act."

(Emphasis supplied)

25. The High Court of Orissa in ***Anurag Suri v. Director General of Goods and Services Tax Intelligence & Ors.***, reported in **2021**

SCC OnLine Ori 2510, dealt with a challenge to show cause notice and subsequent orders issued by the State GST authority, despite the Central GST authority already being seized of the matter. During a search conducted at the petitioner's business premises by the Central GST authority, documents were seized and summons were issued. The petitioner therein participated in the proceedings arising therefrom. Subsequently, the State GST authority issued a show cause notice alleging that tax dues had not been paid or had been short-paid, that refunds had been erroneously released, or that the input tax credit had been wrongly availed or utilized. The petitioner was called upon to pay the tax along with interest and penalty. The petitioner requested that the proceedings initiated by the State GST authority be kept in abeyance until the conclusion of the proceedings before the Central GST authority. Nevertheless, the State GST authority proceeded to pass an order directing the petitioner to pay the demanded amount.

The High Court noted that the period of enquiry by the Central GST authority spanned from July 2017 to June 2018, whereas, the show cause notice issued by the State GST authority pertained to March 2018. Therefore, there was an overlap in the periods under scrutiny. In view of this, the High Court quashed the show cause notice and the subsequent orders issued by the State GST authority. The relevant observations read as under:-

> "*14. Counsel for the Opposite Parties does not dispute that the circular dated 5th October, 2018 precludes the State GST authorities from proceeding in the matter as long as the Central authorities are seized of it. The only submission by Mr. Chimanka is that the Appellant should continue to cooperate with the Central GST authorities and appear as and when required by them to do so.*
>
> 15. Learned counsel for the Appellant states that the Appellant has already been cooperating and would continue to do so as far as the proceeding initiated by the DGGSTI (Opposite Party No. 1) is concerned.
>
> 16. It may be noted that the period of enquiry as far as Central tax authority is concerned is from July, 2017 to June, 2018 whereas Opposite Party No. 3 has issued a show cause notice specific for March, 2018 and, therefore, there is also an overlapping of the periods.
>
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18. For the reasons noted above, the Court quashes the show cause notice dated 23rd July, 2019, the impugned order dated 5th November, 2019 including the order dated 4th November, 2019 all passed by Opposite Party No. 3 and directs that till the *conclusion of the proceeding initiated against the Appellant by the DGGSTI, no coercive action be taken against the Appellant by the Opposite Party No. 3.*"

(Emphasis supplied)

26. In ***Indo International Tobacco Ltd.*** **v.** ***Vivek Prasad***, reported in **2022 SCC OnLine Del 90**, the petitioner approached the High Court of Delhi, aggrieved by multiple search operations and summons. A search was initially conducted by the Central GST authorities in Gautam Buddha Nagar, followed by the issuance of a show cause notice. Thereafter, the bank account of the petitioner was provisionally attached and summons were issued to produce various documents. Subsequently, the petitioner's premises were subjected to searches by multiple units of the Directorate General of GST Intelligence (DGGI), Lucknow Zonal Unit, DGGI, Delhi Zonal Unit, DGGI, Ghaziabad, DGGI, Ahmedabad.

The Court observed that an assessee may fall within the jurisdiction of a State Tax Officer, a Central Tax Officer, and a Central Tax Officer having pan-India jurisdiction. In the context of Section 6, the Court observed that the purport of Section 6 is to eliminate the assessee from being subjected to multiple jurisdictions. However, the Court further clarified that neither Section 6 nor the Circular dated 05.10.2018 would apply to fact-situations where the inquiry, investigation, or proceedings have implications extending beyond the territorial jurisdiction of the initiating officer. It categorically observed that the Circular does not contemplate situations where actions, by Central or State, or only Central or State, have a common thread involving multiple taxpayers. In such cases, requiring an officer to limit the scope of investigation to his territorial jurisdiction would be impractical and would, in turn, subject the assessee to multiple overlapping actions. The relevant observations read as under:

"*64. The above circular is intended to give effect to the mandate of section 6 of the CGST Act and the pari materia provisions in the State Act(s). It states that the mandate of section 6 shall apply even to the "intelligence based enforcement action". It clarifies that the Central tax officers as also the State tax officers are authorized to initiate intelligence based enforcement action on the entire taxpayer's base "irrespective of the administrative assignment of the taxpayer to any authority" and that the authority which*

initiates such action is empowered to complete the entire process of investigation, issuance of show- cause notice, adjudication, recover, etcetera. It further clarifies that even though the taxpayer may be administratively assigned to the other authority- State or Centre as the case may be, the officer initiating "intelligence based enforcement action" need not transfer the said case to the authority otherwise having administrative assignment over the taxpayer.

65. The above circular is one example where section 6 shall have its full play. In terms of section 6(1), the State or the Central Tax Officer as the case maybe, is also authorised to act as the "proper officer" for the purposes of the other Act-CGST or the SGST Act as the case maybe. Therefore, when such officer initiates "intelligence based enforcement action", he acts and is empowered to so act not only under the CGST Act but also under the SGST or the UTGST Act. In terms of section 6(2)(a), he has to pass a comprehensive order, both under the CGST and the SGST/UTGST Act. In terms of section 6(2)(b), as he has initiated "intelligence based enforcement action", the other jurisdiction officer must hold his hands and the officer initiating such "intelligence based enforcement action" need not transfer the case to the jurisdiction officer to whom otherwise the taxpayer is administratively assigned.

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67. A bare reading of section 6 of the CGST and the abovementioned circular, on first blush, supports the interpretation put forth by the learned senior counsel for the appellants. However, in our opinion, neither section 6 of the CGST Act nor the circular dated October 5, 2018 is intended to nor can be given an over arching effect to cover all the situations that may arise in the implementation of the CGST and the SGST Acts. The circular cannot be extended to cover all and myriad situations that may arise in the administration and the functioning of the GST structure, now being governed by the CGST Act ; the SGST Act ; the UTGST Act ; and the IGST Act. Section 6 of the CGST Act and the above said circular clearly has a limited application, which is of ensuring that there is no overlapping exercise of jurisdiction by the Central and the State Tax Officers. It is to bring harmony between the Centre and the State in the implementation of the GST regime, with the two not jostling for jurisdiction over a taxpayer. It is, however, not intended to answer a situation where due to complexity or vastness of the inquiry or

proceedings or involvement of number of taxpayers or otherwise, one authority willingly cedes jurisdiction to the other which also has jurisdiction over such inquiry/proceedings/taxpayers.

68. Neither section 6 of the CGST Act nor the SGST Act nor the Circular dated October 5, 2018, therefore, apply to the fact-situation presented by the two petitions before us as they do not operate and are not intended to operate in a situation where the "intelligence based enforcement action" has repercussion or involvement of taxpayers beyond the territorial jurisdictional limit of the officer initiating such an action. It also does not address a situation where two or more officers, may be Central or State or only Central or State, initiate separate "intelligence based enforcement action" but having a common thread or involvement of multiple taxpayers, like a case of conspiracy. In the first case, the officer initiating the "intelligence based enforcement action" cannot travel beyond his territorial jurisdiction. To strictly enforce section 6 and the above mentioned circular would therefore, lead to compelling such officer to restrict his investigation and findings and resultant action only to the taxpayer within his territorial jurisdiction, thereby leading to an incomplete and inconclusive investigation/action. In the above mentioned second scenario, as all officers who have initiated "intelligence based enforcement action" are otherwise having jurisdiction over the taxpayer, strictly enforcing the mandate of section 6 and the above mentioned circular, will on the one hand subject the taxpayer to multiple action(s) (which is completely contrary to the intent of the Act as noted hereinabove), while on the other hand lead to multiple authorities expending their time, energy and resources investigating the same "intelligence" input, may be even reaching to conflicting findings. It is settled principle of interpretation of statute that the court must adopt construction which will ensure smooth and harmonious working of the statute and eschew the other which will lead to absurdity or give rise to practical inconvenience or friction or confusion in the working of the system. (Refer : State of Punjab *v. Ajaib Singh AIR 1953 SC 10 ; Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd. AIR 1961 SC 1549)*"

(Emphasis supplied)

27. The High Court of Kerala in ***K.T. Saidalavi* v*. State Tax Officer***, reported in **2024 SCC OnLine Ker 5674**, dealt with a case where the Central GST authority had initiated an enquiry concerning non- payment of

GST, directing the production of certain records, followed by the issuance of summons under Section 70 of the CGST Act. During the pendency of this enquiry, the State GST authority initiated proceedings under Section 74 of the respective State GST enactment. The Court held that the initiation of an enquiry or issuance of summons under Section 70 cannot be equated with the initiation of proceedings for the purposes of Section 6(2)(b) of the CGST Act. The term "initiation of any proceedings" is in reference to the issuance of a notice. It further observed that the Circular dated 05.10.2018 did not appear to be in consonance with the mandate of Section 6(2)(b) of the Act. The relevant observations read as under:

> "*7. […]Sub-section (2) of Section 6 with which we are concerned, indicates that, where a proper officer under the CGST Act has issued an order under the provisions of the said Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act as the case may be under the intimation to the jurisdictional officer of the State Tax or the Union Territory Tax Authority as the case may be. The Section further provides that where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the CGST Act on the same subject matter. On a reading of the provisions, unaided by the authority, I am unable to conclude that the contention of the learned counsel for the appellants must be accepted. The term 'initiation of any proceedings' is no doubt a reference to the issuance of a notice under the provisions of the CGST/SGST Acts and the initiation of an enquiry or the issuance of summons under Section 70 of the CGST/SGST Acts cannot be deemed to be initiation of proceedings for the purpose of Section 6(2)(b) of the CGST/SGST Acts. I find support for this view from the judgment of the Allahabad High Court in G.K Trading Company (Supra) where the court held as follows;[…]*"
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> (Emphasis supplied)

28. The High Court of Rajasthan in ***Rais Khan* v*. Add. Commissioner, Enforcement Wing-II***, **D.B. Civil Writ Petition No. 3087/2024**, dealt with a challenge to the issuance of summons by the DGGI, on the ground that the proceedings had already been initiated by the State GST authority. The Court observed that the terms "proceedings" under Section 6(2)(b) of the CGST Act and "inquiry" under Section 70 cannot be conflated to imply a bar on the issuance of summons. It held that the mere issuance of

summons does not amount to the initiation of proceedings under Section 6(2)(b). The relevant observations read as under:

> "*11. In the judgments referred to by counsel for the respondents, it is held that scope of Section 6(2)(b) and Section 70 of the CGST Act is different and distinct, as the former deals with any proceedings on subject matter, whereas the latter deals with power to issue summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondents to invoke the power under Section 70 of the CGST Act. In "G.K. Trading Company vs. Union of India", the Allahabad High Court has held that issuance of summons is not initiation of proceedings referable to under Section 6(2)(b) of the CGST Act. Similar is the view of Madras High Court in "Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi", wherein, Court has also held that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under Section 6(2)(b) of the CGST Act.*
>
> *12. In view of the above, we are of the considered view that issuance of summons under Section 70 of the CGST Act is not hit by Section 6(2)(b) of the CGST Act and the present Civil Writ petition being devoid of merits is accordingly dismissed. Stay application stands disposed.*"
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> (Emphasis supplied)

ii. Decisions interpreting "proceedings" in association to "inquiry" or investigation

29. The High Court of Calcutta in ***M/s. R.P. Buildcon Pvt. Ltd.* v. *Superintendent, CGST & CX, Circle-II, Group-10***, reported in **2022 SCC OnLine Cal 3108**, dealt with an appeal wherein the appellant therein, *inter alia*, sought quashing of notices issued by the Central GST authority (Anti-Evasion) in respect of the financial years 2017-18 to 2019-20, for which an audit under Section 65 of the CGST Act had already been conducted by another wing of the Central GST authority. The appellant also sought a declaration that scrutiny of returns under Section 61 of the CGST Act could not have been undertaken for the same period once an audit under Section 65 had been completed.

The Court observed that different wings of the same Department had initiated action for the same period and held that audit falls within the ambit

of "proceedings" under Section 6(2)(b). Accordingly, it directed that the two wings which had initiated proceedings subsequently be restrained from proceeding further in respect of the said financial years. The relevant observations read as under:

> "*7. Therefore, we are of the view that since the audit proceedings under section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and range office for the very same period shall not be proceeded with any further.*
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> 10. It is made clear that the above direction is confined only for the period covered for the financial years 2017-2018, 2018-2019 and 2019-2020. If *there are any other material required by the second and third respondents for a Department assessment period, it will be well open to them to put the appellants on notice in that regard.*"
>
> (Emphasis supplied)

30. The High Court of Madras in ***Tvl. Metal Trade Incorporation* v. *Special Secretary, Head of the GST Council Secretariat, New Delhi***, reported in **2023 SCC OnLine Mad 8234**, considered a challenge to summons issued by both the State and Central GST authorities. The petitioner therein contended that simultaneous proceedings by both authorities on the same subject matter were impermissible. The Court held that it was not permissible for the State GST authorities to prosecute the petitioner therein again, as the Central GST authority had already initiated action in respect of the same matter. However, the Court granted the petitioner an opportunity to participate in the proceedings initiated by the State GST authority to ascertain whether both sets of proceedings indeed pertained to the same subject matter. The relevant observations are reproduced herein:

> "*5. Admittedly, no final decision has been taken by the fifth respondent to initiate action against the appellant under the TNGST Act, 2017. The appellant has only been called upon to produce documents under the impugned Summons dated 18-10-2022 and he has also been called to come for personal hearing. Admittedly, the appellant has not participated in the personal hearing and instead he has chosen to file this Writ Petition, challenging the impugned Summons. Necessarily, to substantiate his defence that he cannot be once again prosecuted by the State Authority under the TNGST Act, 2017, he has to participate in the enquiry to be*

conducted by the fifth respondent and only then it can be ascertained whether the proceedings initiated by the Central and State Authority are one and the same involving the same subject matter. Truth will come out only when the appellant appears before the respondent pursuant to the Summons received by him and not otherwise. If it is the same subject matter, the State Authority cannot prosecute the appellant once again as the Central Authority has already initiated action against the appellant in respect of the very same subject matter. The appellant has sent a detailed reply on 27-10-2022 to the impugned Summons dated 18-10-2022 and even without allowing the same to be considered by the fifth respondent on merits, the appellant has approached this Court prematurely by filing this Writ Petition.

6. As observed earlier, necessarily, the appellant will have to participate in the personal hearing and state all his objections with regard to the action launched by the State Authority under the TNGST Act, 2017. Unless and until the appellant participates in the impugned proceedings viz., the impugned Summons dated 18-10-2022, truth cannot be unearthed with regard to the appellant's contentions."

(Emphasis supplied)

31. The High Court of Jharkhand in ***Vivek Narsaria*** (*supra*), dealt with a petition wherein the petitioner therein sought a direction that the proceedings be continued by the State GST authority, and not by the Preventive Wing of the Central GST authority or the DGGI. An inspection was initially carried out at the instance of the State GST authorities, during which the books of account were requisitioned. Subsequently, the petitioner was served with a notice by the Preventive Wing of the Central GST authority directing reversal of input tax credit along with interest and penalty, on the allegation of purchases from non-existent entities. While both Departments were seized of the matter, the DGGI conducted a search and effected seizures. The petitioner therein was also summoned at regular intervals by both the Preventive Wing of the Central GST authority and the DGGI.

The High Court observed that the actions taken by any authority form part of a chain of events occurring under the Act, and that every enquiry or investigation initiated by any authority is interrelated. It held that as the State authorities had initiated the same proceeding for wrong/illegal availment of input tax credit, the DGGI does not possess any special powers exceeding those conferred on the officers of the State GST authorities. Accordingly,

the Court directed the Preventive Wing of the Central GST authority and the DGGI to transfer their investigation in relation to the petitioner therein to the State GST authorities. The relevant observations read as under:-

> "*14. Having heard the arguments advanced by respective parties and having perused the documents brought on record and the statements and averments made in the respective counter-affidavits and materials available on record, we find that bare perusal of section 6 of the Act, especially section 6(2)(b), when read with the Clarification dated October 5, 2018, further read with Clarification dated June 22, 2020, when read together, it clearly denotes and implies that it is a chain of a particular event happening under the Act and every and any enquiry/investigation carried out at the behest of any of the Department are interrelated. Even if, we accept the submission of respondent No. 5 that the proceedings initiated by respondent No. 5 is on the basis of an information received from Noida; in that event also, we are at loss to say that the DGGI is raising a question about credibility and competence of the State GST Authorities, in carrying out the investigation concerning wrong/inadmissible availment of Input-tax Credit, inasmuch as, the* officers of the DGGI does not enjoy any special power or privilege in comparison with the officers of the State GST Authorities.
>
> *15. We are little hesitant to accept such argument, inasmuch as, the State Authorities has also initiated the same very proceeding for wrong/illegal availment of input-tax credit. Undeniably, the proceedings at the instance of State Authorities or the Preventive Wing or the DGGI is at initial stage and the proceedings on the basis of "Search and Seizure" by the State Authorities, is prior in point of time. Hence, section 6(2)(b) read with clarification dated October 5, 2018, adds to the issues raised by the appellant herein and manifestly crystallizes that since all the proceedings are interrelated, the State authorities should continue with the proceedings.*"
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> (Emphasis supplied)

32. The High Court of Punjab & Haryana in ***Stalwart Alloys India Pvt. Ltd.* v*. Union of India & Ors.***, reported in **2024 SCC OnLine P&H 15153**, held that any action taken by any Department amounts to judicial proceedings but the Departments are within their right to initiate proceedings and take them to their logical conclusion. In that case, an enquiry had been initiated both by the State GST authority and by multiple Zonal Units of the

DGGI regarding the wrongful availment of input tax credit. The petitioner filed a writ petition, pursuant to which the State GST authority was directed to continue the enquiry proceedings. In aid of this, the petitioner was directed to submit records, including ledger accounts, sales and purchase invoices, and proof of payment, up to 31 January 2021. Subsequently, fresh search and seizure proceedings were undertaken by the DGGI. The DGGI granted permission to the concerned Zonal Unit to conduct a centralized investigation against the petitioner for the period after 2019. In this context, the State GST authority transferred the proceedings to the concerned Zonal Unit of the DGGI.

The High Court observed that the CGST Act does not contemplate the transfer of proceedings from one proper officer to another. Accordingly, no authority has the power to transfer a case from its jurisdiction to another, nor can any authority direct such a transfer. The Court held that actions taken by a proper officer under the Act were in the nature of judicial proceedings, which cannot be transferred through administrative orders. It further held that both the State and Central GST authorities are vested with equal powers under the relevant GST enactments, and once proceedings have been initiated by one authority, the same cannot be transferred to another. The relevant observations read as under:

> "*22. We have considered his submission but find ourselves unable to accept the same in terms of scheme of the GST Act. As noticed above, the GST Act of 2017 empowers both the State authority as well as Central authority with equal powers. Once we have held that the proceedings are in the nature of judicial proceedings. The corollary, such judicial proceedings cannot be transferred by administrative actions. Merely because the DGGI has information relating to similar fraudulent availment of ITC by other firms who may be related to the firm against which the proceedings have been initiated under section 74 of the HGST Act by the State authority itself would not be a sufficient ground to presume that the State GST authority would not be able to conduct the proceedings or examine the culpability of the firm against whom proceedings under section 74 of the HGST Act have been initiated. Merely because there may be other firm also against whom proceedings are initiated, there is no concept of joint proceedings. In view of the above, we do not subscribe to the* contentions raised by learned Assistant Solicitor General.
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25. The import of the aforesaid Circular dated October 5, 2018 is to be understood to mean that when an inquiry is conducted by a proper officer of the State and investigation is required to be done by the Central Tax Officer, the Central Tax Officer would exercise the said power for the purpose of investigation. However, it would not mean that the proceedings being conducted by the State Tax Officer would also be transferred to them. They would only be in a position as investigating officer as is done in any criminal case. Their report relating to their investigation at the level of Pan India will have to be submitted to the State Tax Officer who has initiated the proceedings and as a State Tax Officer has the power to issue summons and warrants of arrest which would be applicable to Pan India. There is no reason to believe that the proceedings in any manner would be hampered or would suffer as against the company/firm against which proceedings have been initiated under section 74 of the Act."

(Emphasis supplied)

Further, the High Court interpreted the term "subject matter" as used in Section 6(2)(b) of the CGST Act to refer to *the nature of the proceedings*. In the facts of the case, the Court construed the subject matter to be the proceedings initiated for the wrongful availment of input tax credit. On this basis, it held that the DGGI was precluded from initiating proceedings, even for a different period, where the State GST authority had already initiated proceedings on the same subject matter. The relevant observations read as under:

"*29. In the opinion of this court, the word "subject- matter" used in section 6(2)(b) of the Act would mean "the nature of proceedings". In the present case, thus, it would mean the proceedings initiated for wrongful availment of input-tax credit by fraudulent means.*

Thus, if the State has already initiated proceedings by issuing notice under section 74 of the Act for the period up to July 22, 2019, for the same subject- matter, the DGGI cannot be allowed to initiate proceedings for the availment of input-tax credit by fraudulent means for the period from July 28, 2019 to January 20, 2022. Such action, if allowed, would be contrary to the provisions contained in section 6(2)(b) of the Act."

(Emphasis supplied)

33. The High Court of Himachal Pradesh in ***Kundlas Loh Udyog* v. *State of H.P.***, reported in **2024 SCC OnLine HP 4810**, dealt with a case where the petitioner was issued summons by the State GST authorities, directing him to furnish details of all suppliers from September 2021, for the tax period spanning April 2019 to December 2023. Subsequently, the petitioner therein received summons from the Central GST authority concerning supplies made by five specific suppliers. The petitioner informed the Central authorities that proceedings with respect to the named suppliers had already been initiated by the State authorities and that the relevant documents had been submitted to them. Nevertheless, the Central authorities proceeded to block the input tax credit on account of the transactions involving the said suppliers.

The Court held that Section 6(1) of the CGST Act empowers the officers appointed under the State enactment to act as proper officers for the purposes of the CGST Act as well. It observed that the object of Section 6(2)(b) of the CGST Act is to prevent the cross- empowerment in a manner that results in taxpayers being subjected to parallel proceedings. The Court interpreted the term "subject matter" to refer to the *nature of the proceedings*, and clarified that if any new information is gathered by the latter authority, it ought to be shared with the authority already seized of the investigation. The relevant observations read as under:

> *22. Further in conformity with the scheme of cross empowering officers under the said enactments, Clause (a) of Section 6(2) of the Act also empowers a proper officer to issue orders under the SGST Act and the said Act. Similarly, officers under the SGST Act and the UGST Act are also empowered to issue orders under the Act. The only condition is that the issuance of such orders is required to be intimated to the Jurisdictional Officer of the central tax or the state tax, as the case may be.*
>
> *23. To ensure that there are no multiple proceedings in regard of the central and the state officers being authorized as proper officers, Clause (b) of Section 6(2) of the Act provides that where a proper officer under the SGST Act and the UGST Act has initiated proceedings on a subject matter, the proper officer under the Act would not initiate proceedings "on the same subject matter". This provision of CGST is also mirrored by Clause (b) of Section 6(2) of the SGST Act and UGST Act as well. Thus, where a proper officer under the CGST Act had initiated proceedings on a subject matter, no proceedings would be initiated by proper officer authorized under the SGST Act or UGST Act on the same subject matter.*

24. It is clear that the object of Section 6(2)(b) of the Act is to ensure that cross empowerment of officers of Central Tax and State Tax do not result in the taxpayers being subjected to parallel proceedings.

25. Noticeably, Section 6 (2) (b) of the Act treats the empowered officers under the SGTS/UGST Act at the central level to be at par and does not prescribe for transfer of investigation of the proceedings from State authority to the Central authority or vice-versa.

26. The object of Section 6(2)(b) of the Act is to avoid multiple proceedings by the Sales Tax Officer and Central Tax Officer on the same subject matter and the Rules of purposive interpretation requires Section 6(2)(b) of the Act to be read in light of this object.

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32. It would be an entirely different matter that if there would have been another firm which has also been found to be availing fraudulent ITC, then the central government authorities would not be precluded from taking action against that firm. The independent action against some other firms would not impede the proceedings already initiated by the State Tax Authorities. Any new information which the respondent No. 2 may have gathered related to fraudulent availment or passing on can always be informed to the authorities, who already conducting the investigation, inquiry and proceedings under Section 6(2) of the Act.

33. In my considered opinion, the word "subject- matter" used in Section 6(2)(b) of the Act would mean, "the nature of proceedings". In the present case, it would thus mean the proceedings initiated prior at any point of time vide Annexure P-1 by respondent No. 1 and, therefore, for the same subject matter, respondent No. 2 cannot be allowed to initiate proceedings. Such action, if allowed, would be contrary to the provisions contained in Section 6(2)(b) of the Act.

(Emphasis supplied)

b. Framework of single interface and cross-empowerment of powers under Section 6 of the CGST Act

34. The unique scheme and framework of the Goods and Services

Tax regime envisages two distinct concepts at its heart, the concept of a “single interface” as-well as the concept of “cross-empowerment”. The former relates to doing away of dual administrative control over the collection as-well as assessment of tax returns by tax payers, that had existed previously, in the erstwhile scheme of indirect taxes in the form of value added tax or VAT. Whereas, the latter, pertains empowering both the Central and State tax administrations to simultaneously undertake enforcement actions against a tax-payer.

35. While at the first blush, both these concepts may appear to be in contradiction to one another, however, a closer and more considered examination of these concepts within the GST framework would reveal that they are complementary to one another. Both these concepts have been consciously adopted and incorporated within the GST framework and have been designed to work in tandem for achieving the avowed object of GST.

36. At the time of the framing of the Goods and Services Tax Act, it was consciously decided that taxpayers should not be subjected to the jurisdiction of both the Central and State tax authorities simultaneously. To prevent the burden of dual administrative control and to streamline compliance, the concept of a “single interface” was introduced. Under this model, only one tax administration would exercise exclusive control over a taxpayer in relation to all aspects of GST compliance. This included matters pertaining to Central GST (CGST), State GST (SGST), and Integrated GST (IGST).

37. The underlying objective of this arrangement was to simplify the taxpayer’s engagement with the tax system by ensuring that all notices, audits, assessments, and other proceedings are handled by a single authority, thereby eliminating the complexity and duplication that would arise from dual control. It was envisioned that a taxpayer should not be compelled to respond to two different authorities for the same issue or transaction.

38. In the 5th GST Council Meeting held on 02.12.2016, the Chairman of the Council emphasized that for the effective implementation of the CGST and SGST, cross-empowerment was essential and should extend across the entire value chain of the taxpayer. The Minister from Karnataka observed that once the State administration had conducted the audit of a taxpayer, there was no justification for the matter to be transferred to the Central administration. The Secretary suggested that the functions such as issuance of show cause notices and passing of adjudication orders ought to be carried out by the same tax administration that had undertaken the audit, scrutiny, or enforcement, thereby maintaining continuity and

administrative coherence. The Minister from Tamil Nadu expressed the view that, except in intelligence-based actions where both administrations were to be empowered, dual control should be avoided in other processes such as registration, return filing, scrutiny, audit, appeals, demand, and refund.

39. At the 9th GST Council Meeting held on 16.01.2017, the Chairman of the Central Board of Excise & Customs stated that the States had agreed that both the Central and State tax administrations shall have jurisdiction over the entire taxpayer base. He further emphasized that neither administration should be completely excluded from any segment of the value chain, so as to ensure proper checks and balances. Towards the conclusion of the discussion on the agenda of cross-empowerment, the Chairman noted that enforcement functions would remain common to both administrations. The Council accordingly agreed that both Central and State tax authorities would be empowered to undertake intelligence-based enforcement actions across the entire value chain of a taxpayer.

40. With a view to ensure single interface under the GST regime and to avoid dual control over taxpayers, the GST Council, in its 9th Meeting, resolved that a clear division of taxpayers between the Central and State tax administrations be effected for all administrative purposes. Simultaneously, the Council recognized the necessity of empowering both the Central and State tax administrations to act on intelligence-based enforcement actions across the entire value chain, regardless of administrative allocation. This dual empowerment was intended to maintain robust enforcement capabilities and prevent evasion, while preserving the administrative clarity of the single interface system.

41. To ensure cross-empowerment across the CGST, SGST, and IGST Acts, Section 6 was incorporated into the statute. Sub-section (1) of Section 6 authorizes the officers appointed under the SGST Act or the Union Territory Goods and Services Tax Act (UTGST) to be "proper officer" for the purposes of the CGST Act. The State GST and Union Territory GST Acts also have similar provisions authorizing officers appointed under the CGST Act to be proper officers for the purposes of the respective State enactments. The provision reads thus:

> "*6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.—(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the*

purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

42. Section 6 of the CGST Act and the identical *pari-materia* provision in the respective State and Union Territories statutes, is a nuanced provision that enshrines both the concept as-well as the contours of "single interface" system and "cross-empowerment". It delineates when and how the various officers appointed under different corresponding legislations shall act as "proper officer" for the purposes of the said legislation. Section 6 of the CGST Act has to be read with Circular No. 01/2017 dated 20.09.2017 and Circular dated 05.10.2018 read with Clarification F. No. CBEC-20/10/07/2019-GST dated 22.06.2020 by the Central Board of Indirect Taxes, GST Policy Wing.

43. In conformity with the scheme of cross-empowering officers, clause (a) of sub-section (2) of Section 6 mandates that where a proper officer issues an order under the CGST Act, he has to pass an order under the SGST or UTGST Act respectively, under an intimation to the jurisdictional officer of the State and Union Territory tax authorities. Further, clause

(b) of sub-section (2) bars a proper officer under the CGST Act to initiate proceedings on a subject matter where a proper officer under the SGST Act and UTGST Act has initiated proceedings on the same subject matter.

44. In furtherance of the Council's decision regarding the administrative division of taxpayer base, the Circular No. 01/2017 dated 20.09.2017 was issued, laying down the framework for allocation of taxpayer between the Centre and the States.

> "*Subject: Guidelines for division of taxpayer base between the Centre and States to ensure Single Interface under GST - regarding*
>
> Based on the decisions taken in the 9th Meeting of the GST Council held on 16 January, 2017 and 21st Meeting of the GST Council held on 9 September, 2017, the following criteria should be followed for the division of taxpayer base between the Centre and the States to ensure single interface:
>
> *i. Of the total number of taxpayers below Rs. 1.5 crore turnover, all administrative control over 90% of the taxpayers shall vest with the state tax administration and 10% with the Central tax administration; the state*
>
> *ii. In respect of the total number of taxpayers above Rs. 1.5 crore turnover, all administrative* control shall be divided equally in the ratio of 50% each for the Central and the State tax administration;
>
> *iii. The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;[…]*"

45. While the latter decision that both the Central and State tax administrations shall have power to take intelligence-based enforcement action in respect of the entire value chain is reflected in the Circular dated 05.10.2018, as reproduced above, and Clarification F. No. CBEC-20/10/07/2019-GST dated 22.06.2020 by the Central Board of Indirect Taxes, GST Policy Wing, which reads thus:

> "*To*

The Principal Director General, Directorate General
of GST Intelligence,
2nd Floor. Wing- VI, West Block- VIII R.K. Puram,
New Delhi- 110066

Sir,

Subject: Reference form DGGI on Cross empowerment under GST. reg.

I am directed to refer to DGGI letter F.No.574/CE/66/2020/ Inv./15308 dated 26.05.2020 on the issues related to cross empowerment of officers in terms of provisions of section 6 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

2. Issue raised in the reference is whether intelligence based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under section 6(1) of the CGST Act and the corresponding provisions of the SGST/UTGST Acts or whether a specific notification is required to be issued for cross empowerment on the same lines as notification No. 39/2017-CT dated 13.10.2017 authorizing the State Officers for the purpose or refunds under section 54 and 55 of the CGST Act.

3.1 The issue has been examined in the light of relevant legal provisions under the CGST Act, 2017. It is observed that Section 6 of the CGST Act provides for cross empowerment of State Tax officers and Central Tax officers and reads as:-

> "6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes- of this Act, Subject to such conditions as the Government shall, on the recommendations of the Council, by Notification specify.

3.2. Thus in terms of sub-section (1) of section 6 of the CGST Act and sub-section (1) of section 6 of the respective State GST Acts respective State Tax officers and the Central Tax officers respectively are authorised to be the proper officers for the purposes of respective Acts and no separate notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this

context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act.

3.3 The confusion seems to be arising from the fact that, the said sub-section provides for notification by the Government if such cross empowerment is to be subjected to conditions. It means that notification would be required only if any conditions are to be imposed. For example, Notification No. 39/2017-CT dated 13.10.2017 restricts powers of the State Tax officers for the purposes of refund and they have been specified as the proper officers only under section 54 and 55 of the CGST Act and not under rule 96 of the CGST Rules, 2017 (IGST Refund on exports). If no notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officer for all the purpose of the CGST Act and SGST Acts.

4. Further, it may kindly be noted that a notification under section 6(1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act, can only be used to impose conditions on the powers given to the officers by the section. In the absence or any such conditions, the power of Cross- empowerment under section 6(1) of the CGST Act is absolute and not conditional.

Yours faithfully, (Sumit Bhatia)
Deputy Commissioner (GST)"

46. The GST regime operates on the principle of self-assessment, as enshrined in Section 59 of the CGST Act, hence, all provisions are to be read in consonance, and not in derogation of Section 59. The provision reads thus:

"*59. Self-assessment.—Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.*"

47. The concept of "cross-empowerment" has been retained within the GST framework in order to maintain a robust enforcement mechanism and prevent any scope of evasion of taxes. For this purpose, both the Central and State tax administrations have been armed with the power to initiate intelligence-based enforcement action i.e., an action that is predicated on information of tax evasion emanating from the value chain or chain of transactions rather than from any administrative scrutiny by way of audit of

accounts or returns.

48. Such gathering of *intelligence* is intended to be a non-intrusive exercise. The Department relies on data analytics, validation with third-party data, and other methods to collect actionable intelligence *via* analytical tools, human intelligence, modus operandi alerts as well as information through past detections. Taxpayers must be mindful that intelligence about evasion of tax cannot be procured from them through issuance summons or other non-descript letters and correspondence.

49. Any action arising from the audit of accounts or detailed scrutiny of returns falls within the first category, and proceedings in such cases are to be initiated by the tax administration to which the taxpayer is assigned. In contrast, when proceedings are based on intelligence relating to tax evasion, they can be initiated by either the Central or the State tax administration.

50. To put simply, Section 6 of the CGST Act provides for the cross-empowerment of powers between the Central and State tax administrations. However, for the purpose of administrative convenience, the GST Council has sought to divide the taxpayer base between the two administrations through a circular. Nonetheless, with respect to intelligence-based enforcement actions, both the Central and the State tax authorities are empowered to act across the entire value chain.

51. We clarify with a view to obviate any confusion that, when we say intelligence-based enforcement action is any action that does not arise from audit of accounts or detailed scrutiny of returns, we do not for a moment say, that there is no scope for tax administration to undertake scrutiny of returns or audit of accounts. Both the Central and the State tax administration are well empowered to undertake such actions, as long as these actions are initiated on the basis of any intelligence relating to tax evasion.

52. The High Court of Delhi in the decision of ***Amit Gupta* v*. Union of India***, reported in **2023 SCC OnLine Del 6664**, succinctly interprets Section 6 of the CGST Act. The relevant observations read thus:

> "*24. It is clear from Section 6(1) of the Act that it contains a non obstante clause and also empowers officers appointed under the State Goods and Services Tax Act, 2017 (hereafter "the SGST Act") or the Union Territory Goods and Services Tax Act, 2017 (hereafter "the UGST Act") to be appointed as proper officers for*

the purposes of the Act.

25. Clause (a) of sub-section (2) of Section 6 of the Act expressly provides that if a proper officer issues an order under Act, he shall also issue an order under the SGST Act or the UGST Act as authorised by the said enactments under intimation of the jurisdictional officer.

26. In conformity with the scheme of statutes in respect of Goods and Services Tax Act (the Act, the SGST Act and the UGST Act) officers under any of the said statutes can be authorised as proper officers for the purposes of proceeding under the other GST statutes as well. Section 6(1) of the Act empowers the officers appointed under the SGST Act and the UGST Act to act as proper officers for the purposes of the Act. Section 6 of the SGST Act and the UGST Act mirrors Section 6 of the Act. Consequently, the officers under the said enactments are also authorised as proper officers under the Act.

27. In conformity with the scheme of cross- empowering officers under the said enactments, clause (a) of Section 6(2) of the Act also empowers a proper officer to issue orders under the SGST Act and the said Act. Similarly, officers under the SGST Act and the UGST Act are also empowered to issue orders under the Act. The only condition is that the issuance of such orders is required to be intimated to the jurisdictional officer of the central tax or the State tax, as the case may be.

28. To ensure that there are no multiple proceedings in regard of the central and the State officers being authorised as proper officers, clause (b) of Section 6(2) of the Act provides that where a proper officer under the SGST Act and the UGST Act has initiated proceedings on a subject-matter, the proper officer under the Act would not initiate proceedings "on the same subject-matter". This provision of CGST is also mirrored by clause (b) of Section 6(2) of the SGST Act and UGST Act as well. Thus, where a proper officer under the CGST Act had initiated proceedings on a subject-matter, no proceedings would be initiated by proper officer authorised under the SGST Act or UGST Act on the same subject-matter."

(Emphasis supplied)

53. At the cost of repetition, sub-section (1) of Section 6 stipulates the general power, encompassing both the single-interface mechanism

and cross-empowerment, inasmuch as each "proper officer" may act as a proper officer under the SGST Act or the UTGST Act, and vice versa. Clause (a) of sub-section (2) further reinforces this by mandating that where a proper officer issues an order under the CGST Act, he must simultaneously pass a corresponding order under the SGST or UTGST Act, with due intimation to the jurisdictional officer of the State or Union Territory tax authorities. Clause (b) of sub-section (2) yet again affirms the principle of cross- empowerment, albeit operating within the narrower confines of intelligence-based enforcement action.

c. Scope and Ambit of "initiated any proceedings" under Section 6(2)(b) of the CGST Act

54. Before addressing what constitutes "proceedings" under Section 6(2)(b) of the CGST Act, it is apposite to first consider the petitioner's contention that the phrase "any proceedings" is intended to encompass *all* proceedings initiated under the relevant GST enactments. We may reproduce the provision in discussion;

> "(2) Subject to the conditions specified in the notification issued under sub-section (1),—
>
> xxx
>
> *(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has* ***initiated any proceedings*** *on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter."*

55. Section 6(2)(b) of the CGST Act precludes a proper officer under the CGST Act to initiate any proceedings on a subject matter if a proper officer under the SGST or the UGST Act has initiated any proceedings on the same subject matter. The CGST Act does not define the term "proceedings". In context with this provision, the Chairman of the 11th GST Council Meeting, held on 04.03.2017, while discussing the approval of the Draft Central Goods and Services Tax Law, opined that that there should be an express or implied bar to prevent a taxpayer from being subjected to proceedings before multiple officers for the *same dispute*.

56. Section 70 of the CGST Act empowers a proper officer to summon any person whose presence is considered necessary for giving evidence or producing documents or any other relevant material in an inquiry. The issuance of summons is one of the instruments employed

by the Department to obtain information, documents, or statements in cases involving suspected tax evasion. Such summons may be issued to the person under investigation or to a person considered a witness in investigation against another person.

57. A summons is not the culmination of an investigation, but merely a step in its course. It is in this context that the legislature has used the term "inquiry" in Section 70, as at the stage of issuing a summons, the Department is primarily engaged in gathering information regarding a possible contravention of law, which may subsequently form the basis for proceedings against an assessee. Since the objective is to collect information, the Department has, in certain instances, advised resorting to a letter of requisition in place of a formal summons.

58. At the stage of issuing a summons, the Department is yet to determine whether proceedings should be initiated against the assessee. Such evidence-gathering and inquiry do not constitute "proceedings" within the meaning of Section 6(2)(b) of the CGST Act. The mere issuance of a summons cannot be equated with *proceedings* barred under the Act, as the subject matter cannot be ascertained solely through summons. That said, summons should not be issued in routine matters or for documents readily available on the GST portal. They ought to be issued after much thought and consideration as to the exact information required. We acknowledge that the issuance of multiple, cyclostyled summons may indicate a roving inquiry.

59. We affirm and appreciate the view taken by the High Court of Allahabad in ***G.K. Trading*** (*supra*) and the High Court of Kerala in ***K.T. Saidalavi*** (*supra*) respectively. The High Court of Allahabad rightly held that the issuance of summons cannot be conflated with a statutory step taken upon conclusion of an inquiry. Similarly, the High Court of Kerala was correct in holding that initiation of inquiry or the issuance of summons does not amount to the initiation of "any proceedings". The phrase "initiation of any proceedings" refers specifically to the issuance of a notice under the relevant provisions of the GST enactment.

60. At this juncture, we wish to refer to the Guidelines on Issuance of Summons under Section 70 of the CGST Act issued by the Central Board of Indirect Taxes & Customs (GST – Investigation Wing) dated 17.08.2022. In view of the facts of the present case in hand, we would like to inject thrust into the Guidelines dated 17.08.2022, and direct the concerned Departments to adhere to the said Guidelines, in both letter and spirit.

61. In the present case, the petitioner was served with a show cause notice dated 18.11.2024 by the respondent no. 2 under Section 73 of the CGST Act, thereby initiating proceedings. The petitioner has impugned the summons dated 16.01.2025 and 23.01.2025 respectively issued by the respondent no. 1 for production of documents. At the summons stage, it cannot be predicated with certainty that the subject matter of the proceedings will be identical; the mere presence of an overlapping aspect under investigation does not *ipso facto* render the subject matter "same".

62. The High Court correctly held that the term "any proceedings" does not encompass summons issued pursuant to a search or investigation, as at the stage of issuance of summons the Department is merely engaged in gathering information. We are in agreement with the finding that a case of search is clearly distinct and separate from proceedings initiated only after issuance of a show cause notice.

63. We may now proceed to elaborate on our understanding of "initiation of any proceedings" within the meaning of Section 6(2)(b) of the CGST Act. P. Ramanatha Aiyar's, 6th Edition, page 4415-4420, defines "proceedings" as under:-

> "*It is not a technical expression with defined meaning attached to it but the one ambit of whose meaning will be governed by the statute. The word "proceedings" can be given a narrow or wide import depending upon the nature and scope of an enactment in which it is used and in the particular context of the language of the enactment in which it appears*."
>
> (Emphasis supplied)

64. We may quote an extract from the Black's Law Dictionary, 4th Edition, page 1368, it stated as under:-

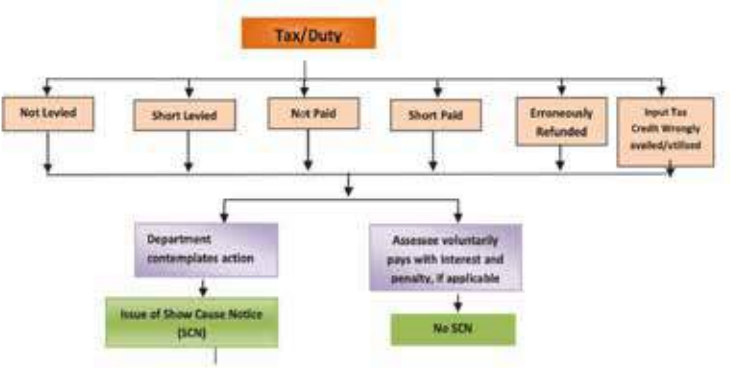
> "*An act which is done by the authority or direction of the court, express or implied; an act necessary to be done in order to attain a given end; a prescribed mode of action for carrying into effect a legal right.*"

65. A show cause notice is a document served on a noticee, requiring them to explain why a particular action should not be initiated against them. Under the GST regime, issuance of a show cause notice is a mandatory precondition for raising a demand. It forms the bedrock for proceedings related to the recovery of tax, interest, and penalty. The notice ensures adherence to the principles of natural justice by granting the assessee an

opportunity to present their case before any adverse action is taken. In essence, it serves as both a procedural safeguard and a legal necessity, marking the commencement of quasi-judicial adjudication under the Act.

66. A show cause notice sets the law in motion concerning the liability under the statute, containing charges that a specific person is called upon to answer. In other words, it sets out the alleged violations of legal provisions and requires the assessee to explain why the duty should not be recovered from them. Thus, a show cause notice cannot be vague, nor can any allegations be made without evidence being commensurate with the gravity of the charges levelled against the noticee.

67. It sets forth the framework for the proceedings proposed to be undertaken and provides the noticee with an opportunity to submit their explanation before the adjudicating authority. It outlines the background for the initiation of such proceedings, whether arising from an audit of accounts by the internal audit wing, scrutiny of returns, or intelligence gathered by officers of the Audit and Intelligence Commissionerate. It is further mandated that the authority issuing the notice must meticulously set out all relevant legal provisions under which the alleged contraventions are framed. The materials obtained through summons and relied upon for issuing the show cause notice must be appended and disclosed to the assessee. In essence, a show cause notice enumerates the charges levelled against the notice.



68. An assessee may be held liable to pay tax along with interest pursuant to an audit, scrutiny, or investigation. This liability can be discharged either through self-assessment or by way of assessment conducted by the Department. The Act contemplates the issuance of a show cause notice under Sections 73, 74, and 76 respectively, wherein the assessee is afforded one or more opportunities to pay the demanded tax amount. Upon such payment, all proceedings in respect of the said notice

stand concluded.

69. Once a show cause notice is issued under a specific provision and the reply submitted in response is duly considered by the adjudicating authority, the liability is then determined through the issuance of an order of adjudication, commonly referred to as an 'Order-in-Original'.

70. The above flowchart, prepared and published by the Comptroller and Auditor General of India in Report No. 1 of 2021 (Indirect Taxes – Goods and Services Tax, Central Excise and Service Tax), illustrates that in cases involving determination of tax not levied, or short levied, or not paid, or short paid, or erroneously refunded, or input tax credit wrongly availed or utilized, the assessee can discharge the liability by voluntarily paying tax alongwith interest and, where applicable, penalty; failing which, the Department contemplates an action. At this stage, the Department initiates action aimed towards ascertaining the tax liability and issuing a show cause notice accordingly.

71. We are cognizant of Circular No. 31/05/2018 – GST dated 09.02.2018, issued by Central Board of Excise and Customs, Department of Revenue, which states that the officers of Audit Commissionerate and DGGI can issue show cause notices. Ergo, by virtue of being designated as proper officers, the officers of the DGGI are also empowered, in their capacity as Central Tax officers, to issue show cause notices. We may reproduce the relevant extract of the concerned Circular hereinbelow:

> "*6. The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.*"

72. The statutory framework of the CGST Act does not admit of any interpretation of the phrase "initiation of proceedings" under Section 6(2)(b) other than one which ties it to the issuance of a show cause notice. An action qualifies as 'proceedings' only when it is undertaken with the object

of attaining a determinate outcome. In the present context, the issuance of a show cause notice partakes the character of proceedings, as it is inherently required to culminate in a definitive determination; there must exist a point of finality or conclusion thereto.

73. Proceedings, by their very nature, cannot be said to be initiated in the absence of certainty, nor can they culminate without adherence to the principles of natural justice. A show cause notice marks the commencement of a process that culminates in an order passed by the adjudicating authority. The legislative intent to prevent the subjugation of a taxpayer to parallel proceedings and to avoid contradictory orders can only be realized only when the Department is clear about the subject matter it seeks to pursue, a certainty that arises only at the stage of issuance of the show cause notice.

74. In the facts of the present case, the mere issuance of summons does not imply that the Department has decided to proceed against the taxpayer for recovery of liability. Therefore, issuance of summons, by no stretch, can be considered as the initiation of proceedings, since at that stage, the Department still retains the discretion not to initiate any proceedings. A mere contemplation or possibility of initiating action cannot be equated with "proceedings", as doing so would undermine the framework of cross-empowerment under the Act. Even when a discovery is made during the search proceedings under Section 67 of the CGST Act, the Department is required to bring such proceedings to a definitive conclusion, either by issuing a show cause notice under Section 74 or by dropping the matter altogether.

i. Reading of Circular dated 05.10.2018

75. While dealing with the present matter, we came across judgments of various High Courts wherein various counsel relied on the Circular dated 05.10.2018 to do both challenge and defend actions taken by the Department. In the present matter, the learned Counsel for the petitioner by relying on the same Circular submitted that the respondent no. 1 could not have initiated proceedings on a subject matter on which the respondent no. 2 had already initiated proceedings. The Circular reads thus:

"Dear Colleague,

It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice

versa.

2. In this regard, GST Council in its 9th meeting held on 16.01.2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:-

"viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain"

3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.

4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case. to its logical conclusions.

5. Similar position would remain in case of intelligence based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.

6. It is also informed that GSTN is already making changes in the IT system in this regard."

76. The said Circular is premised on the administrative division of the taxpayer base, as explained in Circular No. 01/2017 dated 20.09.2017. We would like to underscore that this division of the taxpayer base does not operate as a bar to the initiation of enforcement action by Central Tax officers against a taxpayer assigned to the State Tax authority, and *vice versa*.

77. Enforcement action undertaken by any Department is ordinarily based on intelligence as elucidated by us in paragraph 48 of this judgment, and the authority initiating such action is empowered to carry the matter to its logical conclusion. The term "logical conclusion" does not invariably refer to an order of assessment in every case. Rather, it denotes the decision arrived at by the officers of the Department, having regard to the peculiar facts and circumstances of each case.

II. Whether "subject matter" within the meaning of Section 6(2)(b) of the CGST Act includes all matters dealt with in summons under the Act?

78. In the 11th GST Council Meeting, the Council agreed that in respect of *any dispute* involving tax liability under both the CGST Act and the SGST Act, only a single order shall be passed. Accordingly, where a Central tax officer passes an order, necessarily encompassing the demand for tax under the SGST Act, the corresponding State tax officer shall be precluded from passing a separate order on the same dispute. It was in furtherance of this understanding that Section 6 of the CGST Act was enacted. We may reproduce the provision in discussion;

> "*(2) Subject to the conditions specified in the notification issued under sub-section (1),—*
>
> xxx
>
> *(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings* ***on a subject matter****, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.*"

79. What emerges from the foregoing discussion is the implicit understanding that the subject matter in question pertains to the determination of tax liability, referred to as "dispute". This reinforces the legislative intent of ensuring that an order passed under the statute will be comprehensive in nature, more particularly, covering the entirety of the dispute so as to avoid multiplicity of proceedings, conflicting determinations, or jurisdictional overlap.

80. The High Court of Allahabad, in ***G.K. Trading*** (*supra*), interpreted the phrase "subject matter" to mean 'cause of action' in relation to the same dispute in a proceeding before a proper officer under the relevant GST enactment. The relevant extracts are reproduced hereinbelow:

"*14. Thus, the phrase "subject-matter", or the phrase "on the same subject- matter", used in section 6(2)(b) of the UPGST Act/CGST Act with reference to any proceedings, means same cause of action for the same dispute involved in a proceeding before proper officer under the UPGST Act and the CGST Act.*

xxx

17. Thus, section 6(2)(b) of the CGST Act prohibits separate initiation of proceedings on the same subject-matter by the proper officer under the CGST Act when proceeding on the same subject-matter by the proper officer under the State Act has been initiated, whereas section 70 of the UPGST/CGST Act merely empowers the proper officer to summon any person in any inquiry. The word "proceedings" used in section 6(2)(b) is qualified by the words "subject- matter" which indicates an adjudication process/ proceedings on the same cause of action and for the same dispute which may be proceedings relating to assessment, audit, demands and recovery, and offences and penalties, etc.[…]"

(Emphasis supplied)

81. In ***Satyam Castings Pvt. Ltd.*** **v.** ***Deputy Director, DGGI, Bhubaneshwar***, reported in **2024 SCC OnLine Ori 1624**, the High Court of Orissa also equated "subject matter" with 'cause of action'. The relevant extracts are reproduced hereinbelow:

"*21. The relevant fact to be borne in mind is the subject-matter of the proceeding. If the subject-matter of the proceeding is entirely different, there is no bar to the maintainability of the proceeding. What is barred is the initiation of the proceeding on the same subject-matter by the proper officer. The words "subject-matter" can be equated with words "cause of action". The reason behind barring the initiation of proceeding on the same subject-matter by the proper officer under the State Goods and Services tax Act or the Union Territory Goods and Services tax Act seems to be that the possibility of the final decision in the two proceedings being different cannot be totally ruled out which would create confusion. In the case of Vallabh Das v. Dr. Madan Lal reported in [(1970) 1 SCC 761 : AIR 1970 SC 987.] , it is held that the expression "subject-matter" is not defined in the Civil Procedure Code. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-*

matter of the second suit is the same as that in the previous suit."

(Emphasis supplied)

82. However, we shall now proceed to interpret the term "subject matter" as employed in Section 6(2)(b) of the Act. It is abundantly clear from the purport of the said section that "subject matter" needs to be understood in perspective of initiation of proceedings. In other words, subject matter *of the proceedings*. In the preceding paragraphs of this judgment, we have stated that proceedings stand initiated when a show cause notice is issued *with regard to a subject matter*. We say so because an issuance of a show cause notice is the first stage whereby the Revenue for the very first time elaborately pens down various grounds and charges it is alleging against the assessee, who is invited to show cause as to why adverse action must not be taken against him on the basis of the apprehensions that the authority contemplates.

83. We shall now consider the contents of a show cause notice, bearing in mind the manner in which they facilitate the determination of the subject matter of the proceedings. In ***Gorkha Security Services* v. *Govt. (NCT of Delhi)***, reported in **(2014) 9 SCC 105**, this Court poignantly explained the cardinal principles behind the issuance of a show cause notice. It held that the service of a show cause notice is made in order to inform the noticee about the case that has been set up against him, which he has to meet. The relevant paragraphs have been supplied below:

"Contents of the show-cause notice

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

(Emphasis supplied)

84. Primacy is given to the cogency of a show cause notice. The subject matter of the proceedings lies **in** the contents of the notice. Hence, it ought to be exhaustive, so much so that it is capable of presenting the case of the Revenue in a nutshell. In ***The Commissioner of Central Excise, Bhubaneswar-I* v. *Champdany Industries Limited***, reported in **(2009) 9 SCC 466**, while deciding upon the classification of jute carpets, this Court noted that in the failure of mentioning the application of certain tests which the Revenue relied upon in the proceedings before the Court, the Revenue cannot rely on such tests at a later stage. A show cause notice must lay down the foundation of the case. Such is the importance of a show cause as a starting point in proceedings. The relevant extracts have been supplied below:

> "50. Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case is made out in the show-cause notice, Revenue cannot in Court argue a case not made out in its show-cause notice. See: Commissioner of Customs, Mumbai v. Toyo Engineering India Limited MANU/SC/3625/2006 : (2006) 7 SCC 592, para 16.
>
> 51. Similar view was expressed by this Court in the case of Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd. MANU/SC/3595/2007 : (2007) 8 SCC 89. In paragraph 27 of the said report, learned Judges made it clear that if there is no invocation of the concerned rules in the show-cause notice, it would not be open to the Commissioner to invoke the said Rule."

(Emphasis supplied)

85. From the above exposition of law, we can safely conclude that a show cause notice delineates the scope of the proceedings in the expression of subject matter with which the authority would be dealing. It would be impermissible for an authority to invoke such rules, claims or grounds at a later stage which do not figure in the show cause notice. That is to say, any ground, reasoning or claim which does not figure out in the show cause notice cannot be permitted to adversely affect the noticee. Such recognition has even been made statutorily, as per sub-section (7) of Section 75 of the Act, which reads as thus:

> "75. General provisions relating to determination of tax.—...

xxx

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."

86. The expression "subject matter" contemplates proceedings directed towards determining the taxpayer's liability or contravention, encompassing the alleged offence or non-compliance together with the relief or demand sought by the Revenue, as articulated in the show cause notice through its charges, grounds, and quantification of demand. Accordingly, the bar on the "same subject matter" is attracted only where both proceedings seek to assess or recover an identical liability, or even where there is the slightest overlap in the tax liability or obligation.

87. In other words, under Section 6(2)(b), the "subject matter" is intrinsically tied to the determination of the specific violation under scrutiny or the liability alleged to be unpaid. The statutory bar is triggered only when the two proceedings against the same taxpayer are, in substance, directed towards the very same or overlapping deficiency in tax discharge or the identical contravention alleged. Where the proceedings concern distinct infractions, each Department is entitled to proceed within its respective statutory remit without infringing the prohibition. Where the proceedings concern distinct infractions, each Department is entitled to proceed within its respective statutory remit without infringing the prohibition.

88. In order to bolster such embodiments of Section 6(2)(b) at large, we lay down a twofold test, discernible from our discussion above, to determine whether a subject matter is "same": *first*, the subject matter will be considered the same if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts; and *secondly*, if the demand or relief sought is identical.

89. In the present case, the learned Counsel for the petitioner contended that the subject matter of the proceedings pertained to the availability of input tax credit in respect of cancelled dealers. However, this contention fails for two reasons: *first*, the summons, on its own, cannot reveal the subject matter; and *secondly*, the subject matter can be ascertained only from the show cause notice. The apprehension of the petitioner cannot be countenanced merely because a facet of the ongoing inquiry overlaps with the subject matter of the show cause notice already issued.

90. Upon crystallization of the subject matter through a show cause notice issued pursuant to an intelligence, no other tax authority may assume jurisdiction over it, provided it is ascertainable that the consequences of any further departmental action would be subsumed within the same subject matter.

III. What is the purport of an "Order" under Section 6(2)(a) of the CGST Act?

91. Clause (a) of sub-section (2) of Section 6 of the CGST Act stipulates that where any proper officer issues an order under the CGST Act, he must issue an order under the SGST Act or the UGST Act in order to intimate the jurisdictional officer of the State tax or Union territory tax. The provision reads thus:

> "*(2) Subject to the conditions specified in the notification issued under sub-section (1),—*
>
> *(a) where any proper officer* ***issues an order*** *under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;*"

92. In construing Section 6(2)(a), it is imperative to have due regard to the legislative intent permeating the GST enactments. Section 6, in particular, advances the objective of establishing a unified national market for goods and services and to prevent taxpayers from the undue hardship of being subjected to the rigours of multiple jurisdictions.

93. The provision serves a twofold purpose: *first*, to insulate taxpayers from the prospect of being proceeded against by more than one authority for the same subject matter; and *secondly*, to vest in the officers functioning under the CGST Act, the SGST Act, or the UTGST Act, to render a comprehensive order, thereby avoiding multiplicity of proceedings. Such a construction is also in consonance with the well-recognized principle of comity between jurisdictions, which mandates that coordinate authorities must act with mutual respect and due regard for each other's domain, so as to preclude the possibility of conflicting determinations on the same issue.

94. To give effect to the above intent, Section 6(2)(a) is couched in terms

that are both enabling and mandatory. It confers upon, and simultaneously obliges, the proper officer to issue a corresponding order under the SGST Act or the UTGST Act in cases where an order is being issued under the CGST Act. The expression 'order', qualified by the terms "*under this Act*", occurring in the said provision admits of a broad construction, so as to include every form of order which a proper officer is competent to issue by virtue of the authority vested in them under the statute. Such an interpretation is necessary to ensure that the statutory mandate achieves its intended purpose of avoiding multiplicity of proceedings and securing uniformity of adjudication across the parallel enactments.

95. Inasmuch as the CGST Act vests the proper officer with authority to issue "orders" under various provisions, it becomes imperative that such officer duly apprises the jurisdictional counterpart of any action initiated by the Department in relation to a taxable person who may otherwise fall within the administrative domain of that officer. Given that the statutory framework envisages a regime of cross-empowerment amongst officers, the obligation so cast operates as a safeguard against the prejudice which may arise from the initiation of parallel or overlapping proceedings against the same taxpayer by different wings of the Department.

E. CONCLUSION

96. We summarize our final conclusion as under: -

i. Clause (b) of sub-section (2) of Section 6 of the CGST Act and the equivalent State enactments bars the "initiation of any proceedings" on the "same subject matter".

ii. Any action arising from the audit of accounts or detailed scrutiny of returns must be initiated by the tax administration to which the taxpayer is assigned.

iii. Intelligence based enforcement action can be initiated by any one of the Central or the State tax administrations despite the taxpayer having been assigned to the other administration.

iv. Parallel proceedings should not be initiated by other tax administration when one of the tax administrations has already initiated intelligence-based enforcement action.

v. All actions that are initiated as a measure for probing an inquiry or gathering of evidence or information do not constitute

"proceedings" within the meaning of Section 6(2)(b) of the CGST Act.

vi. The expression "initiation of any proceedings" occurring in Section 6(2)(b) refers to the formal commencement of adjudicatory proceedings by way of issuance of a show cause notice, and does not encompass the issuance of summons, or the conduct of any search, or seizure etc.

vii. The expression "subject matter" refers to any tax liability, deficiency, or obligation arising from any particular contravention which the Department seeks to assess or recover.

viii. Where any two proceedings initiated by the Department seek to assess or recover an identical or a partial overlap in the tax liability, deficiency or obligation arising from any particular contravention, the bar of Section 6(2)(b) would be immediately attracted.

ix. Where the proceedings concern distinct infractions, the same would not constitute a "same subject matter" even if the tax liability, deficiency, or obligation is same or similar, and the bar under Section 6(2)(b) would not be attracted.

x. The twofold test for determining whether a subject matter is "same" entails, *first*, determining if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts, and *secondly*, if the demand or relief sought is identical.

97. We issue the following guidelines to be followed in cases where, after the commencement of an inquiry or investigation by one authority, another inquiry or investigation on the same subject matter is initiated by a different authority.

a. Where a summons or a show cause notice is issued by either the Central or the State tax authority to an assessee, the assessee is, in the first instance, obliged to comply by appearing and furnishing the requisite response, as the case may be. We say, so because, mere issuance of a summons does not enable either the issuing authority or the recipient to ascertain that proceedings have been initiated.

b. Where an assessee becomes aware that the matter being

inquired into or investigated is already the subject of an inquiry or investigation by another authority, the assessee shall forthwith inform, in writing, the authority that has initiated the subsequent inquiry or investigation.

c. Upon receipt of such intimation from the assessee, the respective tax authorities shall communicate with each other to verify the veracity of the assessee's claim. We say, so as this course of action would obviate needless duplication of proceedings and ensure optimal utilization of the Department's time, effort, and resources, bearing in mind that action initiated by one authority enures to benefit of all.

d. If the claim of the taxable person regarding the overlap of inquiries is found untenable, and the investigations of the two authorities pertain to different "subject matters", an intimation to this effect, along with the reasons and a specification of the distinct subject matters, shall be immediately conveyed in writing to the taxable person.

e. The taxing authorities are well within their rights to conduct an inquiry or investigation until it is ascertained that both authorities are examining the identical liability to be discharged, the same contravention alleged, or the issuance of a show cause notice. Any show cause notice issued in respect of a liability already covered by an existing show cause notice shall be quashed.

f. However, if the Central or the State tax authority, as the case may be finds that the matter being inquired into or investigated by it is already the subject of inquiry or investigation by another authority, both authorities shall decide *inter-se* which of them shall continue with the inquiry or investigation. In such a scenario the other authority shall duly forward all material and information relating to its inquiry or investigation into the matter to the authority designated to carry the inquiry or investigation to its logical conclusion. We say, so because, the taxable person except for being afforded the statutory protection from duplication of proceedings, otherwise has no *locus* to claim which authority should proceed with the inquiry or investigation in a particular matter.

g. However, where the authorities are unable to reach a decision as to which of them shall continue with the inquiry or investigation, then in such circumstances, the authority that first initiated the

inquiry or investigation shall be empowered to carry it to its logical conclusion, and the courts in such a case would be competent to pass an order for transferring the inquiry or investigation to that authority.

h. If it is found that the authorities are not complying with these aforementioned guidelines, it shall be open to the taxable person to file a writ petition before the concerned High Court under Article 226 of the Constitution of India.

i. At the same time, taxable persons shall ensure complete cooperation with the authorities. It is incumbent upon them to appear in response to a summons and/or reply to a notice.

98. Before parting with this matter, we deem it appropriate to make certain suggestions concerning the common IT infrastructure shared by the Central and State tax authorities. It is imperative that the Departments act in harmony and maintain heightened vigilance with respect to intelligence inputs received by them, so as to give full effect to the legislative intent underlying the GST regime. Such coordination would also serve to mitigate the unnecessary hardship caused to taxpayers by overlapping proceedings and lack of inter- Departmental communication.

99. The DGGI may consider adopting necessary measures to develop a robust mechanism for seamless data and intelligence sharing between the Central and State authorities, including provision for real-time visibility to both authorities of any action taken pursuant to an intelligence input, thereby advancing the objectives of harmony and cooperative federalism.

100. Accordingly, the present petition is disposed of in the above terms. Pending application(s), if any, shall also stand disposed of.

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Sudhanshu Dhulia and Joymalya Bagchi, JJ

(Partial Court Working Days Bench)

Special Leave Petition (Civil) Diary No(s). 21136/2025

[Arising out of impugned final judgment and order dated 21-10-2024 in WP(C) No. 7250/2024 passed by the High Court of Delhi at New Delhi]

Commissioner Of Central Goods And Service Tax & Ors. ... Petitioner(S)

Versus

Karuna Rajendra Ringshia ... Respondent(S)

IA No. 147113/2025 - Condonation of Delay In Filing

IA No. 147114/2025 - Condonation of Delay In Refiling / Curing the Defects

Date : 09-07-2025

This matter was called on for hearing today.

For Petitioner(s) : Mr. Raghavendra P Shankar, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Karan Lahiri, Adv.
Mr. Bhuvan Kapoor, Adv.
Mr. Piyush Beriwal, Adv.

For Respondent(s) :

UPON hearing the counsel the Court made the following

ORDER

Delay condoned.

No case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petition is accordingly dismissed. However, other remedies of the petitioners for recovery in accordance with law are kept open.

Pending application(s), if any, stand disposed of.

Judicial Trends in GST Litigation: Key Cases and Learnings

Adv. Nidhi Aggarwal

The Goods and Services Tax (GST), implemented on 1st July, 2017, was India's most ambitious tax reform since independence. It replaced a fragmented indirect tax system with a unified, destination-based model designed to eliminate cascading effects and bring transparency to taxation.

However, the introduction of such a vast system brought significant operational and interpretational challenges. Ambiguities in statutory provisions, technological issues on the GST Network (GSTN), and evolving compliance rules gave rise to extensive litigation across India.

Over the years, the judiciary—particularly the High Courts and the Supreme Court of India—has played a critical role in interpreting the law, settling disputes, and establishing guiding principles for taxpayers and administrators alike.

GST litigation in India spans multiple dimensions, often arising from procedural, technical, or constitutional issues. Major categories include:

1. Transitional Credit Issues: Problems in filing TRAN-1/TRAN-2 forms due to portal glitches.
2. Input Tax Credit (ITC) Disputes: Denial of ITC on account of procedural lapses or vendor defaults.
3. Classification and Rate Conflicts: Disputes over product or service categorization.
4. Refunds and Inverted Duty Structure: Restrictive interpretations affecting exporters and manufacturers.
5. Constitutional and Jurisdictional Questions: Validity of delegated powers and federal balance in taxation.

The judiciary's consistent stance has been that substantive justice must prevail over procedural technicalities, especially during the formative years of GST.

Landmark Judicial Pronouncements:

1. Filco Trade Centre Pvt. Ltd. v. Union of India (2022, Supreme Court)

One of the most influential GST rulings, this case dealt with taxpayers' inability to file TRAN-1 forms within the deadline due to technical glitches. The Supreme Court directed reopening of the portal for two months, enabling all affected taxpayers to claim transitional credit.

The Court recognized that procedural difficulties should not deprive taxpayers of vested rights, setting a precedent for technological fairness under GST.

2. Brand Equity Treaties Ltd. v. Union of India (2020, Delhi High Court)

   Before the Filco judgment, the Delhi High Court had already held that the time limit for claiming transitional credit was directory, not mandatory. The Court allowed taxpayers to claim legitimate credits even after the deadline, emphasizing that transition rights stem from the pre-GST regime and cannot be arbitrarily curtailed.

   It was reinforced that **credit is a vested right**, not a concession, and authorities must interpret transition provisions liberally.

3. Mohit Minerals Pvt. Ltd. v. Union of India (2022, Supreme Court)

   This landmark case questioned the levy of IGST on ocean freight in CIF import contracts. The Supreme Court held such levy unconstitutional, observing that the importer was already liable to pay IGST on the total value, including freight.

   The case reaffirmed that GST's destination-based consumption principle and struck down instances of double taxation.

4. Union of India v. VKC Footsteps India Pvt. Ltd. (2021, Supreme Court)

   The issue concerned refund eligibility under the inverted duty structure—whether input services should be included in refund computation. The Court upheld Rule 89(5), limiting refunds to input goods only.

   It showed judicial restraint, recognizing Parliament's prerogative in fiscal policy design, and clarified that courts should not expand refund mechanisms beyond legislative intent.

5. Canon India Pvt. Ltd. v. Commissioner of Customs (2021, Supreme Court)

Although arising under Customs law, this case had a strong bearing on GST. The Supreme Court ruled that the Directorate of Revenue Intelligence (DRI) was not a “proper officer” authorized to issue show cause notices.

The case highlighted the significance of “jurisdictional competence”, a principle now echoed in GST adjudication—only the properly designated authority can initiate proceedings.

6. AAP & Co., Chartered Accountants v. Union of India (2019, Gujarat High Court)

   The petitioner challenged the requirement of mandatory GST audit by chartered accountants or cost accountants, arguing that it violated the concept of self-assessment. The High Court upheld the audit requirement, noting that it enhanced compliance and transparency.

7. M/s Bharti Airtel Ltd. v. Union of India (2021, Supreme Court)

   Bharti Airtel sought permission to revise GSTR-3B returns to claim additional ITC discovered later. The Supreme Court disallowed revision, holding that the GST system was self-regulatory and designed to ensure data consistency.

   The case emphasized **procedural discipline** and data integrity within the GST compliance framework, even if it led to short-term hardship.

8. Torrent Power Ltd. v. Union of India (2023, Gujarat High Court)

   In this case, the court addressed the blocking of Input Tax Credit without prior notice under Rule 86A. The High Court ruled that ITC cannot be blocked mechanically; authorities must provide reasons and adhere to natural justice.

   This case strengthened the principles of transparency and due process in GST administration.

9. Tvl. Megha Engineering and Infrastructure Ltd. v. Commissioner of Central Tax (2019, Telangana High Court)

   The taxpayer’s ITC was denied due to a supplier’s non-payment of tax, even though the taxpayer had paid in good faith. The Court upheld denial, stressing that ITC is conditional upon actual tax remittance by the supplier.

This case highlighted the importance of vendor compliance monitoring and the “trust but verify” nature of the GST framework.

Emerging Judicial Trends in GST

1. Substance Over Procedure

   From “Filco Trade Centre” to “Brand Equity Treaties”, courts have leaned toward protecting legitimate taxpayer rights, particularly when non-compliance arises from technical or systemic failures.

2. Judicial Restraint in Fiscal Policy

   Judgments like “VKC Footsteps” illustrate that courts respect legislative intent and avoid overreach into policy-making unless fundamental rights or constitutional limits are breached.

3. Accountability in Administration

   Recent cases (e.g., “Torrent Power”) indicate growing judicial insistence on fair procedure, transparency, and reasoned orders, especially when taxpayer credits or refunds are restricted.

4. Strengthening Federal Balance

   In “Mohit Minerals”, the Supreme Court also observed that the GST Council’s recommendations are not binding, preserving the cooperative federal structure while maintaining central-state harmony.

5. Technology and Justice

   Many cases (e.g., “Filco”, “Bharti Airtel”) reflect that digital infrastructure plays a decisive role in compliance. Courts increasingly demand that GSTN function efficiently, error-free, and taxpayer-friendly.

Implications for Taxpayers

1. Maintain robust documentation and vendor reconciliation.

2. Exercise due diligence in claiming ITC and filing returns.

3. Use legal remedies timely instead of procedural shortcuts.

4. Keep evidence of any technical glitches or portal issues to support claims.

Implications for Tax Administrators

1. Ensure consistency and reasonableness in enforcement.

2. Avoid overuse of coercive measures like ITC blocking or cancellation of registration without prior hearing.

3. Build technological reliability to minimize disputes.

4. Adopt a facilitative rather than adversarial approach toward compliance.

Implications for Policymakers

1. Simplify the law to minimize interpretational disputes.

2. Clarify ambiguous provisions through timely circulars and notifications.

3. Encourage pre-litigation resolution mechanisms to reduce judicial burden.

   The volume of GST litigation is expected to remain high as the system matures. With the upcoming GST Appellate Tribunal (GSTAT) becoming operational, many pending cases will shift from High Courts to a dedicated quasi-judicial platform, ensuring faster resolution.

   However, courts will continue to play an essential role in addressing constitutional and interpretational issues, especially those involving taxpayer rights and federal principles.

   The evolution of GST law in India is as much a judicial journey as a legislative one. Courts have consistently acted as guardians of fairness and accountability, ensuring that procedural lapses or systemic inefficiencies do not compromise substantive justice.

   From enabling taxpayers to claim transitional credits to striking down unconstitutional levies, judicial decisions have shaped the GST ecosystem into a more transparent and equitable system.

   As GST enters its next phase—with technological upgrades, tribunal establishment, and ongoing reforms—the judiciary's guiding hand

will remain vital in maintaining balance between revenue interests and taxpayer rights.

Author's Note:

"GST is not merely a tax reform but a continuing experiment in cooperative federalism. Judicial oversight ensures that in this experiment, fairness remains the constant variable."

APPEAL TO TRIBUNAL

Adv. Kumar Jee Bhat

1. **Appeal** has not been defined under CGST Act nor under Income Tax Act, 1961. Appeal as per dictionary, in law means, a legal proceeding by which a case is brought before a higher Court for review of the decision of a lower Court. AIR 1968 SC 488.

An appeal is the taking of a cause from an inferior to a Superior Court for the purpose of testing the soundness of the decision of the lower Court. Civil & Criminal Appeals are dealt under relevant laws. The Appellate jurisdiction has been conferred on the Supreme Court by Article 132 of the Constitution of India. Appeal under CGST Act / SGST Act is defined under Section 107 to 121 in Chapter XVIII read with Rules 108 to 116 in Chapter XIII of CGST Rules.

2. **An Appeal is not a matter of right** but creation of a statute given by legislature for questioning the decision of lower authorities to higher Authorities. Therefore, no appeal will lie unless it is provided by the Statute – CIT vs. Garware Nylons Ltd., 1995

The statutes determine what orders are appealable and what not. So unless an order is made appealable, no appeal can be filed or entertained by the higher Court. A right to appeal is not a procedural right but a substantive right. A right to appeal accrues to a litigant on and from the date the lis commences and the record must show that such an order has been passed so that the aggrieved person may exercise his vested right of appeal and get it redressed – CIT vs. Express Newspapers (P) Ltd. 111 ITR 347 Mad.

3. **Appellate Authority** has been defined in Section 2(8) of the CGST Act – "means the Authority appointed or authorised to hear appeals as referred in the Section 107."

Appellate Tribunal – "means the Goods and Services Appellate Tribunal constituted U/s 109" –

> Goods and Services Tax Appellate Tribunal (GSTAT) is not a Court – All the Tribunals are not Courts, though all Courts are Tribunals – Tribunals fall within the preview of Article 136(1) of the Constitution of India and occupy a special position of their own under the Scheme of Constitution – special matters or questions

are entrusted to them for their decision. The basic and common features of both the Courts and Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a severing State – Tribunals for other matters - AIR 1965 SC 1595

Article 323(2)(a) is the relevant provision which delineates the comprehensive powers available to the legislature in establishing the Tribunals for Taxation matters. The provision permits the exclusion of jurisdiction of all Courts except the Supreme Court under Article 136, thereby creating a specialised adjudicatory system for the specified matters –

The decision of the Hon'ble Madras High Court in Revenue Bar Association vs. UOI, wherein the Court observed that the composition of tribunal is not correct as two technical Members will potentially over rule the judicial member. Hon'ble Supreme Court struck down certain provisions of the Tribunal Reforms Act 2021.

4. **Who can file an appeal** – U/s 107 of the Act, it is any person aggrieved by any decision or order passed under this Act by any Adjudicating Authority.

Any person who feels disappointed with the decision or result of the case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something ….. Adi Ferozshah Gandhi vs. H.M. Seervai, 1971 SC 385. There is no filing fee before the Appellate Authority but there is, before the Tribunal.

The fee payable for filing an appeal before the GSTAT as prescribed under Rule 110(5) is Rs. 1000/- for every one lakh of Rupees of tax or input tax credit, involved or difference of tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against subject to maximum of Rs.25000/-.

5. **Time for filing Appeal before Appellate Tribunal** – The time for filing of an appeal by any person aggrieved by an order u/s 107 or 108 of the CGST Act or SGST Act may appeal within 3 months from the date on which the order sought to be appealed is communicated – with a further 3 months, if it is satisfied that there was a sufficient cause for not presenting it within that period.

Conditions prescribed for filing an appeal before the Appellate Tribunal

u/s 112(8) are mandatory before the appeal is entertained. The jurisdiction of the Appellate Tribunal in hearing and then deciding the appeal depends upon the strict compliance of requirement of Section 112(8). If the assessee fails to deposit the tax strictly in accordance with the requirements, the appeal is to be dismissed as not maintainable.

6. **Appeal by the Department** – Like Income Tax the CGST Act has provided an appeal by the Department as well. If the department itself is not in agreement with the decision or order of Adjudicating Authority or the Appellate Authorities or revisional authority the department may file a review or appeal. The review or appeal has to be filed within 6 months from the date of communication of the order.

7. **Limitation/Power to condone delay** - The discretion to accept the appeals beyond the prescribed time must be exercised with vigilance, justice common sense and sound judgments (AIR 1968 SC 222). It should be exercised judicially and not arbitrarily and giving reasons for not accepting the same. The Supreme Court in Collector Land Acquisition, Anantnag vs Mst. Katiji, has explained the term of sufficient cause. It is common knowledge that the court has been making a justifiable, liberal approach in matters instituted in this court. The Supreme Court in Singh Enterprises vs. CCE, Jamshedpur, 221 ELT 163 SC established fundamental principles regarding statutory limitation and condonation powers.

Where a statute provides a time limit to condone delay, the appellate authority has no powers to condone delay and allow the appeal after the said specified period. And there is complete exclusion of Section 50 of Limitation Act. The Court cannot direct condonation for more than extended period provided in the statute –

Singh Enterprises vs. CCE, (2008) 12 VST 542 SC.

CCE vs. Hongo India (P) Ltd., (2009) 24 VST 298 SC.

However, the Supreme Court / High Courts have wider powers under Article 226 of Constitution but not wider than primary powers bestowed on Court under Article 142 of the Constitution.

The Appellate Tribunal U/s 112(6) mandates that the Tribunal may admit an appeal within extended time period provided it is satisfied that there was sufficient cause for not presenting it within the period specified in the Section.

8. **Conditions for filing of Appeal – pre-deposit** - No appeal before the Appellate Authority U/s 107(6) or the Appellate Tribunal u/s 112(8) shall be filed, unless the Appellant has paid –

a. in full such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

b. in case of Appellate Authority – a sum equal to 10% of the remaining amount of tax in dispute

in case of Appellate Tribunal, a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid before the Appellate Authority arising from the said order.

When the amount of entire tax liability was deducted from the electronic cash ledger, the court directed to entertain the appeal since the requirement of pre-deposit is already satisfied –

As per amendment in 107(6) which prescribes payment of 25% of penalty imposed u/s 129(3) of the Act.

9. **Admitted Tax** – The Allahabad High Court in Ghanshyam Dass Balmukund vs State of UP (23 STC 282) held that when computing admitted tax, regard should be had to the position taken by the appealing assessee in the memorandum of Appeal. Therefore, if the appellant admits any tax liability in the memorandum of appeal then it becomes a precondition to deposit the said amount for the purpose of entertainment of appeal. The payment of admitted tax can be made through GST Electronic Credit Ledger i.e. through DRC-07.

10. **Duties of Tribunal** – The Tribunal is the final fact-finding Authority and it should record its conclusion on every disputed question raised before it, setting out its reasons in support of its conclusion.

The Tribunal has to act judicially and consider with due care all the material facts and evidence in favour and against the assessee and record its findings on all the contentions raised from both the sides – (Nawabganj Sugar Mills Co. Ltd. vs. CIT, 86 ITR 44 SC).

It is the duty of the Tribunal being, the highest Appellate Tribunal exercising appellate jurisdiction to examine the issue both of law and facts in detail. It must appear from the order passed by the Tribunal that sincere efforts were made to decide the issue that fell for examination –

The Appellate Tribunal is bound to obey the decision of the Supreme

Court as well as High Courts or co-ordinate Benches of the Tribunal having more members on the Bench.

11. **Electronic Filing Framework** – Rule 18 of the GSTAT (procedural Rules), 2025 established electronic filing as the primary mode of instituting appeals. The Rule mandates that appeals be manual, filing is also provided in exceptional cases with specific permission from the Registrar enquiring that technical difficulties do not prejudice legitimate appeals –

GSTAT Form -05 has specific requirements to be fulfilled – which are as per GSTAT (procedure) Rules, 2025, which

Cause Title – In the Goods and Services Tax Appellate Tribunal.

Paragraph – Consequently numbered paras organised presentation of facts.

Party Details – Complete Identification including GSTIN – Proper Party identification.

Challenged Order – Specific identification of Appellate order.

Rule 20 – Mandates that Grounds of Appeal must be set forth concisely under destinate, numbered heading.

Rule 21 – Establishes core documents requirements ensuring that the Tribunal has access to all the relevant documents –

1. Certified copy of impugned order.
2. Certified Original Order.
3. Relied upon documents.
4. Fee payment proof–Evidence of online fee payment

All the documents must be properly authenticated as attested copies

14. In National Thermal Power Co. Ltd. vs. CIT established the discretionary powers of tribunal to admit additional grounds. Interlocutory Application must be in the prescribed GSTAT Form-01 and must be accompanied by a fee of Rs.5000/- and supported by an affidavit.

CONCLUSION –

1. Use Paper size A4 with margins with left margin 5 cm, right margin

2.5 cm.

2. It should be single side printing.

3. Double Spacing.

4. Neat and legible fonts.

5. Neat and fairly type written.

6. Electronic filing via portal mandatory, Rule 115(2).

7. Authentication by Signatures Electronic via portal.

Appeal to be signed by the party concerned and verified by the Appellant himself.

Non-English documents must be accompanied by English Translated copies.

Appellate Tribunal has a very vest role to play in the dispensation of justice so far taxation is concerned. Every decision has a long draw repercussions on the registered person for their day to day working and payment to taxes in general.

https://player.vimeo.com/video/1122108187?badge=0&autopause=0&player_id=0&app_id=58479&loop=1

DELHI SALES TAX CASES

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HIGHLIGHTS

"Human Judges can show mercy. But against the laws of nature, there is no appeal. Judges ought to be more leaned than willy, more reverent than plausible, and more advised than confident. Above all things, integrity is their portion, and proper virtue."

— Hon'ble Mr. Justice Ujjal Bhuyan

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7.	Seeks to extend the due date for furnishing FORM GSTR-3B for the month of July,2025 upto 27.08.2025, for the taxpayers registered in Mumbai (City), Mumbai (sub-urban), Thane, Raigad and Palghar districts of Maharashtra Notification No. 12/2025 – CENTRAL TAX	N-298
8.	Seeks to notify the Central Goods and Services Tax (Third Amendment) Rules 2025. Notification No. 13/2025–Central Tax	N-298
9.	Seeks to Notify Category of Persons Under Section 54(6). Notification No. 14/2025 – Central Tax	N-334
10.	Seeks to Exempt Taxpayer with Annual Turnover less than Rs 2 Crore from Filing Annual Return. Notification No. 15/2025 – Central Tax	N-335
11.	Seeks to notify clauses (ii), (iii) of section 121, section 122 to section 124 and section 126 to 134 of Finance Act, 2025 to come into force. Notification No. 16/2025–Central Tax	N-335
12.	Seeks to extend date of filing GSTR-3B. Notification No. 17/2025 – CENTRAL TAX	N-336
13.	Seeks to notify the Central Goods and Services Tax (Fourth Amendment) Rules 2025 Notification No. 18/2025 – Central Tax	N-336
14.	Seeks to Notify Supplies Under Section 15(5) of CGST Act for Valuation Based on Retail Sale Price (RSP) Notification No. 19/2025 – Central Tax	N-344
15.	Seeks to notify Central Goods and Services Tax (Fifth Amendment) Rules, 2025 Notification No. 20/2025–Central Tax	N-345
16.	Generation and quoting of Document Identification Number(DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons Circular No. 249/06/2025-GST	N-349
17.	Reviewing authority, Revisional Authority and Appellate Authority in respect of orders passed by Common Adjudicating Authority (CAA) for show cause notices issued by DGGI Circular No. 250/07/2025-GST	N-350
18.	Clarification on Various Doubts Related to Treatment of Secondary or Post-sale Discounts under GST Circular No. 251/08/2025-GST	N-352
19.	Communication to taxpayers through eOffice - requirement of Document Identification Number (DIN) Circular No. 252/09/2025 -GST	N-355
20.	Regarding withdrawal of circular No. 212/6/2024-GST. Circular No. 253/10/2025 – GST	N-257
21.	Assigning proper officer under section 74A, section 75(2) and section 122 of the Central Goods and Services Tax Act, 2017 Circular No. 254/11/2025-GST	N-358

LEGAL GLOSSARY – because in law, every word matters!

Compiled By: Adv. Ela Garg

Word/ Term	Pronunciation	Meaning	Usage
Aliter	AL-ih-ter	"Otherwise" or "in a different manner." It is commonly used in judgments to indicate a contrary or alternative view.	The court agreed with the principle, but held aliter on the facts of the present case
Alibi	AL-uh-bye	A plea by a person accused of an offence that he was "elsewhere"—that having regard to the time and place at which the offence is alleged to have been committed, he could not have been present.	The accused established his alibi by producing air tickets along with boarding passes, proving that he was in another city at the relevant time.
Catena	ka-tay-na	It means to "a chain" or "a series." In legal usage, it refers to a chain of reasoning or a series of judicial decisions that are connected together and relied upon to support a legal principle.	The court referred to a catena of judgments to affirm the settled position of law.
Cavalier	Ka-vuh-leer	It refers to an attitude that is careless, dismissive, or showing a lack of proper concern, especially toward rules, rights, or responsibilities.	The court criticized the officer's cavalier approach to following due procedure.
Folly	Faw-lee	It refers to a lack of good sense, judgment, or foresight — in legal context, it may highlight reckless or ill-advised actions with serious consequences.	The judge observed that ignoring procedural safeguards was not just an error, but a legal folly.
Hiatus	High-ay-tus	It refers to a pause, gap, or break in continuity — often used to describe gaps in legal proceedings, legislative sessions, or contractual obligations.	The court noted a hiatus in the enforcement of the regulation, leading to confusion among stakeholders."
Inimical	In-imm-i-kal	It means hostile, harmful, or unfriendly — especially used to describe actions or policies that are damaging to public interest, law, or order	The Court held that such activities were inimical to the interests of national security.

Word/ Term	Pronunciation	Meaning	Usage
Qua	Kwaa	It refers to “in the capacity of” or “as.” It is used to specify the role or position in which a person or entity is acting	The trustee qua trustee cannot use the property for personal benefit.
Subpoena	Suh-pee-nuh	A legal document issued by a court requiring a person to appear in court or produce documents as evidence. It ensures the presence of witnesses or the availability of evidence for fair trial.	The court issued a subpoena to the witness to testify in the fraud case
Subpoena Duces Tecum	Suh-pee-nuh Doo-seez Tee-kum	A type of subpoena that requires a person not only to appear in court but also to bring specified documents, records, or evidence with them.	The court issued a subpoena duces tecum to the company’s managing director to produce financial records in the fraud case.

IN THE SUPREME COURT OF INDIA
(B.V. Nagarathna & R. Mahadevan, JJ)

Civil Appeal No. 4573 of 2017

The Commissioner,
Department of Trade & Taxes & Anr. Appellant(s)

Versus

Ingram Micro India Pvt. Ltd. Respondent(s)

Date of Order: 13.11.2025

WHETHER WITHHOLDING OF 'C' FORMS LEGAL IN VIEW OF THE STAND TAKEN BY THE DEPARTMENT – THE CENTRAL SALES TAX (REGISTRATION & TURNOVER) RULES, 1957 RULE 12(7) DOES NOT PRESCRIBE INFLEXIBLE CONDITION AS TO TIME LIMIT – PRESCRIBED FOR MAKING REQUEST FOR ISSUANCE OF STATUTORY FORMS - THE PETITIONER DID NOT SHOW CENTRAL PURCHASES AGAINST STATUTORY FORMS IN RETURN – "C" FORMS WERE DENIED ON THE GROUND THAT PURCHASES WERE NOT REFLECTED IN RETURNS - WRIT PETITION FILED - REVENUE DID NOT TAKE STAND THAT THE TRANSACTIONS OF INTER-STATE PURCHASES WERE NOT GENUINE-THE PETITIONER OFFERED VALID REASONS WITH EXPLANATION-THE COURT DIRECTED TO ISSUE 'C'-FORMS TO PETITIONER.

Held: - The Court has upheld the decision of High Court of Delhi and has reiterated that the Statutory forms cannot be withheld when the transactions are genuine and it hardly effects the transactions if the amount of Statutory forms is not reflected in the columns prescribed for the interstate purchase made by the dealers in the returns filed. However, in the circumstances, we dispose of these appeals by keeping upon substantial question(s) of law, if any, to be advance in any other appropriate case.

Present for Appellant(s) : Mr. N Venkataraman, A.S.G.
Mrs. Nisha Bagchi, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mr. Arvind Kumar Sharma, AOR
Mr. Chirag M. Shroff, AOR
Mr. Gurmeet Singh Makker, AOR

Present for Respondent(s) : Mr. Aseem Mehrotra, Adv.
Mr. Virag Tiwari, Adv.
Mr. Ashok Kumar Babbar, Adv.
Mr. Surendra Kumar, Adv.
Mr. Atul Babbar, Adv.

Mr. Nitya Sharma, Adv.
Mr. Archit Upadhayay, AOR
Mrs. Amita Babbar, Adv.
Mrs. Ruchi Babbar, Adv.

ORDER

Leave granted in SLP (C) Nos. 17127/2021, 3405/2022 and 12944/2022.

2. We have heard learned senior counsel Ms. Bagchi appearing for the appellant(s)/Department in all these cases and learned counsel for the respondents at length.

3. We have also perused the impugned order passed in Civil Appeal No.4573/2017 which order has been followed in the other cases.

4. Learned counsel, Shri Krishnamohan submitted that in Civil Appeal No.4573/2017, there has been compliance of the directions issued by the Division Bench of the Delhi High Court in the impugned order inasmuch as the C-Forms have been issued pursuant to an indemnity bond submitted by the respondent(s)-assessee(s) following which the assessment has also been completed.

5. It is therefore, submitted by other learned counsel appearing for the respondent(s)-assessee(s) that in view of the aforesaid submissions, this Court may not interfere with the impugned order(s) in the other appeals and the directions issued by the High Court may be complied with by the appellant(s) and consequently the C-Forms and F-Forms may be issued. This could be subject to indemnity bonds being submitted by the respondent(s)-assessee(s).

They further submitted that if learned senior counsel appearing for the appellant(s) is intending to make submissions on any substantial questions of law, the same may be kept open having regard to the fact that in Civil Appeal No.4573/2017, there has been compliance of the directions issued by the Delhi High Court and the other impugned orders have simply followed the order passed in Civil Appeal No.4573/2017.

It was further submitted by learned counsel for the respondents that there has also been verification made by the Department insofar as the nature of the inter-State transactions and in certain cases, the assessments have also been completed for the relevant years. Therefore, for this

case, this Court may not consider the correctness or otherwise of the impugned orders and re-open the matters as the Assessment Years relate to the years prior to 2016.

By way of response to these submissions, Ms. Bagchi learned senior counsel for the appellant(s)/Department submitted that although there may have been a detailed reasoning given by the Delhi High Court in the impugned order passed in Civil Appeal No.4573/2017, insofar as the other impugned orders are concerned, the High Court has mechanically followed the dictum/order passed by the High Court in Civil Appeal No.4573/2017 and therefore, these cases call for a detailed examination both on the question of law as well as on facts.

6. We have considered the arguments advanced at the Bar.

7. We have noted the fact that the order impugned in Civil Appeal No.4573/2017 has been complied with by the appellant(s)-Department. Secondly, the said order has been followed in the subsequent orders passed by the High Court which are also impugned in this batch of cases.

8. Since the Department has complied with the directions issued by the High Court in its order which is impugned in Civil Appeal No.4573/2017, we find that irrespective of the contentions that may arise or that are sought to be advanced by the appellant(s) in these cases, the Department ought to comply with the directions issued in the connected appeals also.

9. In the circumstances, we dispose of these appeals by keeping upon substantial question(s) of law, if any, to be advanced in any other appropriate case.

10. The appeals are disposed of in the aforesaid terms. Consequently, the stay orders granted by this Court stand vacated.

All pending applications including the application(s) for intervention/ impleadment also stand disposed of.

IN THE SUPREME COURT OF INDIA
(Manoj Misra & Nongmeikapam Kotiswar Singh, JJ.)

Civil Appeal No. 2042-2047 of 2015

The Commissioner Trade and Tax Delhi ... Appellant(s)

Versus

M/s Shanti Kiran India (P) Ltd. ... Respondent(s)

Date of Order: 09.10.2025

VALUE ADDED TAX – INPUT-TAX CREDIT – AMENDMENT IN 2010 TO EFFECT THAT CREDIT ALLOWABLE TO PURCHASING DEALER ONLY WHEN TAX ACTUALLY DEPOSITED BY SELLING DEALER – NOT CLARIFICATORY – CREDIT TO BE DENIED FOR EARLIER PERIOD ON SOLE GROUND – SELLING DEALER OPERATED FOR SHORT PERIOD AND HAD HIGH TURNOVER COMPARED TO TAX DEPOSITED BY IT- DELHI VALUE ADDED TAX ACT, 2004 (3 OF 2005), S. 9.

Held: In light thereof, as we find that there is no dispute regarding the selling dealer being registered on the date of transaction and neither the transactions nor invoices in questions have been doubted, based on any inquiry into their veracity, we do not find a good reason to interfere with the order of the High Court directing for grant of ITC benefit after due verification. The appeals lack merit and are, accordingly, dismissed.

Present for Appellant(s) : Sh. Mukesh Kumar Maroria [P-1]

Present for Respondent(s) : Sh. Varinder Kumar Sharma

ORDER

1. Heard learned counsel for the appellant and perused the record.

2. In these appeals the short issue that arose for consideration before the Delhi High Court[1] was whether the benefit of Input Tax Credit (ITC) is available to the registered purchaser dealers (respondents herein) who paid taxes to registered seller dealer(s) in terms of invoice(s) raised by them even though those seller dealers did not deposit the collected tax with the Government.

3. There is no dispute that on the date of transaction, the seller dealer(s) were registered with the Department. However, after the transaction, the

1 High Court

registration of those seller dealer(s) was cancelled, and they defaulted in depositing the tax collected by them from the purchaser dealer(s). The High Court vide impugned judgment and order(s) found respondent(s) bona fide purchaser dealer(s) who had paid taxes in good faith to registered seller dealer(s) and, therefore, entitled to the benefit of ITC and, accordingly, allowed the said benefit to them after due verification of invoices.

4. A similar issue later arose for consideration before the High Court in On Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi and Ors., 2017 SCC OnLine Delhi 13037 in the context of the provisions of Section 9(2) (g) of Delhi Value Added Tax Act, 2004[2].

5. Section 9(1) of DVAT Act permits ITC to a registered dealer in respect of turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are liable to tax under Section 7 of the DVAT Act. Subsection (2) of Section 9 sets out the conditions under which such ITC would not be allowed. Clause (g) of sub-section (2) of Section 9 made ITC benefit available to a purchasing dealer only when the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period. Reading down clause (g) of sub-section (2) of Section 9, in On Quest Merchandising India (supra), the Delhi High Court held:

> "62. In light of the above legal position, the Court hereby holds that the expression 'dealer or class of dealers' occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression 'dealer or class of dealers' in Section 9 (2) (g) is 'read down' in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.
>
> 63. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has

2 DVAT Act

issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act."

6. The aforesaid decision of the High Court was challenged before this Court in Special Leave to Appeal (Civil) No.36750 of 2017. The said special leave petition was disposed of without interfering with the order of the High Court.

7. In light thereof, as we find that there is no dispute regarding the selling dealer being registered on the date of transaction and neither the transactions nor invoices in questions have been doubted, based on any inquiry into their veracity, we do not find a good reason to interfere with the order of the High Court directing for grant of ITC benefit after due verification. The appeals lack merit and are, accordingly, dismissed.

8. Pending application(s), if any, shall stand disposed of.

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Prathiba M. Singh & Shail Jain, JJ.)

W.P.(C) No. 16906/2025

A and T Security Services Pvt. Ltd.
Through its Director Mr. Tejvir Malik ... Petitioner

Versus

Addl. Commissioner of CGST
CGST Delhi West & Anr. ... Respondents

Date of Order: 18.11.2025

WHETHER WITHOUT PRE-DEPOSIT – FOR FILING OF APPEAL – BEFORE THE GSTAT – WILL APPEAL BE ALLOWED?

Held: - YES – Hon'ble Delhi High Court allowed the second appeal before the GSTAT without pre-deposit, as the Appellate authority failed to

consider the important fact that the taxpayer had already deposited more than Two Crores before issuance of the show cause notice U/s 122 of the CGST Act, 2017.

Present for Petitioner	:	Mr. A.K. Babbar, Ms. Ishmat Kaur, Adv.
Present for Respondents	:	Mr. Akshay Amritanshu, Sr. Standing Counsel, Ms. Drishti Rawal, Adv., Mr. Abhay Nair, Adv., Mr. Mayur Goyal, Adv., Mr. Sarthak Srivastava, Adv.

Order

1. This hearing has been done through hybrid mode.

2. The Petitioner in the present petitions *i.e.* A and T Security Services Pvt. Ltd. is engaged in the business of supply of Security Services and has a Goods and Services Tax Registration No. 07AAECA1356L1ZO.

3. An inspection was stated to be conducted at the Petitioner's premises on 18th March, 2019 where the premises was found to be locked. This led to show cause notice dated 12th September, 2019*(hereinafter, 'SCN')* being issued to the Petitioner for cancellation of the registration certification. The said SCN records that the Petitioner did not file the returns for a continuous period of six months and hence, the registration of the Petitioner is liable to be cancelled.

4. An opportunity for personal hearing was also given in the said SCN for 19th September, 2019, and the reply to the SCN was to be filed by the Petitioner.

5. It is the Petitioner's case that a reply to the SCN was filed on 23rd September, 2019 and it was stated that all the GSTR-1 and GSTR-3B returns were filed up to date by the Petitioner. Accordingly, the Petitioner prayed for withdrawal of the SCN for cancellation of registration. Thereafter, the reply filed by the Petitioner was considered by the Department and the registration certificate of the Petitioner was cancelled on 29th November, 2019 and zero demand was created on the Petitioner.

6. An appeal was filed by the Petitioner against the order of cancellation dated 29th November, 2019. The Appellate Commissioner (Appeals) allowed the appeal on 27th August, 2021 and ordered for restoration of the GST Registration Certificate of the Petitioner in the following terms:

"In view of above discussions, analysis and statutory provisions cited in para 4, the appeal filed by the appellant merits lenient view and deserve to be allowed, if the appellant submits an undertaking before the concerned jurisdictional officer that all the pending GST returns/pending tax liabilities would be filed within one month from restoration of GST registration.

Further, it is desired from the appellant that GST returns would be filed within the stipulated time period in future. Accordingly, the present appeal is hereby disposed of, in terms of Section 107(12) of CGST Act, 2017."

7. As can be seen from the above order dated 27th August, 2021, the Petitioner was to file all the pending GST returns and pay all the pending tax liabilities. According to the Petitioner, the Petitioner thereafter paid a total sum of Rs. 2,01,20,299/- and thus, the GST Registration of the Petitioner was also restored.

8. Subsequently, a further show cause notice was issued to the Petitioner on the ground of fraudulent availment of ITC on 31st July, 2024. A reply to the said show cause notice was filed by the Petitioner on 2nd September, 2024 and the personal hearing was also attended on 28th January, 2025 . Thereafter, the order-in-original was passed on 31st January, 2025, creating a demand under Section 122 of CGST/SGST Act on account of penalty.

9. This order-in-original dated 31st January, 2025 was challenged by the Petitioner before the Commissioner(Appeals). The total penalties which were imposed on the Petitioner by the Commissioner(Appeals) in its order dated 16th May, 2025 is to the following effect:

SN	Appeal No.	Name/Address of the Appellant	Penalty imposed (in Rs.)
1.	171/GST/DL-Appeal-II/2024-25	M/s. A&T Security Services Pvt. Ltd., WZ-144A, Sant Carh, Near Subil Ki Dairy, Tilak Nagar, New Delhi-110018 (presently at: WZ-2A, GF, Plot No. 9 and 10, Sant Garh, Major Bhupinder Singh Nagar, New Delhi-110018.) (here-in-after also referred to as the 'appellant no. 1')	Fenalties of Rs. 1,77,332/- & Rs. 2,01,20,299/- under Section 122(1)(vii) & Section 122(1)(ii) respectively of the Act ibid.

2.	274/GST/DL-Appeal-II/2024-25	Sh. Tejvir Malik, Director of M/s. A&T Security Services Pvt. Ltd. (here-in-ajter also referred to as the 'appellant no. 2')	Penalties of Rs. 2,01,20,299/- & Rs. 25000/- imposed under Section 122(1A) & Section 122(3) respectively of the Act ibid.
3.	273/GST/DL Appeal-II/2024-25	Sh. Vivek Kumar, Director of M/s. A&T Security Services Pvt. Ltd. (here-in-after also referred to as the 'appellant no. 3')	Penalties of Rs. 2,01,20,299/- & Rs. 25000/- imposed under Section 122(1A) & Section 122(3) respectively of the Act ibid
4.	275/GST/DL-Appeal-II/2024-25	Sh. Rajesh Kumar Sharma, Director of M/s. A&T Security Services Pvt. Ltd. (here-in-afier also referred to as the 'appellant no. 4")	Penalties of Rs. 2,01,20,299/- & Rs. 25000/- imposed under Section 122(1A) & Section 122(3) respectively of the Act ibid.

10. According to Mr. A.K. Babbar, ld. Counsel for the Petitioner, in the parallel proceedings relating to cancellation of the GST Registration, the Petitioner has already deposited more than Rs. 2.01 crores prior to the show cause notice dated 31st July, 2024 being issued. This aspect has, however, not been taken into consideration in the impugned order dated 16th May, 2025. He thus submits that the order dated 16th May, 2025 deserves to be set aside *qua* the Petitioner.

11. Mr. Akshay Amritanshu, ld. Senior Standing Counsel for the Respondent concedes to the fact that the aspect of payment of Rs. 2,01,20,299/- by the Petitioner does not appear to have been considered in the order dated 16th May, 2025.

12. The documents which have been placed on record in respect of the cancellation of GST registration of the Petitioner, clearly show that a substantial amount of payments have been made by the Petitioner. This fact has also been stated in the reply filed by the Petitioner on 2nd September, 2024 to the show cause notice dated 31st July, 2024.

13. In the opinion of this Court, this aspect ought to have been considered by the adjudicating authority, as also the appellate authority which clearly shows that there has been a lapse in the adjudication.

14. Considering the fact that the order dated 16th May, 2025 is an appealable order before the GST Appellate Tribunal and the Court is informed that the GST Appellate Tribunal has now been constituted and appeals are being accepted, the Petitioner shall challenge the order dated 16th May, 2025 before the GST Appellate Tribunal itself.

15. The GST Appellate Tribunal shall duly consider the documents that have also been produced before this Court to show that *prima facie,* approximately Rs. 2,01,20,299/- have already been deposited by the Petitioner prior to issuance of the show cause notice dated 31st July, 2024.

16. Thus, in terms of Section 73 of the Central Goods and Service Tax Act, 2017, the penalty raised against directors of the Petitioner concern may not sustain. Moreover, even the penalty against the Petitioner company would have to be reconsidered in view of the earlier payments which have been made. Needless to act, if the said payments do not relate to the present allegations which have been raised, then the same would also be liable to be considered by the GST Appellate Tribunal.

17. However, in the facts of the present case, considering the substantial amount of money which has already been paid by the Petitioner, the Court is of the opinion that the Petitioner ought to be permitted to avail of the appellate remedy before the GST Appellate Tribunal without any further payment of any amount as pre-deposit.

18. Let the appeal be filed by the Petitioner by 25th December, 2025. If the appeals are filed within the said time period, the same shall be considered on merits and shall not be dismissed on the ground of delay.

19. The present petitions are disposed of in said terms. Pending applications, if any, are also disposed of.

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Prathiba M. Singh & Shail Jain, JJ.)

W.P.(C) No. 15219/2025

Suraj Industries ... Petitioner

Versus

Commissioner of DGST & Anr. ... Respondents

Date of Order: 08.10.2025

WHETHER REGISTRATION CERTIFICATE CAN BE CANCELLED WITH A RETROSPECTIVE DATE – WHEN THERE IS NO SUCH CONTEMPLATION IN THE SCN?

Held: - No.

Present for Petitioner : Ms. Tabnassum Firdause,
Mr. M.A. Ansari,
Mr. P.K. Malik, Mr. Ahmed Ansari &
Md. Imran Ahmed, Advs.

Present for Respondents : Ms. Vaishali Gupta, Adv.

Order

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the impugned order dated 31st August, 2023 passed by the Sales Tax Officer Class II/AVATO, Ward 63, by which the GST Registration of the Petitioner has been cancelled retrospectively *(hereinafter, 'impugned order')*.

3. The brief background is that the Petitioner had filed an application for cancellation of the GST registration on 11th May, 2022. The said application was considered by the GST Department and a clarification was sought in respect of the same on 14th May 2022. According to the GST Department, there was a mismatch between GSTR-1 & GSTR-3 for Financial Year 2018-19.

4. The application dated 11th May, 2022, for cancellation of GST registration, was rejected *vide* order dated 15th June, 2022, passed by Sales Tax Officer Class II/AVATO, Ward-63.

5. On the same date *i.e.,* 15th June, 2022, a Show Cause Notice *(hereinafter, 'SCN')* was issued for cancellation of GST registration, on the ground of non-traceability of the firm and that the contact No. on the GST portal, was not working.

6. The aforesaid position is challenged by the Petitioner. Ld. Counsel for the Petitioner submits that the contact No. is still working.

7. In view of the reasons stated in the SCN, the impugned order was passed on 31st August, 2023 by which the GST registration of the Petitioner was cancelled, retrospectively, w.e.f. 1th July 2017.

8. Parallelly, a demand under Section 73 of the Central Goods and Services Tax Act, 2017 *(hereinafter, 'CGST Act')* was raised against the Petitioner *vide* Order dated 21st April, 2024. The demand raised is as under:

Sr. No.	Tax Rate (%)	Turn-over	Tax period		Act	POS (Place Tax of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	APR 2018	MAR 2019	SGST	NA	28,383.00	26,566.00	3,322.00	0.00	0.00	58,271.00
2	0	0.00	APR 2018	MAR 2019	CGST	NA	28.383.00	26.566.00	3,322.00	0.00	0.00	58.271.00
3	0	0.00	APR 2018	MAR 2019	IGST	Other Territory	28.657.00	26.823.00	3,355.00	0.00	0.00	58,835.00
Total							85,423.00	79,955.00	9,999.00	0.00	0.00	1,75,377.00

9. Ld. Counsel for the Respondent submits that since the demand is outstanding, the GST registration cannot be restored till the same is paid.

10. Heard. Today, this Court has in **W.P.(C) 15326/2025** wherein Order dated 21st April, 2024, was under challenge, has set aside the same and has remanded the matter for fresh consideration.

11. Be that as it may, there was no proposal to cancel the GST registration retrospectively. As per the settled legal position, if a SCN does not contemplate retrospective cancellation of GST Registration, the cancellation cannot be given retrospective effect. This position has been reiterated by this Court in various decisions including in ***'Subhana Fashion v. Commissioner Delhi Goods and Service Tax (W.P. (C) 12255/2024)', 'M/S Balaji Industries v. The Principal Commissioner CGST Delhi North Commissionerate &Anr. (W.P.(C) 11913/2024)'*** and ***'Ridhi Sidhi Enterprises v. Commissioner of Goods & Service Tax (CGST), South Delhi &Anr. (W.P.(C) 8061/2024)'.***

12. Under these facts and circumstances, the following directions are issued:

(i) The SCN does not take the ground of retrospective cancellation and therefore, is not tenable.

(ii) The demand under Section 73 of the CGST Act has been set aside today, by this Court in **W.P.(C) 15326/2025** and the matter has now been remanded back.

(iii) The credentials of the firm are stated to be working which may be verified by the GST Department.

(iv) The impugned order for cancellation is, accordingly, directed to be modified. The cancellation shall be w.e.f. 15th June 2022 *i.e.,* the date of SCN.

13. Ld. Counsel raises a concern that the contact details of the Petitioner for future purpose are not available. The Petitioner has furnished the same, and is set out below:

Name: Dhiraj Kathuria

Address: Rohini Sector-11, Raja Pur Kalan, Delhi-110085.

Mob. No.: 9312623805

14. If the GST Department decides to take any action against the Petitioner in respect of any demand, it may do so in accordance with law.

15. The present petition is disposed of in the aforesaid terms. Pending Applications, if any, are also disposed of.

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Prathiba M. Singh & Shail Jain, JJ.)

W.P.(C) No. 15646/2025

Delhi Sales Corporation ... Petitioner

Versus

The Pr. Commissioner of Central Tax & Ors. ... Respondents

Date of decision: 18.11.2025

WHETHER PENALTY CAN BE IMPOSED U/S 74 FOR NON-PAYMENT OF TAX AND INTEREST – WHEN THE SAME HAS BEEN PAID MUCH BEFORE THE SCN ISSUED?

Held: - No.

Present for Petitioner	:	Mr. M.A. Ansari, Ms. Tabnassum Firdause, Mohd. Saleem, Md. Imran Ahmed & Mr. Ahmed Ansari Advs.
Present for Respondents	:	Mr. Akash Verma & Mr. Sandeep Tyagi, Advs.

Order

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The Petitioner has filed the present writ petition under Article 226 of the Constitution of India, *inter alia*, challenging the Order-in-Original dated 21st January, 2025 *(hereinafter, 'the impugned order')* passed by the Office of the Principal Commissioner of Central GST, Delhi North. The Petitioner further challenges the Form DRC-07 dated 23rd February, 2025 by which a demand has been raised against the Petitioner for a sum of Rs. 1,32,467/-.

3. The stand of the Petitioner is that prior to the issuance of the show cause notice dated 7th June, 2024, *(hereinafter, 'SCN')*, the entire demand was paid by the Petitioner in the month of August, 2022 itself. This is evidenced by a letter dated 31st August, 2022 issued by the Delhi Sales Corporation which is placed at Annexure P-3 in the present petition. Thus, it is the stand of the Petitioner that though the impugned order relates to 1155 buyers/recipients and 79 fake non-existent firms, insofar as the Petitioner is concerned, if the entire amount has been paid, the impugned order would be unsustainable to the extent of the demands raised against the Petitioner.

4. A perusal of the impugned order would show that the said payment made by the Petitioner is also acknowledged in the impugned order itself at page no.12. On the said page, where noticee no. 631 is the Petitioner, under the head *'appropriation'* a sum of Rs.2,07,868/- is duly acknowledged to have been received by the Department.

5. Today, Mr. Verma, ld. Counsel for the Department confirms that the tax amount of Rs. 2,07,868/- has been deposited by the Petitioner. It is his submission that there were a large number of buyers and recipients of 79 fake, non-existent firms and hence a penalty was imposed upon the Petitioner.

6. Ld. Counsel for the Petitioner submits that in this case, the summary of the SCN *i.e.* FORM GST DRC-01 was issued on 27th September, 2024. However, the amount was deposited by the Petitioner in August, 2022 itself. Reliance is also placed by the Petitioner upon Section 74(8) of the Central Goods and Service Tax Act, 2017.

7. Ld. Counsel for the Petitioner also submits that in terms of Section 74(5) of the Central Goods and Service Tax Act, 2017 *(hereinafter, 'the Act'),* even prior to issuance of SCN, a person chargeable with tax can pay the same. Hence, it is the case of the Petitioner that no further penalty can be imposed on them.

8. Heard. A perusal of Section 74 of the Act would show that there is a

fundamental difference in the wording of Section 74(5) and Section 74(8) of the Act. The said provisions contemplate issuance of initially a notice under Section 74(1) of the Act, as to why the taxable amount along with interest ought not to be recovered. Upon such notice being issued along with a statement-cum- demand under Section 74(3) of the Act, the person chargeable with tax has the option to pay the tax along with 15% of the penalty on his own. If the same is done, then no further notice would be served upon such a person.

9. On the other hand, if the amount is not paid and a show cause notice is actually served and thereafter, within 30 days, the tax along with interest and penalty equivalent to 25% is paid, then the proceedings emanating from the show cause notice are deemed to be concluded. The relevant provisions of the Act are extracted hereinbelow:

> 74. Determination of tax pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful- misstatement or suppression of facts.—
>
> *(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 utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax,* ***he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, 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 equivalent to the tax specified in the notice.***
>
> *xxxx*
>
> *(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax. xxxx*
>
> (5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest

payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub- section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded."

10. In the present case, summons were issued to the Petitioner on 6th July, 2022. In response to the summons issued on 6th July, 2022, the Petitioner paid the tax amount along with interest in terms of a letter dated 31st August, 2022 under Section 73(5) of the Act.

11. Subsequently, the demand-cum-SCN was issued under Section 74(1) of the Act on 7th June, 2024. In terms of the provisions, even if the entire amount and penalty is taken into consideration, the penalty only comes to Rs.19,000/-. Under such circumstances, relegating the Petitioner to the appellate remedy would unnecessarily delay the matter.

12. Accordingly, if the Petitioner deposits 15% of the penalty amount, the SCN would be deemed to be closed in terms of Section 74(5) of the CGST Act.

13. The Petitioner is willing to deposit the same. Let the Petitioner deposit 15% of the penalty amount within a period of four weeks, subject to which, the impugned order, only *qua* the Petitioner shall be quashed. It is made clear that this order would not apply to any of the other noticees.

14. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Prathiba M. Singh & Shail Jain, JJ.)

W.P.(C) No. 6571/2025

Commissioner of DGST Delhi ... Petitioner

Versus

Truth Fashion ... Respondent

Date of decision: 16.05.2025

WHETHER THE ACTION OF THE DEPARTMENT IS JUSTIFIED IN NOT ALLOWING THE REFUND TO THE DEALER - WHEN DEALER HAVING GONE IN ROUNDS OF WRIT PETITIONS?

Held: - No. – High Court directs to deposit the entire amount of refund with the Court, same shall be kept in an FDR.

Present for Petitioner : Ms. Urvi Mohan and Mr. Naman Jain, Advs.

Present for Respondent : Appearance not given

ORDER

1. This hearing has been done through hybrid mode.

CM APPL. 29785/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 6571/2025 & CM APPL. 29784/2025 (for interim relief)

3. The present petition has been filed by the Petitioner– Commissioner of DGST, Delhi *(hereinafter, 'the Department')*, assailing the order dated 10th May, 2024 *(hereinafter, 'the impugned order'),* passed by the appellate authority u/s 107 of the Central Goods and Service Tax Act, 2017 *(hereinafter, 'the CGST Act')* with respect to the appeal filed by the Respondent herein.

4. *Vide* the impugned order dated 10th May, 2024, the appellate authority has set aside the order of the adjudicating authority dated 5th February, 2024.

5. The brief background of this case is that through an application dated 8th October, 2023, the Respondent had applied for a refund of Input

Tax Credit *(hereinafter, 'ITC')* for a sum of Rs.18,33,000/- in form RFD-01 and the same was acknowledged by the Department. However, notice was issued on 8th January, 2024 under RFD-08, by the Department under Rule 92(3) of the CGST Rules, 2017, thereby seeking clarifications/ information with respect to the Respondent's application.

6. Thereafter, a reply was filed by the Respondent dated 21st January, 2024, however, the refund sought by the Respondent was rejected on 5th February, 2024.

7. Subsequently, the order dated 5th February, 2024, was appealed against by the Respondent/ Assessee under Section 107 of the CGST Act, 2017, and in the said appeal the impugned order dated 10th May, 2024 has been passed, setting aside the order of rejection of refund dated 5th February, 2024.

8. In effect, the refund sought by the Respondent has been allowed *vide* the impugned order, however, the refund was not being processed and granted to the Respondent.

9. The Respondent then filed a petition being ***W.P.(C) 15886/2024*** titled ***Truth Fashion Through Proprietorship Sadia v. Commissioner of Delhi Goods and Service Tax, DGST.*** In the said writ petition, the Coordinate Bench of this Court had held that the Department has to effect the refund forthwith together with the statutory interest. The operative portion of the order dated 18th November, 2024, reads as under:

> "1. The solitary grievance of the writ petitioner is a failure on the part of the respondents to process the refund application of the petitioner submitted in consequence to the order dated 10 May 2024 passed by the Objection Hearing Authority, the Additional Commissioner.
>
> 2. Mr. Aggarwal, learned counsel who appears on behalf of the respondent, states that subject to due verification of all facts and contentions on merits being kept open, the respondent shall ensure that the claim for refund is disposed of with expedition and preferably within a period of three weeks from today. The statement so made is recorded and accepted.
>
> 3. The aforesaid direction shall be subject to any orders that maybe obtained by the respondents on any statutory appeal that they may choose to prefer and orders that may be passed thereon."

10. Thereafter, upon the failure of the Department to adhere to the above stated order dated 18th November, 2024, passed by the Division Bench of this Court, the Respondent filed another petition being ***W.P. (C) 486 of 2025*** titled ***Truth Fashion Through Proprietorship Sadia v. Commissioner of Delhi Goods and Service Tax, DGST & Ors.*** before this Court seeking refund in respect of the impugned order dated 10th May, 2024 passed by the appellate authority as also the order dated 18th November, 2024.

11. In the said matter, this Court passed an order dated 10th February, 2025, directing the Department to effect the refund to the Respondent along with statutory interest.

12. Ld. Counsel for the Respondent has informed the Court that upon non adherence of the order dated 10th February, 2025 passed in ***W.P. (C) 486 of 2025,*** the Respondent initiated contempt proceedings against the Department vide ***CONT. CAS(C) 484/2025*** titled ***Truth Fashion v. S.K. Singh, Special Commissioner & Anr.*** whereby the following order dated 1st April, 2025 has been passed:

1. This petition has been filed alleging wilful disobedience of order dated 10th February 2025, passed in W.P(C) 486/2025, wherein directions were passed by the Court for refund of amounts along with the statutory interest. The relevant directions are contained in paragraph 8 of the said order, which is extracted as under:

> *8. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and hereby command the respondents to affect the refund to the writ petitioner forthwith together with statutory interest, as payable.*

2. Issue Notice.

3. Notice is accepted by counsel for respondents.

4. List on 15th May 2025 for 'compliance'.

5. It is expected that prior to the next date, compliance of the orders shall be made, failing which a responsible officer of the GST Authorities shall be present in Court or through VC.

6. Order be uploaded on the website of this Court.

However, the Department, unfortunately, did not process the refund of the Respondent despite the specific orders of this Court and has now chosen to challenge the impugned order passed by the appellate authority by way of the present writ petition.

Ld. counsel for the Petitioner/Department submits that the Department could not approach the Appellate Tribunal as the same is not yet constituted. Reliance is further placed upon an order of the Supreme Court in ***SLP (C) No. 29276/2024*** titled ***Team Computers Pvt. Ltd. v. Union of India & Ors.*** He further submits that the Department has no option now but to file the present writ petition to challenge the impugned order.

The Court has heard ld. counsels for the parties. A perusal of the order dated 13th December, 2024 passed by the Supreme Court in ***Team Computers (supra)*** shows that the Supreme Court has stayed the judgment of the High Court of Delhi in ***Team Computers (supra)*** wherein the Department's prayer to challenge an order passed by the appellate authority in a writ petition has been dismissed. The observations of the Supreme Court in ***SLP (C) No. 29276/2024*** are as under:

> "1. Application seeking exemption from filing certified copy of the impugned order is allowed.
>
> 2. We have heard Mr. Kavin Gulati, the learned Senior counsel appearing for the petitioner and Mr. Rupesh Kumar, the learned Senior counsel appearing for the respondents.
>
> 3. It appears that the High Court declined to entertain the Writ Petition filed by the petitioner- herein on the ground that the petitioner has an efficacious remedy of an appeal under Section 112 of the Central Goods and Services Act, 2017 before the Goods and Services Tax Appellate Tribunal.
>
> 4. However, the fact is that the Goods and Services Tax Appellate Tribunal has not been made functional till this date.
>
> 5. When this matter was being heard, Mr. Rupesh Kumar, the learned Senior counsel appearing for the department assisted us by submitting that it is true that the Goods and Services Tax Appellate Tribunal is not functional but if the assessee wants to file an appeal, he can file it with a pre-deposit of 10% of the tax liability demanded by the authority.

6. We would like to first know at the earliest why the Goods and Services Tax Appellate Tribunal has not been made functional till this date.

7. We want a report in the aforesaid regard by the next date of hearing.

8. Issue notice, returnable in three weeks.

9. Mr. Rupesh Kumar, the learned Senior counsel waives service of notice for and on behalf of the respondents.

10. It appears that a writ petition had to be filed before the High Court as the Department wants to claim back the amount which was already refunded to the assessee.

11. In such circumstances, the order passed by the Department asking the assessee to pay back the already refunded amount shall remain stayed from its operation."

16. As stated in the abovementioned order, judicial notice has been taken upon the fact that the GST Appellate Tribunal is yet to be constituted. Thus, while the assessees have been given a remedy vide Circular No. 224/18/24 dated 11th July, 2024, whereby the assessee can make a pre-deposit and the limitation would not run, the Department has been provided with no such option in the said circular.

17. In the opinion of this Court, the Department is, therefore, entitled to maintain a challenge to the appellate order dated 10th May, 2024.

18. Accordingly, issue notice.

19. However, this Court also takes notice of the fact that the Department has chosen to challenge the impugned order only now, after the institution of multiple proceedings by the Respondent, seeking implementation of the impugned order.

20. Under these circumstances, instead of processing the refund and granting the same in favour of the Respondent, since the appellate authority's order is under challenge before this Court, the Department shall deposit the entire amount of refund with the Registrar General of this Court by 15th July, 2025. Upon the said amount being deposited, the same shall be kept in a fixed deposit on an auto renewal mode.

21. Let a counter affidavit be filed within four weeks. Rejoinder, thereto, if any, be filed within four weeks thereafter.

22. List before the Joint Registrar on 18th July, 2025 for ensuring that the amount is deposited in the fixed deposit

23. List before Court on 25th August, 2025.

IN THE HIGH COURT OF CALCUTTA AT JALPAIGURI

[Aniruddha Roy, J.]

WPA 1737 of 2025

Dinesh Biswas ... Petitioner

Vs.

The State of West Bengal & Ors. ... Respondent

Date of Order: 02.09.2025

WHETHER CANCELLATION OF GST REGISTRATION – DUE TO NON-FILING OF RETURNS CAN BE SUSTAINED – WHEN THE STATUTORY PERIOD FOR FILING APPEAL HAS EXPIRED?

HELD: YES, such procedural non-compliances are curable and cancellation should not defeat substantive justice. Even where the statutory appeal period has expired, the High Court may exercise writ jurisdiction under Article 226 to prevent undue hardship and loss of livelihood. Restoration of registration, subject to filing of pending returns and payment of tax, interest, penalty and fine, serves the interest of both revenue and assessee.

Present for Petitioner	:	Mr. Bikramaditya Ghosh, Mr. Rajiv Parik, Ms. Supriya Singh, Mr. Ved Rai, Mr. Mayank Bhandari, Mr. Vivek Saha
Present for Respondent	:	Mr. Pretom Das, Mr. Rima Sarkar

Order

Aniruddha Roy,J. :

Affidavit of service filed in Court today, is taken on record.

Facts:

1. Through this writ petition, the petitioner has challenged the impugned cancellation of GST registration dated **March 26, 2025, annexure p-3 at page 17** to the writ petition. The observation of the GST authority form the said impugned order is quoted below:-

> "This has reference to show cause notice issued dated 05/07/2023.
>
> Whereas no reply to the show cause notice has been submitted, and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reasons(s):
>
> 1. Others Remarks :
>
> Section 29(2)(c)- Person, other than paying tax u/s 10, failed to furnish returns for prescribed periods. The effective date of cancellation of your registration is 01/12/2022.
>
> 2. Kindly refer to the supportive document(s) attached for case specific details. - Not Applicable
>
> 3. It may be noted that a registered person furnishing return under sub-section (1) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.
>
> 4. Your are required to furnish all your pending returns.
>
> 5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation."

2. From the observations made in the impugned order, it appears that initially there was a show cause notice issued upon the petitioner and no reply was submitted by the petitioner in response to the said show cause notice. The observations further show that there were certain procedural irregularities on the part of the petitioner for which the GST registration was cancelled.

3. Mr. Bikramaditya Ghosh, learned counsel appearing for the petitioner, in his usual fairness submits that there is an appellate provision under **Section 107 of the Central Goods and Services Tax Act, 2017 (for short, the said 2017 Act.)**. No appeal has been preferred.

4. With the passage of time, the statutory period of preferring the appeal stands expired including the grace period as provided under the statute.

5. Mr. Ghosh further submits that unless the said GST registration is restored, the petitioner will not be able to carry his business and as a result shall suffer immense prejudice and shall be deprived of his livelihood. He further submits that the petitioner is agreeable to comply with all the procedural requirements which are necessary for restoration of the GST registration.

6. Mr. Ghosh further submits that in the event the GST registration is restored after making necessary statutory payments and if thereafter the petitioner is allowed to carry out the business, it would generate further revenue out of which the petitioner will also be able to pay the revenue authority the necessary levies in due process of law and ultimately the revenue authority shall be benefitted and the State will earn the exchequers. By keeping this GST registration cancelled, the revenue will not earn any benefit.

7. In support of the above contention, learned counsel for the petitioner has referred the following decisions:-

(i) The decision of the **Hon'ble Division Bench dated April 9, 2024**, ***In the matter of: Subhankar Golder –vs Assistant Commissioner of State Tax. Serampore Charge & Ors. rendered in MAT 639 of 2024*** and

(ii) a decision of the Co-ordinate Bench dated **July 29, 2025**, ***In the matter of : Marjina Khatun C/o. Anarun Islam Sarkar – vs- Union of India & Ors. rendered in WPA 1542 of 2025.***

8. In the light of the above, Mr. Ghosh prays for quashing of the said impugned dated **March 26, 2025 at page 17** to the writ petition and further prays for restoration of the GST registration in favour of the petitioner.

9. Learned State counsel, Mr. Pretom Das with Ms. Rima Sarkar, learned advocate submit that an alternative remedy is available under the statute and the petitioner should have approached the appellate forum.

Decision:

10. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the time to file statutory appeal including the grace period as provided under the statute stands expired. The impugned order cancelling of registration of the petitioner shows that there were some procedural non-compliance on the part of the petitioner leading to cancellation of the registration. These procedural non-compliance are curable. The law is well settled that substantive justice and right shall not suffer for procedural non-compliance of some formalities.

11. The Hon'ble Division Bench, ***In the matter of : Subhankar Golder (supra)*** had observed as under:-

> "3. After elaborately hearing learned counsel for the respective parties, we are of the view that the appellant can be provided with one more opportunity to remedy the bridge as the appellant being an individual since a small retailer of imitation jewellery, we deem it appropriate that the appellant should be permitted to remedy the bridge.
>
> 4. Accordingly, the appeal, the connected application and the writ petition all are allowed and the order of cancellation of registration is set aside subject to the condition that the appellant files returns for the entire period of default, pays requisite amount of tax and interest and fine and penalty. If the appellant complies with the directions passed within a period of three weeks from the date of receipt of the server copy of this order, the appellant's registration under the Act shall be restored by the Jurisdictional Officer. However, if the appellant fails to comply with the directions, the benefit of this order would not enure to the appellant and the writ petition would stand automatically dismissed."

12. The Co-ordinate Bench, ***In the matter of: Marjina Khatun C/o. Anarul Islam Sarkar (supra)*** had observed as under:

> "5) This Court is required to take into consideration the nature of order passed by the adjudicating authority dated 31st July, 2024 leading to cancellation of GST registration of the petitioner which in effect will not prejudice revenue earning of the respondent authorities in the event registration certificate is revived.

*6) Placing reliance on **Subhankar Golder** (supra) and **Tvl. Suguna Cutpiece Centre** (supra), Court finds that the petitioner can be given one more opportunity to take steps for filing return within the specified time. Considering the above, this Court is also of the considered opinion that the cancellation of the GST registration of the petitioner on the procedural ground would not enure in the benefit either to the revenue authority, the petitioner. On the contrary. If the GST certificate stands restored and the petitioner is allowed to carry on its business the State can earn revenue and to the till of the order exchequer"*

13. Considering the above, this Court is of the considered opinion that, the cancellation of GST registration of the petitioner on the procedural ground would not enure any benefit either to the revenue authority or to the petitioner. On the contrary, if the GST certificate stands restored and the petitioner is allowed to carry on its business, the State can earn revenue to the till of the public exchequer.

14. Existence of alternative remedy is not an absolute bar to entertain a writ petition by this Constitutional Court in exercise of its jurisdiction under Article 226 of the Constitution of India but is a self-imposed restraint. Alternative remedy does not make a writ petition to be not maintainable but the same may not be entertained by a writ court depending upon the facts and circumstances of the case. Each case differs from other on facts. There is no fixed and straight jacket formula and the same depends on the facts of each case. While exercising power under Article 226 of the Constitution of India, this Constitutional Court also exercises its equitable jurisdiction.

15. In the facts and circumstances of the instant case, the statutory period for preferring an appeal from the impugned order, including the grace period as provided under the statute has expired. Due to the cancellation of the GST registration, the entire business of the petitioner has been stopped. The impugned order shows that due to non-compliance of some procedural requirements, the registration was cancelled. Considering the facts and circumstances in this case, this writ petition is entertained.

16. In view of the foregoing reasons and discussions, **the impugned order of cancellation of registration dated March 26, 2025 annexure p-3 at page 17** stands set aside and quashed.

17. The petitioner shall file return for the entire period of default and pay the requisite amount of tax, interest, fine and penalty within a period **4 weeks** from date strictly in accordance with law.

18. In the event return is filed along with necessary payment as directed above, the GST registration of the petitioner shall forthwith be **restored** with all its consequential effect in accordance with law.

19. In the event, the petitioner defaults in submitting the return and to make the necessary payment within the time mentioned above, the benefit of this order shall not be extended to the petitioner after expiry of the said period and the writ petition would be treated and would stand automatically dismissed without any reference to this Court.

20. In order to grant opportunity to the petitioner, to take steps in terms of the direction made herein, the concerned GST authorities are directed to open the portal for the petitioner to enable the petitioner to file the return for the entire period of default along with all tax, interest, fine and penalty in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

21. With the above observations and directions this writ petition, ***WPA 1737 of 2025*** stands ***disposed of*** without any order as to costs.

22. The parties shall act on the server copy of this order duly downloaded from the official website of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
[Krishnan Ramasamy, J.]

W.P.No.18560 of 2023
W.M.P.Nos.17792 & 17795 of 2023

Vajra Global Consulting Service LLP ... Petitioner

Vs.

Assistant Director of Income Tax,
CPC Bengaluru ... Respondent

Date of Order: 30.07.2025

WHETHER RENDERING ACTIVITIES OF DIGITAL MARKETING CONSTITUTES BUSINESS OR PROFESSION?

HELD: Digital Marketing is the business for persons who carry out the said activities. In the event anybody carrying on the business of Digital Marketing with cash transactions both on the aspect of receipts and payments in cash below 5% of the turnover, which is below Rs.5 Crores as per the proviso to Section 44 AB (a), the said assessee is not required to file an audit report and they are exempted.

Present for Petitioner : Mrs. Hema Muralikrishnan

Present for Respondent : Mrs. S. Premalatha, Sr. Standing Counsel

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in DIN: CPC/2122/G5d/619819520301221 and quash the impugned order dated 25.12.2022 passed therein for the Assessment year 2021-22 and further direct the respondent to process the Return of Income filed by the petitioner for the AY. 2021-22 vide acknowledgement number 619819520301221 and refund the tax due to the petitioner herein.

Order

This Writ Petition has been filed by the petitioner to quash the impugned order dated 25.12.2022 passed by the respondent.

2. The learned counsel for the petitioner would submit that in the present case the issue pertaining to the financial year 2020-2021 and the assessment year pertains to 2021-2022. She would further submit that the petitioner has been carrying on the business of Digital Marketing and the turnover of the petitioner is below Rs.5 Crores and therefore, they are not liable to file an audit report in terms of the 1st proviso to Section 44 AB (a) of the Income Tax Act, 1961.

3. By referring to the above proviso, it is submitted by the learned counsel for the petitioner that in the present case the petitioner is carrying on the business of Digital Marketing with a turnover of below Rs.5 Crores and they have not received or spent any amount in cash beyond the

limit of 5%, in which case the audit report is not required to be filed for the turnover upto Rs.5 Crores and therefore, they have not filed audit report.

4. In these circumstances, the petitioner filed return of income on 30.12.2021 and they have received an intimation notice from the respondent dated 24.08.2022 and on the same day, the petitioner filed reply stating that the cash receipts and payments were less than 5% of the turnover and also the turnover is below Rs.5 Crores and therefore, they have not furnished the audit report. However, without considering the said claim, the respondent passed the present impugned assessment order. Hence, the present Writ Petition.

5. Per contra, the learned Senior Standing Counsel for the respondent filed counter affidavit stating that in the present case the petitioner is not carrying on the business of Digital Marketing but carrying on the profession. Since they carry out all the work through the computers, it falls under the category of profession. Therefore, in the event of profession, the limit of Rs.5 Crores will not be applicable and hence, they have passed the present impugned order.

6. However, in reply, the learned counsel for the petitioner would submit that in the present case the question of carrying on the business of Digital Marketing would not fall under the category of profession and therefore, under the wrong impression, the respondent proceeded to pass the present impugned order as if the petitioner did not carry on the business but carried on the profession.

7. In reply, the Senior Standing Counsel for the respondent would submit that in such case, this Court is inclined to set aside the impugned order and remand the matter back to the Authority for fresh consideration. Hence, she prayed for appropriate directions.

8. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, in the present case the issue pertains to the assessment year 2021-2022 and there is no dispute on the aspect that the petitioner is carrying on the business of Digital Marketing. According to the respondent, the petitioner carries on the business of Digital Marketing through computers and therefore, it comes under the category of profession. However, Digital Marketing cannot be treated as profession, but it should be treated as business. Merely because it carried on the business through computers, it cannot be treated as profession.

9. Digital Marketing is the business for persons who carry out the said activities. In the event anybody carrying on the business of Digital Marketing with cash transactions both on the aspect of receipts and payments in cash below 5% of the turnover, which is below Rs.5 Crores as per the proviso to Section 44 AB (a), the said assessee is not required to file an audit report and they are exempted. In the present case, the petitioner turnover is below Rs.5 Crores and the cash transaction is below 5% on both aspects of expenses and receipts and everything was carried on through bank transactions. In this regard, evidence has also been produced and the said aspects had not been considered by the respondtent. Therefore, in non- application of mind, the respondent arrived at a conclusion that the present transaction is in the nature of profession, not in the nature of business and passed the impugned order.

10. In such view of the matter, this Court is inclined to set aside the impugned order dated 25.12.2022 passed by the respondent. Accordingly, this Court passes the following order:-

i) The impugned order passed by the respondent dated 25.12.2022 is set aside.

ii) Consequently, the matter is remanded to the respondent for fresh consideration.

iii) The petitioner is directed to file a reply along with supportive documents within a period of two weeks from the date of receipt of copy of this order.

iv) Thereupon, the respondent is directed to consider the reply and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

11. With the above observations & directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

IN THE SUPREME COURT OF INDIA
(Vikram Nath & Prasanna B. Varale, JJ)

Criminal Appeal No. 1314 of 2025

Pradeep Nirankarnath Sharma ... Appellant(s)

Versus

Directorate of Enforcement & Anr. ... Respondent(s)

Date of Judgment: 17.03.2025

WHETHER THE FINANCIAL TRANSACTIONS RELATED TO PROCEEDINGS OF CRIME WHERE COVERED UNDER PMLA AS THE SAME WAS NOT IN FORCE DURING THE RELEVANT TIME PERIOD.

Held: - It is well established that offences, under PMLA are of a continuing nature, and the act of money laundering does not conclude with a single instance but extends so long as proceeds …. untainted, property. Thus not discharging the appellant at the nascent stage of charge framing.

Present for Appellant(s) : Kapil Sibal, Sr. Adv., Aljo K. Joseph, Vinay Kumar Puvvala, Santosh Kumar Kolkonda, Saket Jee

Present for Respondent(s) : Tushar Mehta, Solicitor General, Zoheb Hussain, Annam Venkatesh, Kanu Agrawal, Vivek Gurnani, Arvind Kumar Sharma, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Neha Singh.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The present appeal has been filed against an order dated 14.03.2023 passed by the High Court of Gujarat dismissing the appellant's criminal revision application and refusing to the quash the order of the Trial Court rejecting the appellant's discharge application in a case for offences under the Prevention of Money Laundering Act, 2002.[1]

1 PMLA

3. The appellant had approached the High Court through a Criminal Revision Application No. 66 of 2018, challenging the order dated 08.01.2018 passed by the Special Judge (PMLA), Ahmedabad, in PMLA Case No. 02 of 2016. The Special Judge had rejected the discharge application filed by the appellant under Section 227 of the Code of Criminal Procedure, 1973[2] seeking discharge from the case registered under the PMLA. The appellant had been implicated based on allegations of money laundering arising out of scheduled offences under the PMLA.

4. The case against the appellant arose from an alleged economic offence wherein the respondent no. 1 – Enforcement Directorate[3] initiated proceedings against him under the PMLA. The primary allegation was that the appellant was involved in financial transactions related to proceeds of crime, generated through fraudulent activities causing significant financial losses to the State of Gujarat. The prosecution alleged that the appellant had actively facilitated the process of money laundering by utilizing banking channels and other financial instruments to conceal the illicit origins of funds.

5. Appellant was arrested on 31.07.2016 in connection with inquiry in furtherance of ECIR/01/AZO/2012 registered by respondent no.1. This Enforcement Case Information Report[4] dated 12.03.2012 came to be registered in furtherance of FIR No. 03/2010 dated 31.03.2010 and FIR No. 09/2010 dated 25.09.2010. Upon completion of the investigation, respondent no.1 filed a complaint before the Special Judge on 27.09.2016 for offences under Section 3 and 4 of the PMLA. In the present case there were two scheduled offences as per the two FIRs:

   i. I-CR No. 03/2010 registered with Rajkot Zone, CID Crime for offences under Sections 7, 11, 13(1)(B), 13(2) of the Prevention of Corruption Act, 1988;[5] and

   ii. I-CR No. 09/2010 registered with Rajkot Zone, CID Crime for offences under Sections 217, 409, 465, 467, 468, 471, 476, 120-B, IPC.

6. In both these cases, the charge sheet has been filed before the

2 CrPC

3 ED

4 ECIR

5 PC Act

concerned Court. Appellant is on anticipatory bail in the first scheduled offence, in furtherance of High Court's order dated 03.02.2012. In the second scheduled offence, the appellant has been on regular bail in furtherance of this Court's order dated 13.12.2011.

7. Appellant approached the Special Judge under Section 227 of CrPC seeking discharge in the PMLA case on the grounds that he has been falsely implicated in the case and also no offence under the PMLA is made out. Further, the appellant was arrested on 06.01.2010 and thereafter suspended on 08.01.2010, during which period he had attained the age of superannuation and therefore now there is no question of him being in service. He further contended that the offences are alleged to have been committed when the PMLA was not in force and thus these provisions cannot be invoked retrospectively. It was his case the transaction alleged against him were of the company in which his wife is a partner and thus these cannot be attributed to him. Further, the transactions made to the accounts held by him the bank in United States of America cannot be deemed to be in furtherance of any offence, as he had opened those accounts during his studies there and they were used for transactions in that period.

8. The Special Judge (PMLA) in its judgment dated 08.01.2018 observed that from the material on record and on the basis of the investigation by respondent no.1, it *prima facie* appears that the appellant is involved in Hawala, that is, illegal transfer of money to foreign countries, he also appears to be in possession of proceeds of crime, and *prima facie* appears to be involved in offences likely to affect the economy of the country. It was further held that it appears from the material on record that the appellant is *prima facie* involved in Hawala transaction of crores of rupees as well. Further, in the Trial Court's opinion, the appellant had miserably failed to discharge the burden of proof under Section 24 of the PMLA which had shifted upon him to show that proceeds of crime are untainted property. Such *prima facie* material sufficient to infer the appellant's involvement in such a serious case did not warrant interference in the opinion of the Special Judge (PMLA) and therefore the Trial Court refused to discharge the appellant, thereby rejecting his application under Section 227 of the CrPC.

9. Aggrieved, the appellant approached the High Court seeking to quash and set aside the above judgment of the Special Judge. The appellant contended before the High Court that the allegations against him were baseless and did not constitute an offence under

the PMLA. He argued that the scheduled offences alleged against him predated the introduction of money laundering provisions in the PMLA, and therefore, the application of the PMLA sought in the present case was retrospective and thus impermissible in law. There was no direct evidence linking him to the generation, possession, concealment, or transfer of proceeds of crime.

10. It was further argued that the prosecution had failed to establish a *prima facie* case against him, as the allegations were based purely on assumptions and conjectures. The Special Judge erred in rejecting his discharge application without properly considering the absence of cogent material against him. The enforcement proceedings were initiated in a mala fide manner with the sole intent of harassing him, despite the lack of substantive evidence.

11. The State and the Enforcement Directorate vehemently opposed the petition and argued that the appellant was a key player in the entire money laundering scheme and had facilitated the layering and placement of funds through multiple transactions to project them as untainted.

12. It was also contended that the investigation had revealed substantial material to suggest that the appellant had knowingly assisted in the money laundering activities and had derived financial benefits from the proceeds of crime.

13. It was further submitted that the appellant's argument regarding the retrospective application of the PMLA was misplaced since the offence of money laundering is a continuing offence, and as long as the tainted money remains in circulation, PMLA is applicable. The Special Court had examined the materials on record and found sufficient grounds to proceed against the appellant, thereby justifying the rejection of his discharge application. They also argued that the High Court, in the exercise of its revisional jurisdiction, ought not to interfere with well-reasoned orders passed by the Trial Court unless there was a manifest error or miscarriage of justice, which was not the case here.

14. The High Court *vide* the impugned order dated 14.03.2024 dismissed the Criminal Revision Application, thereby upholding the Special Judge's order rejecting the appellant's discharge application. The High Court observed that the material placed on record by the Enforcement Directorate indicated *prima facie* involvement of the

appellant in the alleged offence. The High Court held that, in light of the charge sheet and the documents to be considered at the stage of charge framing, without going into the evidence produced by the accused, the order of the Trial Court does not suffer from any illegality, irregularity or impropriety.

15. The High Court found no procedural irregularity or legal infirmity in the Special Judge's order warranting interference under its revisional jurisdiction. It also emphasized that economic offences of this nature require a strict approach, and courts must be cautious while exercising their discretionary powers to quash proceedings at an early stage. In light of these findings, the High Court concluded that the rejection of the appellant's discharge application was justified and did not warrant interference. The revision application was accordingly dismissed.

16. The appellant, aggrieved by the High Court's decision, has now approached this Court in appeal, seeking to challenge the correctness of the judgment.

17. We have heard Mr. Kapil Sibal, learned senior counsel for the appellant and Mr. Tushar Mehta, learned Solicitor General appearing for the respondents at length.

18. Learned senior counsel for the appellant has made the following submissions:

    18.1 The alleged predicate offences, which supposedly generated proceeds of crime, took place before the PMLA came into force. Additionally, these offences predate the PMLA (Amendment) Act, 2009. As a result, such actions could not have generated proceeds of crime as defined in Section 2(1)(u) of the PMLA, which stipulates that a property can only be categorized as proceeds of crime if it is derived from criminal activity related to a scheduled offence. The substantiate this argument, the appellant has submitted a detailed summary of the enforcement of the PMLA and the various amendments. The PMLA came into effect on 1st July 2005, and various predicate offences were incorporated into its schedule on different dates. Initially, Section 420 of the Indian Penal Code (IPC) and the Prevention of Corruption Act, 1988 were not included as scheduled offences under the PMLA. Section 467 IPC was originally part of the PMLA schedule (Part B), but only if the total value involved in such offences was thirty lakh rupees or more. Later, Section 420 IPC was added to Part B

of the PMLA schedule on 1st June 2009, with a similar monetary threshold. Similarly, Section 13 of the Prevention of Corruption Act was included in Part B of the PMLA schedule from 1st June 2009, again applicable only when the offence involved more than thirty lakh rupees. Subsequently, with the PMLA (Amendment) Act, 2012, effective from 4th January 2013, Sections 420 IPC, 467 IPC, and 13 of the Prevention of Corruption Act were moved to Part A of the PMLA schedule, removing any monetary threshold.

18.2 It has been further submitted that the Enforcement Directorate (ED) has relied on the judgment in **Vijay Madanlal Chaudhary and others v. Union of India and others**,[6] to argue that the issue of PMLA's retrospective application is settled. However, it has been contended, the only paragraphs dealing with retrospectivity in this judgment are Paragraphs 270 and 296, despite extensive submissions made on this issue. The judgment merely holds that "in a given fact situation," the offence of money laundering under Section 3 of the PMLA may be considered a continuing offence, irrespective of when the scheduled offence was committed. The appellant argued that the conclusions in Paragraph 467 of this judgment do not address the issue of retrospectivity. Currently, a three- judge bench of this Court is deliberating on the retrospective application of the PMLA and its amendments in ED v. M/s Obulapuram Mining Company Pvt. Ltd. (Criminal Appeal No. 1269/2017) and related cases.

18.3 It is further the argument of the appellant that the allegations in the eight predicate offence FIRs primarily concern actions allegedly taken by the accused during his tenure as Collector at Bhuj and Rajkot. It is alleged that he approved large-scale land allotments in 2004 and 2005 to private companies and individuals, exceeding his authorized power, thereby committing offences under Section 420 IPC. Further, it is claimed that he hastily approved the conversion of land use from agricultural to industrial to unduly benefit certain persons, thereby committing offences under Sections 420 and 467 IPC. Additionally, he allegedly facilitated land allotments at below- market rates, causing notional losses to the government in 2004 and 2005, amounting to offences under Sections 420 and 467 IPC. Furthermore, between 2004 and 2009, certain private companies allegedly paid his mobile phone bills totaling approximately ₹2.24

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lakhs and ₹46,554/-, which has been characterized as bribery under the Prevention of Corruption Act, 1988. It is submitted that these alleged actions all took place either before the PMLA came into force or when the offences under Section 420 and 467, IPC were not predicate offences.

18.4 To underscore and highlight the non-application of the PMLA to these allegations, a chronological analysis of the alleged acts and the application of the PMLA at the relevant time was submitted by the appellant.

Period	Allegations in the predicate offence FIRs	Applicable Law
Prior to 01.07.2005	i. That during his tenure as Collector at Bhuj which began from 02.05.2003, while in discharge of his official duties, he was in charge of a land revenue policy of 1997 [Circular dated 25.09.1997] that allowed allotment of fallow lands to private persons. He allotted such lands contrary to the policy and cheated the government, caused loss, committed forgery by allowing false documents to be used for these allotment requests and engaged in corruption. ii. As per Gujarat Govt Order 03.02.2002 for allotment of land to those affected by the earthquake at Bhuj, a certificate was required from the Collector to verify that the victim was in fact impacted by the earthquake. The accused provided a fake certificate to a trust to facilitate their fraudulent application for compensatory land. iii. As per Gujarat Govt' s Revenue Dept Resolution No. Jaman/392003/454/A dated 06.06.2003, the Collector was authorized to allot land upto 2 hectares only for industrial use. iv. When the accused Pradip Sharma was Collector, Bhuj, he allowed allotment of fallow land to M/s Saw Pipes Ltd. for setting up an industrial unit. These applications were submitted on 23.01.2004 and sanctioned on 05.03.2004, after which accused Pradip issued an order on 05.03.2004 for allotment above the cap of 2 hectares.	PMLA not in force.

	v. Accused Pradip received a mobile SIM card no. 9925133799 from Asim Niranjan Chakravorty, Director of M/s Wellspun Company for which a bill of Rs. 2.24 lakhs were paid by the company for the period from 2004-2009 which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act, 1988, as this was in exchange for allotments of land to M/s Wellspun in the year 2004 at an allegedly undervalued rate. vi. These undervalued allotments to M/s Wellspun in 2004 at the rate of Rs. 15/- and not Rs. 30/- per sq metre on 22.07.2004 caused a financial loss of Rs. 1,20,30,824/- to the government. An application dated 01.02.2005 was made by a company M/s Value Packaging in which the wife of the accused Pradip is a partner, for converting land from agricultural to non- agricultural use. Accused Pradip allowed this within 40 days by passing an order on 10.03.2005 which amounted to an offence punishable under Section 217/409/465/467/471/476 and 120-B IPC. vii. Accused Pradip received mobile sim card no. 9824001729 from Ranjit Singh Bhaktasingh Bhat, owner of M/s Ratan Enterprises Company and used it and the bill of Rs. 46,554/- was paid by Mr. Bhat for the period from 2004- 2009 which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act, 1988.	
Between 01.07.2005 and 01.06.2009	i. That during his tenure as Collector at Bhuj between 02.05.2003 and 03.07.2006 and thereafter in Rajkot till 28.03.2008, while in discharge of his official duties, he was in charge of a land revenue policy of 1997 [Circular dated 25.09.1997] that allowed allotment of fallow lands to private persons. He allotted such lands contrary to the policy and cheated the government, caused loss, committed forgery by allowing False documents to be used for these allotment requests and engaged in corruption.	PMLA in force. S. 420 IPC and PC Act not scheduled offences.

	ii. While accused Pradip was Collector, Bhuj, he received an application dated 18.07.2005 from one Chandan Mandali requesting extension of a lease of land from the government to him was initially rejected by the accused. Allotment of 30 units vide applications made in 2005 were awarded instead despite it crossing the threshold of 2 hectares. iii. While accused Pradip was Collector, Rajkot, he passed an order dated 23.05.2007 to reinstate allotment of agricultural land to applicants who were resident abroad, despite their ineligibility. iv. Accused Pradip received a mobile SIM card no. 9925133799 from Asim Niranjan Chakravorty, Director of M/s Wellspun Company for which a bill of Rs. 2.24 lakhs was paid by the company for the period from 2004-2009 which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act, 1988, as this was in exchange for allotments of land to M/s Wellspun in the year 2004 at an allegedly undervalued rate. v. Accused Pradip received mobile sim card no. 9824001729 from Ranjit Singh Bhaktarsingh Bhat, owner of M/S Ratan Enterprises Company and used it and the bill of Rs. 46,554/- was paid by Mr. Bhat for the period from 2004- 2009 which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act, 1988. vi. On retirement from the partnership in April 2009, his wife received Rs 22 lakhs in her NRO Bank account maintained with Bank of India from M/s Value Packaging. Subtracting her original investment of Rs. 1,50,000/-, this amounted to profits of Rs. 20.5 lakhs which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act,1988. vii. Pradip Sharma's wife received Rs. 7.5 lakhs as goodwill payment from M/s Value	

	Packaging which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act, 1988.	
Between 01.06.2009 and 04.01.2013	i. Accused Pradip received a mobile SIM card no. 9925133799 from Asim Niranjan Chakravorty, Director of M/s Wellspun Company for which a bill of Rs. 2.24 lakhs were paid by the company for the period from 2004-2009. This was in exchange for allotments of land to Wellspun in the year 2004 at an allegedly undervalued rate which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act, 1988. ii. Accused Pradip received mobile sim car no. 9824001729 from Ranjit Singh Bhaktasingh Bhat, owner of M/s Ratan Enterprises Company and used it and the bill of Rs. 46,554/- was paid by Mr. Bhat for the period from 2004- 2009 which was allegedly a bribe punishable under Section 7/11/13 of the Prevention of Corruption Act, 1988. iii. Accused Pradip got a SIM card while in custody at Palora Jail as an under trial offence was made out only if the total value involved in such offences is thirty lakh or more.	PMLA was amended by the PMLA (Amendment) Act, 2009 which came into force on 01.06.2009: S. 420/467 IPC and S. 13 PC Act were in the PMLA Schedule (Part B) Which stipulated that the offence was made out only if the total value involved in such offences is R. 30 Lakhs or more.
From 04.01.2013	No allegations	PMLA in force. S.420/467 IPC and S.13 PC Act was in the PMLA schedule (Part A) with no minimum monetary value specified.

18.5 Thus, on the basis of the above allegations, the following submissions were made with regards to the application of the PMLA:

A. Before 1st July 2005, the PMLA was not in force. During his tenure as Collector at Bhuj, beginning on 2nd May 2003, the accused was responsible for implementing a land revenue policy from 1997, which permitted the allotment of fallow lands to private entities. It is alleged that he misused this policy to approve land allotments contrary

to regulations, thereby committing offences of cheating, forgery, and corruption. Under a Gujarat Government Order dated 3rd February 2002, land allotments to earthquake victims required a certificate from the Collector verifying their eligibility. The accused allegedly issued a fraudulent certificate to a trust, facilitating a wrongful land allotment. Further, the Gujarat Government's Revenue Department Resolution dated 6th June 2003 authorized the Collector to allot up to two hectares of land for industrial purposes. However, it is alleged that in 2004, he exceeded this limit by allotting large tracts of land to M/s Saw Pipes Ltd. and M/s Wellspun Company at significantly undervalued rates, causing a financial loss of ₹1,20,30,824/- to the government. Additionally, his wife was a partner in M/s Value Packaging, which applied for land-use conversion in 2005, and he allegedly facilitated the approval within 40 days, constituting offences under multiple IPC sections, including 217, 409, 465, 467, 471, 476, and 120-B.

B. Between 1st July 2005 and 1st June 2009, while the PMLA was in force, Sections 420 IPC and the Prevention of Corruption Act were not scheduled offences, though Section 467 IPC was included in Part B of the schedule, applicable only if the offence involved a value exceeding thirty lakh rupees. During this period, similar allegations continued against the accused, including improper land allotments in Bhuj and Rajkot, approval of ineligible applications for agricultural land, and further instances of alleged bribery. Notably, during this period, his wife received ₹22 lakhs in her NRO bank account from M/s Value Packaging upon her retirement from the partnership in April 2009. After deducting her original investment of ₹1.5 lakhs, the remaining ₹20.5 lakhs was allegedly an illicit benefit under the Prevention of Corruption Act. Additionally, she received ₹7.5 lakhs as a goodwill payment, which was also considered a bribe under the Act.

C. From 1st June 2009 to 4th January 2013, the PMLA (Amendment) Act, 2009 was in effect, which added Sections 420 and 467 IPC and Section 13 of the Prevention of Corruption Act to the PMLA schedule (Part B), again with a monetary threshold of thirty lakh rupees. During this time, the accused allegedly continued to benefit from mobile

phone bills paid by companies in return for past land allotments. Moreover, it is alleged that while in custody at Palora Jail as an undertrial, he obtained a SIM card, though it is unclear whether this constitutes an offence under the PMLA.

D. Finally, from 4th January 2013 onward, the PMLA was amended to include Sections 420 and 467 IPC and Section 13 of the Prevention of Corruption Act in Part A of its schedule, thereby removing any minimum monetary threshold. However, there are no allegations against the accused for actions taken during this period.

18.6 The primary submission made in light of the above timeline is that the allegations primarily pertain to acts committed before the PMLA was in force or during periods when the relevant offences were not scheduled under the Act. It is further the argument that given the legal framework and the pending deliberations before this Court regarding the retrospective application of the PMLA, it is evident that the accused cannot be prosecuted under the PMLA for alleged predicate offences that occurred prior to its enactment or prior to the inclusion of those offences in the PMLA schedule

19. The learned Solicitor General has made the following submission on behalf of the respondent authorities and the State:

19.1 The respondent argues that the appellant's arguments regarding the retrospective application of PMLA are legally untenable, as the offence of money laundering is a continuing offence as has been held by this Court and has been correctly applied based on the facts of the case.

19.2 The respondent emphasizes that at the stage of framing of charges, the court only needs to determine whether there is sufficient material to raise a "grave suspicion" of the commission of an offence. The probative value of evidence is not assessed at this stage, and the case must proceed to trial if a prima facie offence is made out.

19.3 The respondent submits that the predicate offences forming the basis of the money laundering case were scheduled offences under the PMLA at the relevant time. Specifically, the predicate offences under the IPC and the Prevention of Corruption Act,

1988 (PC Act), were already included in the Schedule to PMLA when they were committed. Section 7 of the Prevention of Corruption Act, 1988, was part of Part B, Para 5 of the PMLA Schedule as originally enacted in 2005. Section 467 of the IPC was part of Part B, Para 1 of the PMLA Schedule as enacted in 2005. The total value of the alleged offence exceeded Rs. 30 lakhs, satisfying the monetary threshold under Section 2(1)(y) of PMLA for a Part B offence. The amendments to PMLA in 2009 and 2013 only expanded the scope of money laundering offences but did not introduce retrospective liability in this case.

19.4 The respondent provided a detailed factual timeline to establish that the offence was committed after PMLA came into force. FIR No. 3/2010 was registered on 31.03.2010 under Section 7 of the PC Act, a scheduled offence under PMLA since 01.07.2005. Similarly, FIR No. 9/2010 was registered on 25.09.2010 under Section 467 IPC, a scheduled offence under PMLA since 01.07.2005. Additionally, the sanction order for the illegal land allotment was issued by the appellant on 09.06.2006, establishing the continuation of criminal conduct after PMLA came into force. The charge sheet under the Prevention of Corruption Act and IPC, filed in 2011, confirmed that the total proceeds of crime exceeded Rs. 1.32 crores, justifying the invocation of PMLA.

19.5 The respondent asserted that the amount allegedly laundered by the appellant is far in excess of the Rs. 30 lakhs threshold required for a Part B scheduled offence before the 2013 amendment. The charge sheet records that the total loss to the government was Rs. 1.20 crores, which by itself exceeds the threshold limit. Furthermore, the total proceeds of crime laundered amount to Rs. 1.32 crores, as identified through investigation and attachment proceedings under Section 5 of PMLA. The accused allegedly projected Rs. 22 lakhs received by his wife as profits from a business entity, which was in reality an attempt to disguise illegal gratification. Several hawala transactions linked to the accused involved amounts exceeding Rs. 1 crore, reinforcing the magnitude of the financial crime. These figures demonstrate that the case is well within the purview of PMLA, even under the pre-amendment legal framework.

19.6 The respondent strongly contended that the offence of money laundering is independent and continuing and is not confined to the date when the predicate offence was committed. The ED

relies on this Court's judgment in ***Vijay Madanlal Choudhary (supra)***, which held that the offence of money laundering extends beyond the mere commission of the scheduled offence. Any process or activity connected with the proceeds of crime, including possession, use, concealment, or projection as untainted property, continues to attract liability under PMLA. The relevant date for determining the offence of money laundering is when the accused engages in activities connected to the proceeds of crime, not the date of the scheduled offence. The amendment to Section 3 of PMLA in 2019 was merely clarificatory and did not introduce new liabilities.

19.7 The respondent refuted the appellant's claim that PMLA has been applied retrospectively in this case. It submits that the appellant continued to enjoy and utilize the proceeds of crime well after 2005, making the offence of money laundering applicable under PMLA. The sanction orders for land allotments were passed in 2006, after PMLA came into force, and were based on forged documents, constituting an independent offence. The reverse burden of proof under Section 24 of PMLA places the onus on the appellant to prove that the attached properties were not proceeds of crime, which he has failed to do.

19.8 The respondent submitted that the Special Court and High Court correctly applied the law in framing charges against the appellant. The scheduled offences were part of the PMLA Schedule at the time they were committed, and the offence of money laundering continued well beyond the enactment of PMLA. Additionally, the total amount involved far exceeds the Rs. 30 lakhs threshold required under Part B of the Schedule before its amendment. Therefore, the appellant's argument regarding retrospective application is misconceived and without merit.

20. Having considered the rival submissions, the material on record, and the statutory framework under the PMLA, this Court finds no merit in the appeal.

21. A significant ground raised by the appellant pertains to the nature of the alleged offence under the PMLA. The appellant has contended that the alleged acts do not constitute an offence under the PMLA as the same was not in force during the relevant period, or the predicate offences as alleged were not included in the schedule to the PMLA at the relevant time and, therefore, cannot be subject to proceedings

under the PMLA. It has also been argued that these instances do not constitute continuing offences. This contention, however, is untenable. It is well established that offences under the PMLA are of a continuing nature, and the act of money laundering does not conclude with a single instance but extends so long as the proceeds of crime are concealed, used, or projected as untainted property. The legislative intent behind the PMLA is to combat the menace of money laundering, which by its very nature involves transactions spanning over time.

22. The concept of a continuing offence under PMLA has been well-settled by judicial precedents. An offence is deemed continuing when the illicit act or its consequences persist over time, thereby extending the liability of the offender. Section 3 of the PMLA defines the offence of money laundering to include direct or indirect attempts to indulge in, knowingly assist, or knowingly be a party to, or actually be involved in any process or activity connected with the proceeds of crime. Such involvement, if prolonged, constitutes a continuing offence.

23. Even though the issue of retrospective application of the PMLA is pending adjudication before this Court, the reliance by the respondent on the observation of this Court in ***Vijay Madanlal Chaudhary (Supra)*** cannot be said to be misplaced. This Court, in its judgment in this case made the following observations regarding the offence of money laundering and its nature as a continuing offence:

> "134. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.
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> *135. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a*

result of criminal activity (a scheduled offence). ***It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime.*** *These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the* Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

[Emphasis supplied]

24. In the present case, the material on record establishes that the misuse of power and position by the appellant, coupled with the alleged utilization and concealment of proceeds of crime, has had an enduring impact. The act of laundering money is not a one-time occurrence but rather a process that continues so long as the benefits derived from criminal activity remain in circulation within the financial system or are being actively utilized by the accused. The respondent has submitted that fresh instances of the utilization of the proceeds of crime have surfaced even in recent times, thereby extending the offence into the present and negating the appellant's contention that the act was confined to a particular point in the past.

25. The law recognizes that money laundering is not a static event but an ongoing activity, as long as illicit gains are possessed, projected as legitimate, or reintroduced into the economy. Thus, the argument that the offence is not continuing does not hold good in law or on facts, and therefore, the judgment of the High Court cannot be set aside on this ground. Even if examined in the context of the present case, the appellant's contention does not hold water. The material on record indicates the continued and repeated misuse of power and position by the appellant, resulting in the generation and utilization of proceeds of crime over an extended period. The respondent has successfully demonstrated *prima facie* that the appellant remained involved in financial transactions linked to proceeds of crime beyond the initial point of commission. The utilization of such proceeds, the alleged layering and integration, and the efforts to project such funds as untainted all constitute elements of a continuing offence under the PMLA. Thus, the proceedings initiated against the appellant are well within the legal framework and cannot be assailed on this ground.

26. Another ground urged by the appellant is that the amount involved does not meet the statutory threshold for initiating proceedings under the PMLA as it stood prior to the amendment. The appellant has relied upon the monetary threshold of Rs. 30 lakhs to argue that at the relevant time, the offence did not attract the provisions of the PMLA. This argument is equally devoid of merit.

27. The respondent has placed substantial material on record to demonstrate that the quantum of proceeds of crime significantly exceeds the statutory threshold. The financial trail indicates that the aggregated value of assets derived from the alleged criminal activity is well beyond the prescribed limit. It is settled law that the determination of the threshold value must be based on the entirety of the transaction and not an isolated instance or a narrow interpretation of specific amounts at any given time.

28. The respondent has categorically established that the amount in question far exceeds the threshold of Rs. 30 lakhs, even under the unamended provisions of the PMLA. The allegations against the appellant involve alleged land allotment transactions facilitated through forgery, cheating, and fraud, resulting in an alleged loss of over Rs. 1 crore to the government, along with hawala transactions of crores of rupees, and illegal gratification through his wife of around Rs. 22 Lakhs. The financial transactions in the alleged acts, as evidenced from the record, reveal a considerably higher amount of proceeds of crime, rendering the appellant's reliance on the threshold limit baseless.

29. Furthermore, it is settled law that the determination of the amount involved in a money laundering offence is not to be viewed in isolation but in the context of the overall financial trail and associated transactions. The totality of the evidence must be assessed, which is a matter of trial; but even on a *prima facie* assessment, it is clear that the proceeds of crime in the present case are significantly higher than the statutory threshold. The appellant has failed to substantiate his claim with any material that contradicts the respondent's submissions in this regard. Therefore, this ground also does not aid the appellant in any manner.

30. The PMLA was enacted with the primary objective of preventing money laundering and confiscating the proceeds of crime, thereby ensuring that such illicit funds do not undermine the financial system. Money laundering has far-reaching consequences, not only in terms of individual acts of corruption but also in causing significant loss to the public exchequer. The laundering of proceeds of crime results in a significant loss to the economy, disrupts lawful financial transactions, and erodes public trust in the system. The alleged offences in the present case have a direct bearing on the economy, as illicit financial transactions deprive the state of legitimate revenue, distort market integrity, and contribute to economic instability. Such acts, when committed by persons in positions of power, erode public confidence in governance and lead to systemic vulnerabilities within financial institutions.

31. The illegal diversion and layering of funds have a cascading effect, leading to revenue losses for the state and depriving legitimate sectors of investment and financial resources. It is settled law that in cases involving serious economic offences, judicial intervention at a preliminary stage must be exercised with caution, and proceedings should not be quashed in the absence of compelling legal grounds. The respondent has rightly argued that in cases involving allegations of such magnitude, a trial is imperative to establish the full extent of wrongdoing and to ensure accountability.

32. The PMLA was enacted to combat the menace of money laundering and to curb the use of proceeds of crime in the formal economy. Given the evolving complexity of financial crimes, courts must adopt a strict approach in matters concerning economic offences to ensure that perpetrators do not exploit procedural loopholes to evade justice.

33. The present case involves grave and serious allegations of financial misconduct, misuse of position, and involvement in transactions

constituting money laundering. The appellant seeks an end to the proceedings at a preliminary stage, effectively preventing the full adjudication of facts and evidence before the competent forum. However, as established in multiple judicial pronouncements, cases involving economic offences necessitate a thorough trial to unearth the complete chain of events, financial transactions, and culpability of the accused.

34. The material submitted by the respondent, coupled with the broad legislative framework of the PMLA, indicates the necessity of allowing the trial to proceed and not discharging the appellant at the nascent stage of charge framing. The argument that the proceedings are unwarranted is devoid of substance in light of the statutory objectives, the continuing nature of the offence, and the significant financial implications arising from the alleged acts. Discharging the appellant at this stage would be premature and contrary to the principles governing the prosecution in money laundering cases.

35. Given the severe and grave nature of the allegations against the appellant, it is imperative that he must undergo thorough judicial scrutiny during trial. A proper trial is necessary to unearth the full extent of the offence, to evaluate the evidence produced by the appellant, to analyze the complete chain of final transactions, and find out the veracity of the severe allegations and the amount of proceeds of crime. The legal framework under the PMLA serves as a crucial mechanism to ensure that individuals involved in laundering proceeds of crime are brought to justice and that economic offences do not go unpunished.

36. In light of the above discussion, it is evident that the appellant has failed to establish any legally sustainable ground warranting interference by this Court at a pre-trial stage. The submissions made in support of the appeal are neither legally untenable nor in the best interest of justice. The offence alleged against the appellant is clearly a continuing offence under the PMLA, and the quantum of proceeds of crime involved far exceeds the statutory threshold and requires proper investigation and judicial scrutiny. The findings of the Courts below are well-reasoned and do not call for interference.

37. Consequently, the appeal is dismissed.

38. Pending applications, if any, also stand disposed of.

Result of the case: Appeal dismissed.

IN THE SUPREME COURT OF INDIA
(Abhay S. Oka, Ahsanuddin Amanullah & Augustine George Masih, JJJ.)

Criminal Appeal No. 1622 of 2022

Sarla Gupta & Anr. ... Appellant(s)

Versus

Directorate of Enforcement ... Respondent(s)

Date of Judgment: 07.05.2025

WHETHER THE ACCUSED ARRESTED UNDER PMLA IS ALLOWED THE DOCUMENTS RELIED UPON AND OTHER DOCUMENTS SEIZED FROM THE PREMISES.

Held: - (i) That ED is directed to provide legible soft copies of the documents produced with the complaint U/s 44(1)(b).

(ii) The ED is directed to supply true copies of the documents seized from the premises of the accused with in a period of one month from today.

Present for Appellant(s) :

Present for Respondent(s) :

JUDGMENT

ABHAY S. OKA, J.

FACTUAL ASPECTS CRIMINAL APPEAL NO.1622 OF 2022

1. Criminal Appeal no.1622 of 2022 takes an exception to the impugned judgment and order of the High Court of Delhi dated 22nd July, 2019, in a writ petition filed by the present appellants. In July 2017, the Central Bureau of Investigation (for short, 'the CBI') registered a First Information Report (for short, 'FIR') against the appellants for the offences punishable under Section 120-B read with Section 420 of the Indian Penal Code, 1860 (for short, ANITA MALHOTRA Date: 2025.05.08 13:25:22 IST Reason:

> 'the IPC') and Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). Based on the said FIR, an Enforcement Case Information Report (for short, 'the ECIR') was registered by the Directorate of Enforcement (for short, 'the ED').

A complaint under Section 44(1)(b) of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA') was filed before the Special Court on 24th August 2018. The appellants were shown as accused in the complaint. The allegation in the complaint is of the commission of the offence under Section 3 of the PMLA, which is punishable under Section 4 of the PMLA. The Special Judge took cognizance of the offence on 17th September 2018. The appellants were supplied copies of the complaint and some documents relied upon by the prosecution. An application was made by the appellants to the Special Court for the grant of copies of the following categories of documents: (a) documents relied upon in the complaint but not supplied; (b) documents supplied which were not legible; and (c) documents collected during the investigation which were suppressed.

2. The ED contested the said application. By the order dated 30th March 2019, the Special Court rejected the said application by holding that the prosecution is under an obligation to supply only those documents which are referred to and relied upon in the complaint/ chargesheet and it is under no obligation to supply the documents which were collected during the investigation which were not relied upon. The appellants filed a writ petition challenging the said order, which has been dismissed by the High Court by the impugned judgment.

CRIMINAL APPEAL NO. 730 OF 2024

3. Criminal Appeal no.730 of 2024 takes an exception to the judgment dated 18th November 2022 in a writ petition filed by the appellants. Even in this case, a complaint was filed under Section 44 of the PMLA and cognizance was taken by the Special Court on 31st August 2021. The appellants were shown as accused therein. In this case, a predicate offence was registered under Section 420 of the IPC. In August 2019, the ED conducted various searches in the office and residential premises of the appellants. The ED seized documents/records/ property. Applications were moved under Section 17 of the PMLA seeking a direction to provide a list of the documents seized by the ED and copies of the documents seized. The Adjudicating Authority under the PMLA allowed the applications. An appeal against the said order is pending before the Appellate Authority.

4. The second appellant filed an application before the Special Court seeking a direction to the ED to supply the documents seized during the raids/searches conducted by it to enable the appellants to defend their case before the Special Court. The Special Court rejected the said application

by the order dated 22nd March 2022. Accordingly, the appellants filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the CrPC') before the High Court of Punjab and Haryana at Chandigarh to challenge the said order. By the impugned judgment and order, the High Court dismissed the said writ petition. SUBMISSIONS APPELLANTS

5. Detailed submissions have been made in both appeals. In support of Criminal Appeal no.1622 of 2022, the learned senior counsel appearing for the appellants urged that the right under Section 207 of the CrPC is not restricted to the documents relied upon by the prosecution. The right under Section 207 to get documents includes all the documents collected during the investigation. He submitted that Sections 207 and 208 of the CrPC must be complied with before the trial commences. He submitted that the right to get all the documents collected during the investigation flows from the right to a free and fair trial, which is guaranteed under Article 21 of the Constitution of India. He referred to the provisions of the Code of Criminal Procedure, 1898 (for short, 'the 1898 CrPC'). He submitted that Section 207 of the CrPC has been retained in the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') in the form of Section 230. He submitted that in view of Section 46(1) read with Section 65 of the PMLA, all the provisions of the CrPC shall apply to the proceedings under the PMLA, insofar as the same are not inconsistent with the provisions of the PMLA. He submitted that no provision of the PMLA is inconsistent with Section 207 of the CrPC and Section 230 of the BNSS. He pointed out the provisions of the PMLA which are inconsistent with the CrPC. He also pointed out the law prevailing in the United States of America (for short, 'USA') and the United Kingdom (for short, 'UK'). He relied upon several decisions of this Court and the Courts in the USA and the UK.

6. In support of Criminal Appeal no.730 of 2024, the learned senior counsel appearing for the appellants submitted that relevant provisions of the CrPC mandate that the prosecution must provide copies of the relied upon documents, documents in its custody which are not relied upon, as well as the list of documents to the accused, before framing of a charge.

7. He submitted that in view of Section 45(1)(ii) of the PMLA, while deciding the bail application, the burden is on the accused to show that there are reasonable grounds to believe that he is not guilty of such an offence. He submitted that this is a standalone provision not found in other penal statutes. He submitted that, therefore, at the stage of hearing the bail applications, the accused is entitled to seek the production of documents that will help him to discharge the burden. He submitted that in view of

Section 44(1)(b) of the PMLA, no committal of an accused to the Sessions Court is required. He also submitted that in view of Section 65 read with Section 46 of the PMLA, provisions of the CrPC apply to the proceedings under the PMLA. He also pointed out various decisions in support of his submissions. RESPONDENTS

8. The submission of the learned Additional Solicitor General (for short, 'ASG') appearing for the ED is that all the documents relied upon by the ED in the complaint have been supplied to the appellants. He submitted that the accused is entitled to only the relied upon documents and has no right to seek documents with the ED which are not relied upon, at the stage of framing of charge. He submitted that in the offence that is the subject matter of Criminal Appeal no.730 of 2024, the ED is carrying out further investigation. Therefore, before completion of the investigation, the appellants are not entitled to seek copies of the documents not relied upon by the ED. He submitted that the law is very well settled and that at the time of framing of the charge, the Court can only look into the documents that are part of the chargesheet and no other document. The accused cannot rely upon something that is not a part of the chargesheet at the time of hearing on framing of charge. The accused cannot seek production of the documents that were not relied upon by the ED at the time of framing of the charge. The learned ASG also referred to Section 204 of the CrPC. He submitted that in view of the said provision, the accused is only entitled to get a copy of the complaint and documents filed along with the complaint.

9. Relying upon a decision of this Court in the case of Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re v. State of Andhra Pradesh & Ors1, he submitted that it is held by this Court that an accused is entitled to only a list of the documents not relied upon by the prosecution and not the copies of the said documents. He submitted that at the trial stage, the accused can seek production of the said documents. The learned ASG submitted that Section 208 of the CrPC is not applicable for seeking copies of documents not relied upon by the prosecution. He submitted that Section 208 applies at the stage when the learned Magistrate has not committed a case to the Court of Session. He submitted that the question of committal does not arise in the case of an offence under the PMLA, in view of Section 44(1)(b) of the PMLA. He submitted that the Special Court does not have inherent powers at par with the High Court under Section 482 of the CrPC. He submitted that in the absence of any specific provision empowering the Special Court to direct the supply of (2021) 10 SCC 598 : 2021 SCC OnLine SC 329 documents to the accused and in the absence of any inherent power vested in the Special Court, a direction to supply documents not relied upon by the prosecution to the

accused cannot be issued by the Special Court. He submitted that the orders passed by the Special Court are interlocutory in nature and therefore, the High Court ought to be slow in interfering with such interlocutory orders in exercise of its power under Section 482 of the CrPC. CONSIDERATION OF SUBMISSIONS CRIMINAL APPEAL NO 730 OF 2024

10. In Criminal Appeal no.730 of 2024, the petitions filed by the appellants and another accused were disposed of by the common order dated 18th November 2022. The challenge before the High Court was to the order dated 22nd March 2022. In this case, the ED had conducted raids/searches at different premises of the accused and seized various documents under the seizure memo drawn. The second appellant and the co-accused (Ashok Solomon) filed separate applications seeking a direction to the ED to supply copies of the documents seized under the seizure memo. The learned Special Judge under the PMLA rejected the applications by holding that the investigation was in progress and the charges were yet to be framed. The Special Court relied upon a decision of this Court in the case of State of Orissa v. Debendra Nath Padhi2.

11. The Special Court held that the appellants had no right to place any document on record which was not a part of the complaint at the time of framing of the charge. Before the High Court, reliance was placed on the decision of this Court in the case of Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re1. The High Court held that the documents relied upon were already supplied by the ED. However, the appellants were entitled to seek only a list of documents which were not relied upon by the ED. The High Court held that at the time of framing of charges, reliance can be placed only on the documents filed by the prosecution. Therefore, the appellants were not entitled to the copies of the documents which were not relied upon by the prosecution. However, the High Court observed that in case the appellants so require, they can always file an 2 (2005) 1 SCC 568 : 2004 SCC OnLine SC 1491 appropriate application before the learned Special Judge for a direction to the prosecution to supply the list of such documents. RIGHT TO GET COPIES OF THE RECORD/DOCUMENTS SEIZED AS PER SECTIONS 17 AND 18 OF THE PMLA

12. Under Section 17 of the PMLA, a power is vested in the Director or other authorised officers to conduct a search and seizure of record or property. Section 17 of the PMLA reads thus:

> "17. Search and seizure.— (1) Where the Director or any other officer not below the rank of Deputy Director authorised by him

for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering, or

(iv) is in possession of any property related to crime, then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act.

(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order], forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence: Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub- section.

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub- section (1A), before the Adjudicating Authority." (emphasis added)

13. Section 18 deals with the power to search persons and seize records or property in their possession. Section 18 reads thus:

"18. Search of persons.—(1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this

Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act:

(2) The authority, who has been authorised under sub-section (1), shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty- four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court. (4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate's Court. (5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(8) No female shall be searched by anyone except a female.

(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search:

(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority." (emphasis added) Thus, Section 17 confers a power to search a building, place, vessel, vehicle, etc. and to seize any record or property found during the search. Section 18 confers a power on the authority to search persons and seize record or property from them.

14. Section 2(w) of the PMLA defines 'records', which include records maintained in the form of books or stored in a computer or such other form as may be prescribed. 'Property' is defined under Section 2(v), meaning any property or assets of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets wherever located. Thus, deeds and instruments of title are included in the definition of property and books or records stored in a computer become records within the meaning of Section 2(w).

15. Section 20 deals with retention of the property seized under Section 17 or Section 18 or frozen under sub-section (1A) of Section 17 of the PMLA. Section 21 deals with the retention of records. Sections 20 and 21 read thus:

"20.Retention of property.—(1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a

sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, Special Court, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it. (6) Where an order releasing the property has been made by the Special Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of receipt of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

21. Retention of records.—(1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records

were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8. (5) After passing of an order of confiscation or release under sub-section (5) or sub- section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court Adjudicating Authority under sub-section (5) of section 21, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of receipt of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act." (emphasis added)

16. Sub-rule (2) of Rule 4 of the Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005 (for short, 'the 2005 Rules') mandates the authority exercising the power of seizure to prepare seizure memo (inventory of items) in Form-II appended to the 2005 Rules. Sub- rule (4) of Rule 4 provides that a copy of the list of seized property prepared shall be delivered to the occupant of the building or place searched or to any person on his behalf. Thus, the person from whose premises the properties are seized is entitled to receive a copy of the list of the seized properties.

17. Under sub-section (2) of Section 21 of the PMLA, the person from whom the records are seized is entitled to a copy of the records, which include the record in the form of books or records stored in a computer. Therefore, the person from whom the record is seized is entitled to the copies thereof as a matter of right.

18. As stated earlier, the definition of 'property' under Section 2(b) includes deeds and instruments evidencing title or interest in such property or asset. The order of retention of the property under Section 20 does not

amount to forfeiture of the property. The seized property does not vest in the ED. There is no prohibition on providing copies of the deeds or instruments evidencing title to the person from whom or from whose premises the deeds or instruments are seized. If the provision is interpreted to mean that the person from whom such deeds or instruments are seized is not entitled to receive even copies of the same, the provision will be rendered arbitrary and violative of Article 14 of the Constitution. Therefore, as far as the seized documents and records are concerned, the person from whom or from whose premises the seizure has been made is entitled to get the true copies thereof. As far as the other property seized is concerned, the person from whom the property is seized is entitled to a copy of the seizure memo and the list of the properties seized.

19. In this case, we are called upon to decide only the issue of the supply of seized documents and records. To that extent, the Special Court and the High Court have committed an error. They rejected the prayers made for providing copies of the seized documents. When the records are seized from the custody of the accused, there is no reason why the true copies of the seized documents should not be provided on an application being made by the accused. The same is the case with the instruments or documents of title forming part of the property seized. If the documents are bulky, even soft copies thereof can be provided. Even if the seized record or documents are not relied upon in the complaint, copies must be supplied, though the accused will not be entitled to rely upon them at the time of framing the charge. Hence, the impugned orders deserve to be set aside. CRIMINAL APPEAL NO 1622 OF 2022 RIGHT OF AN ACCUSED TO GET COPIES OF THE DOCUMENTS RELIED UPON IN THE COMPLAINT UNDER SECTION 44(1)(b) OF THE PMLA AND THE DOCUMENTS PRODUCED ALONG WITH THE COMPLAINT

20. In Criminal Appeal No.1622 of 2022, writ petitions were filed to challenge the common order dated 30th March 2019 passed by the learned Special Judge (under the PC Act) who was also a Special Judge under the PMLA. There were two applications decided by the said common order. The first application was made on 11th February 2019. It is stated in the said application that the documents provided by the ED have been arranged in eight volumes containing a total of 3535 pages. It is mentioned in the application that about 45 relied upon documents mentioned in the application were not supplied to the appellants. The application contains a list of eight illegible documents. A prayer was made to issue a direction to the ED to provide copies of these documents. Another application was made by the appellant on 27th March 2019, stating that on inspection of the file of the Court in the presence of the investigating officer, eight

documents mentioned therein were found to be illegible. It was also stated that pages 1323, 1770 to 1779 and 2000 were not available in the Court record and pages 1367 and 1368 have been numbered twice on different documents. It was also pointed out in paragraph 4 that certain pages mentioned in the application were legible in the Court file but illegible in the documents supplied to the appellant. By the order dated 30th March 2019, the said applications were dismissed.

21. The Special Court referred to a decision of the Delhi High Court in the case of Dharambir v. Central Bureau of Investigation3. The learned Special Judge held that:

(a) The appellants have not stated that the prosecution was relying upon the documents, but the copies were not given to them;

(b) It is not the case of the appellants that these documents which the prosecution has withheld, were of sterling quality, and if the same were produced, the appellants may be discharged;

(c) In economic offences, the investigation is conducted at length and a large number of documents are collected, but not every document is relevant. The Investigating Officer files 3 2008 SCC OnLine Del 336 : ILR (2008) 2 Delhi 842 only those documents which are relevant for proving the case; and

(d) In the relied upon documents, there is a reference to innumerable other documents which are not relied upon. A direction cannot be issued to the prosecution to supply such documents.

22. In the impugned judgment, the High Court also relied upon the decision of the Delhi High Court in the case of Dharambir2. It was further held that neither Section 207 nor Section 208 of the CrPC can be applied mutatis mutandis to the proceedings/complaint under the PMLA. It was further observed that as the charge has not been framed, the trial has not commenced. Therefore, the High Court proceeded to dismiss the writ petitions.

23. The offences under the PMLA, as provided under Section 44(1)(a), are triable by the Special Court. Under Section 43(1), there is a power vested in the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more courts of session as Special Courts. Thus, the Special Court under the PMLA is presided over by a Session Judge. Under Section 44(1)(b), the Special Court is empowered to take cognizance of the offence under Section 3 of the PMLA only upon

a complaint. Clause (b) provides that cognizance of the offence under Section 3 can be taken by the Special Court without the accused being committed to it for trial. Under Section 44(1)(b), it is provided that a Special Court, while trying the offence of money laundering, shall proceed with the trial in accordance with the provisions of the CrPC as it applies to a trial before the Court of Session. Therefore, the provisions of Chapter XVIII of the CrPC will apply to the proceedings of a complaint under Section 44(1)(b) (Chapter XIX of the BNSS). Therefore, in view of Section 228 of the CrPC (Section 251 of the BNSS), a charge is required to be framed in the complaint.

24. In the case of Yash Tuteja & Anr. v. Union of India & Ors4, in paragraph 6, this Court held thus:

> "6. The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorised on this behalf. Section 46 PMLA provides that the 4 (2024) 8 SCC 465 : 2024 SCC OnLine SC 533 provisions of CrPC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of CrPC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act".
>
> Considering the provisions of Section 46(1) PMLA, save as otherwise provided in PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short "CrPC") shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 CrPC will apply to the complaint.
>
> There is no provision in PMLA which overrides the provisions of Sections 200 to Sections 204 CrPC. Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 PMLA is made out in a complaint under Section 44(1)(b) PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 PMLA is made out, it must exercise the power under Section 203 CrPC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 CrPC." (emphasis added) Hence, the provisions of Sections 200 to 204 of the CrPC (Sections 223 to 227 of the BNSS) will apply to a complaint under Section 44(1)(b) of the PMLA.

25.As held by this Court, Section 204 of the CrPC (Section 227 of the BNSS) is applicable to a complaint under Section 44(1)(b) of the PMLA. Sub-section (3) of Section 204 of the CrPC (sub-section (3) of Section 227 of the BNSS) reads thus:

> "204. Issue of Process (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint." Thus, after taking cognizance, the process issued on the complaint under Section 44(1)(b) of the PMLA to the accused must be accompanied by a copy of the complaint. If any documents are annexed or produced along with the complaint on the basis of which cognizance is taken, it follows that even the copies of those documents must be supplied to the accused. The copies of the documents annexed to the complaint or produced in the complaint cannot be separated from the complaint, as they form a part of the complaint. These are the documents on the basis of which cognizance is taken by the Special Court. Therefore, the accused is entitled to receive copies of the same as a matter of right. The same principle will apply to the documents annexed to or produced with supplementary complaints. If the Special Court has recorded the statements of the complainant and witnesses, if any, in accordance with Section 200 of the CrPC (Section 223 of the BNNS), the accused must get copies thereof as the order of cognizance is passed based on the said statements.

26. There are two important provisions under the CrPC which deal with the supply of documents. The same are Sections 207 and 208 of the CrPC (Section 230 and 231 of the BNSS respectively), which read thus:

> "207. Supply to the accused of copy of police report and other documents.— In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—
>
> (i) the police report;
>
> (ii) the first information report recorded under section 154;
>
> (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.— Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 161 or section 164;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court." Section 207 of the CrPC applies when the proceedings have been instituted on a police report. Section 208 applies to a case that is instituted otherwise than on a police report, and the learned Magistrate is of the view that the case is exclusively triable by the Court of Sessions.

27. Section 207 of CrPC applies when the chargesheet is filed. Thus, after the charge sheet is filed, the accused is entitled to copies of the police report, FIR, confessions, statements, if any, recorded under Section 164 of the CrPC, and statements recorded under sub-section (3) of Section 161 of the CrPC of all the persons whom the prosecution proposes to examine as witnesses. There is an exception to the rule as regards the supply of statements under Section 161(3) of the CrPC. Sub-section (6) of Section 173 (sub- section (7) of Section 193 of the BNSS) provides that if the police officer is of the opinion that any part of such statement is not relevant to the subject matter of the proceeding or that its disclosure to the accused is not essential in the interest of justice and is inexpedient in public interest, he shall indicate that part of the statement and append a note requesting the learned Magistrate to exclude that part of the statement from the copies to be provided to the accused. The police officer is required to state reasons for making such a request. As can be seen from the first proviso to Section 207 of the CrPC, after considering the request of the police officer and the reasons given by him, it is open for the learned Magistrate to direct a copy of that part of the statement or such portion thereof as the learned Magistrate thinks proper, to be furnished to the accused. However, the learned Magistrate is not bound by the request made by the police officer. After considering the request, the learned Magistrate is empowered to reject the request of the police officer and supply the complete copies of such statements. It is pertinent to note that the Police have the power to apply for the exclusion of parts of only the statements. This power does not extend to the documents covered by clause (v) of Section 207.

28. Now, we come to Section 208 of the CrPC. When a case is instituted by way of a complaint under Section 200 of the CrPC, if it appears to the learned Magistrate issuing process that the offence is triable by a Court of Session, the learned Magistrate is duty bound to supply the copies of the statements recorded under Section 200 or Section 202 of all the persons examined by the learned Magistrate to the accused. He is also duty bound to supply to the accused the statements and confessions, if any, recorded under Section 161 or Section 164, and any document produced before the learned Magistrate on which the prosecution proposes to rely. Even Section 208 does not permit withholding of any documents from the accused. If a document is bulky, it allows the accused to inspect it.

29. If we peruse Sections 209 and 238 of the CrPC (Sections 232 and 261 of the BNNS), these provisions reiterate the mandatory requirement of providing the documents referred to in Sections 207 and 208 of the CrPC.

30. Both Sections 207 and 208, on the face of it, do not specifically apply to a complaint under Section 44(1)(b) of the PMLA. But, there is no

reason why the principles laid down under Sections 207 and 208 should not be applied to a complaint under Section 44(1)(b) of the PMLA. The provisions are consistent with the principles of fair play. The object of the provisions is to protect the rights of accused persons. An accused is entitled to a fair trial as he has the right to defend himself. That is the essence of Article 21 of the Constitution. Therefore, once cognizance is taken on the basis of a complaint under Section 44(1)(b) of the PMLA, the learned Special Judge must direct that along with the process, a copy of the complaint and the following documents must be provided to the accused:

a. Statements recorded by the learned Special Judge of the complainant and the witnesses, if any, before taking cognizance;

b. The documents including the copies of the Statements under Section 50 of the PMLA produced before the Special Court, along with the complaint, and the documents produced subsequently by the ED till the date of taking cognizance; and c. Copies of the supplementary complaints and the documents, if any, produced with supplementary complaints.

After cognizance is taken on the basis of the complaint, the ED cannot be heard to say that a document has been produced with the complaint or in the proceedings of the complaint, but it is not a relied upon document. The copies of documents must be supplied along with a copy of the complaint as required by sub-section (3) of Section 204 of the CrPC (sub-section (3) of Section 227 of the BNSS).

THE RIGHT OF AN ACCUSED TO SEEK PRODUCTION OF THE DOCUMENTS NOT RELIED UPON BY THE PROSECUTION

31.Now, we come to the decision of this Court in the case of Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re1. This Court, in paragraph 11 of the said decision, held thus:

> "11. The Amici Curiae pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should

also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under CrPC for their production during the trial, in the interests of justice. It is directed accordingly; the Draft Rules have been accordingly modified. [Rule 4(i)]" (emphasis added) Accordingly, Rule 4(i) of the Draft Criminal Rules of Practice, 2021 was formulated, which reads thus:

"4. Supply of documents under Sections 173, 207 and 208 CrPC.—

(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208 CrPC." Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer" (emphasis added) Therefore, it is held that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused.

As held by this Court, the object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91 of the CrPC (Section 94 of the BNSS) for providing copies of the documents which are not relied upon by the prosecution. This decision upholds the right of the accused to apply for the supply of copies of the documents which are not relied upon by the prosecution at an appropriate stage by making an application to the Court.

32. This requirement was again quoted with approval in a decision of the Coordinate Bench of this court in the case of Manoj & Ors. v. State of Madhya Pradesh5. Paragraphs 208 and 209 of the said decision read thus:

"208. This view was endorsed in a recent three-Judge Bench decision of this Court in Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re v. State of A.P. [Criminal Trials

Guidelines Regarding Inadequacies & Deficiencies, In re v. State of A.P., (2021) 10 SCC 598 :

(2022) 1 SCC (Cri) 100] This Court has highlighted the inadequacy mentioned above, which would impede a fair trial, and inter alia, required the framing of rules by all States and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation—to the accused. The relevant draft guideline, approved by this Court, for adoption by all States is as follows : (SCC p. 608, para 21) "21. … '… 4. Supply of documents under Sections 173, 207 and 208CrPC.—(1) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, 5 (2023) 2 SCC 353 material objects and exhibits that are not relied upon by the investigating officer." This extract is taken from Manoj v. State of M.P., (2023) 2 SCC 353 : 2022 SCC OnLine SC 677 at page 452

209. In view of the above discussion, this Court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules." (emphasis applied) Therefore, what can be deduced from the above decisions is that the accused has the right to ask for the supply of documents not relied upon by the prosecution by making an application to the Court. The question is at what stage the accused can demand copies of the documents.

WHETHER AN ACCUSED IS ENTITLED TO SEEK COPIES OF THE DOCUMENTS NOT RELIED UPON BY THE PROSECUTION AT THE STAGE OF FRAMING OF CHARGE

33. At this stage, we may make a reference to the decision of this Court in the case of Debendra Nath Padhi3. This Court was considering the provision of discharge under Section 227 of the CrPC, which reads thus:

"227. Discharge.— If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing." The issue before this Court was what is the meaning of 'the record of the case' which is required to be considered for the purposes of framing of charge. Paragraph 8 of the said decision reads thus:

"8. What is the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section

209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial." In paragraph 25 of the said decision, this Court held thus:

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in

mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence.

Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof." (emphasis added) Thus, this Court observed that the entitlement of the accused to seek an order under Section 91 of the CrPC for the production of the documents that are not relied upon would ordinarily not come till the stage of defence. These observations are in the context of what constitutes 'the record of the case' for the purposes of Section 227 of the CrPC. Even this judgment recognizes the right of the accused to seek documents at the time of leading defence evidence by invoking Section 91 of the CrPC. We may note here that what is observed by this Court is that there is no absolute prohibition on an accused making an application under Section 91 of CrPC, before the stage of entering upon defence. It is held that ordinarily, the entitlement of the accused to apply under Section 91 will not arise till the stage of defence.

34.As far as the supply of documents is concerned, we may refer to the decision of the Constitution Bench in the case of Assistant Collector of Customs, Bombay & Anr. v. L.R. Melwani & Anr 6. Paragraphs 11 to 14 of the said decision read thus:

"11. We also see no merit in the contention that the accused in this case are entitled to the benefit of Section 173(4), Criminal Procedure Code which provides that before the commencement

of the enquiry or trial the officer-in-charge of the police station who forwards a report under Section 173, Criminal Procedure Code, should furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Section 173(1), Criminal Procedure Code of the first information report recorded under Section 154, Criminal Procedure Code and all other documents or relevant extracts thereof on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under Section 164, Criminal Procedure Code and the statements recorded under Section 161, Criminal Procedure Code 6 (1969) 2 SCR 438 : 1968 SCC OnLine SC 161 of all the persons whom the prosecution proposes to examine as its witnesses.

12. On a plain reading of Section 173, Criminal Procedure Code, it is clear that the same is wholly inapplicable to the facts of the present case. In the instant case no report had been sent under Section 173, Criminal Procedure Code. Therefore that provision is not attracted. That provision is attracted only in a case investigated by a police officer under Chapter XIV of the Criminal Procedure Code, followed up by a final report under Section 173, Criminal Procedure Code. It may be remembered that sub-section (4) of Section 173, was incorporated into the Criminal Procedure Code for the first time by Central Act 26 of 1955, presumably because of the changes effected in the mode of trials in cases instituted on police reports. Before the Criminal Procedure Code was amended by Act 26 of 1955, there was no difference in the procedure to be adopted in the cases instituted on police reports and in other cases.

Till then in all cases irrespective of the fact whether they were instituted on police reports or on private complaints, the procedure regarding enquiries or trials was identical. In both type of cases, there were two distinct stages i.e. the enquiry stage and the trial stage. When the prosecution witnesses were examined in a case before a charge is framed, it was open to the accused to cross-examine them. Hence there was no need for making available to the accused the documents mentioned in sub Section (4) of Section 173, Criminal Procedure Code. The right given to him under Section 162, Criminal Procedure Code was thought to be sufficient to safeguard his interest. But Act 26 of 1955 as mentioned earlier made substantial changes in the procedure to be adopted in the matter of enquiry in cases instituted on police reports. That procedure is now set out in Section 251(a), Criminal Procedure Code. This new procedure truncated the enquiry stage. Section 251(a), Criminal

Procedure Code says that the Magistrate, if upon consideration of all the documents referred to in Section 173 and making such examination if any, of the accused as he thinks necessary and after giving the prosecution and the accused an opportunity of being heard considers the charge against the accused to be groundless he shall discharge him but if he is of opinion that there is ground for presuming that the accused has committed an offence triable as a warrant case which he is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing a charge against him. Under the procedure prescribed in Section 251(a), Criminal Procedure Code but for the facility provided to him under Section 173(4) of that Code an accused person would have been greatly handicapped in his defence. But in a case instituted on a complaint, like the one before us and governed by Sections 252 to 259 of the Criminal Procedure Code, no such difficulty arises. Therein the position is as it was before the amendment of the Criminal Procedure Code in 1955.

13. We are unable to agree with the learned fudges of the High Court that the legislature did not make available the benefit of Section 173(4), Criminal Procedure Code in cases instituted otherwise than on police reports by oversight. The observations of the learned Judges in the course of their judgment that "Even the great Homer occasionally nods. There is nothing to show that the legislature has applied its mind to the question of the amendment of the procedure so far as the investigation of an offence under the Sea Customs Act is concerned at the time when it was considering amendments to the Criminal Procedure Code" is without any basis. In the first place, it is not proper to assume except on very good grounds that there is any lacuna in any statute or that the legislature has not done its duty properly. Secondly from the history of the legislation to which reference has been made earlier, the reason for introducing Section 173(4) is clear. The learned judges of the High Court were constrained to hold that Section 173(4), Criminal Procedure Code in terms does not apply to the present case. But strangely enough that even after coming to the conclusion that provision is inapplicable to the facts of the present case, they have directed the learned Magistrate to require the prosecution to make available to the accused, the copies of the statements recorded from the prosecution witnesses during the enquiry under the Customs Act. They have purported to make that order under Section 94(1), Criminal Procedure Code which to the extent material for our present purpose reads:

"Whenever any Court … considers that production of any document or other thing is necessary or desirable for the purposes of any … enquiry, trial or other proceeding under this Code by or before such Court … such Court may issue a summons … to the person in whose possession and power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order." This section does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person. That much appears to be plain from the language of that section. It was impermissible for the High Court to read into Section 94, Criminal Procedure Code the requirements of Section 173(4), Criminal Procedure Code. The High Court was not justified, in indirectly applying to cases instituted on private complaints the requirements of Section 173(4), Criminal Procedure Code.

14. That apart we do not think that the High Court was justified in interfering with the discretion of the learned Magistrate. Whether a particular document should be summoned or not is essentially in the discretion of the trial court. In the instant case the Special Public Prosecutor had assured the learned trial Magistrate that he would keep in readiness the statements of witnesses recorded by the Customs Authorities and shall make available to the defence Counsel the statement of the concerned witness as and when he is examined. In view of that assurance, the learned Magistrate observed in his order:

"The recording of the prosecution evidence is yet commence in this case and at present there are no materials before me to decide whether or not the production of any of the statements and documents named by the accused in his application is desirable or necessary for the purpose of the enquiry or trial. As stated at the outset, the learned Special Prosecutor has given an undertaking that he would produce all the relevant statements and documents at the proper time in the course of the hearing of the case. The request made for the issue of the summons under Section 94, Criminal Procedure Code is also omnibus." The reasons given by the learned Magistrate in support of his order are good reasons. The High Court has not come to the conclusion that the documents in question, if not produced in court are likely to be destroyed or tampered with or the same are not likely to be made available when required. It has proceeded on the erroneous basis that the accused will not have a fair trial unless they are supplied with the

copies of those statements even before the enquiry commences. Except for very good reasons, the High Court should not interfere with the discretion conferred on the trial courts in the matter of summoning documents. Such interferences would unnecessarily impede the progress of cases and result in waste of public money and time as has happened in this case."

35. This Court was considering the issue whether the benefit of Section 173(4) of the 1898 CrPC was available in cases instituted otherwise than on a police report. Section 173(4) of the 1898 CrPC required the officer in charge of a police station to forward documents mentioned therein along with the report. It is in that context that this Court observed that the requirement of Section 173(4) cannot be read into Section 94 of the 1898 CrPC (equivalent to Section 91 of the CrPC). This Court has not considered what is provided under Sections 207 and 208 of the CrPC. In any case, this Court was not considering the right of the accused to apply under Section 91 of the CrPC at the time of leading defence evidence.

36. The right of the accused to apply under Section 91 of the CrPC for production of the documents not relied upon by the prosecution at the stage of leading defence evidence has been recognised by the decisions of this Court including the decisions in the cases of Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re1 and Manoj & Ors5.

37. In the case of Om Prakash Sharma v. CBI, Delhi7, this Court dealt with the issue whether an application under Section 91 of the CrPC can be made by the accused at a stage before framing of a charge. In paragraph 6 of the decision in the case of Om Prakash Sharma7, this Court held thus:

"6. The powers conferred under Section 91 are enabling in nature aimed at arming the court or any officer in charge of a police station concerned to enforce and to ensure the production of any document or other things "necessary or desirable" for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the inbuilt limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. The question, at the present stage of the proceedings before the trial court would be to address itself to find whether there is sufficient ground for proceeding to the next stage

against the accused. If the accused could produce any 7 (2000) 5 SCC 679 : 2000 SCC OnLine SC 776 reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. This Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial vide Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] . Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the court and not of any rights concretised in favour of the accused." Thus, this decision will have no application when it comes to the right of the accused to apply for the production of documents by invoking Section 91 of the CrPC at the stage of entering defence.

The decision means that the said right is ordinarily not available at the time of framing of the charge. The reason is that while framing a charge, the Court can consider only that material which forms part of the chargesheet.

38. In the case of a complaint under Section 44(1)(b) of the PMLA, while framing charge, the Court can look into only the complaint and the documents produced along with the complaint. In the case of Nitya Dharmananda & Anr. v. Gopal Sheelum Reddy & Anr.8, the same view was taken by this Court while addressing the issue of the right of the

accused to invoke Section 91 of the CrPC at the time of framing of charge. In the case of Anjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.9, the issue was whether the evidence in the form of a document not 2017 INSC 1201 : (2018) 2 SCC 93 9 2020 INSC 453 : (2020) 7 SCC 1 produced along with the chargesheet can be produced subsequently in any circumstances. In paragraph 56, this Court held thus:

> "56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law." This Court, in this case, considered the issue in the context of the prosecution producing new documents after the commencement of the trial.

39. Now, we come to the decision of this Court in the case of Abhishek Banerjee & Anr. v. Directorate of Enforcement 10.

The issue before this Court was whether the provisions of the CrPC and especially the safeguards under Sections 160 and 161 are applicable while summoning a person under the provisions of the PMLA. This Court considered the issue of the power of the ED to issue summons for the production of documents and not the power of the Court. This decision has no relevance to the issue of the right of the accused to apply for the production of documents that are not relied upon during the trial.

40. This Court in the case of V.K. Sasikala v. State11 considered the right of the accused to seek copies of certain unmarked and unexhibited documents at a belated stage after cross-examination of the prosecution witnesses had progressed. In this case, this Court relied upon its earlier decision in the case of Sidharth 2024 INSC 668 : 2024 SCC OnLine SC 2454 (2012) 9 SCC 771 : 2012 SCC

OnLine SC 799 Vashisht alias Manu Sharma v. State (NCT of Delhi)12. In paragraphs 18 to 21 of the decision in the case of V.K. Sasikala v. State11 it was held thus:

> "18. In a recent pronouncement in Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] to which one of us (Sathasivam, J.) was a party, the role of a Public Prosecutor and his duties of disclosure have received a wide and in-depth consideration of this Court. This Court has held that though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails. The fairness of the investigative process so as to maintain the citizens' rights under Articles 19 and 21 and also the active role of the court in a criminal trial have been exhaustively dealt with by this Court.

Finally, it was held that it is the responsibility of the investigating agency as well as that of the courts to ensure that every investigation is fair and does not erode the freedom of an individual except in accordance with law. It was also held that one of the established facets of a just, fair and transparent investigation is the right of (2010) 6 SCC 1 an accused to ask for all such documents that he may be entitled to under the scheme contemplated by the Code of Criminal Procedure. The said scheme was duly considered by this Court in different paragraphs of the report.

19. The views expressed would certainly be useful for reiteration in the context of the facts of the present case: (Manu Sharma case [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , SCC pp. 84-86, paras 216-21) "216. Under Section 170, the documents during investigation are required to be forwarded to the Magistrate, while in terms of Section 173(5) all documents or relevant extracts and the statement recorded under Section 161 have to be forwarded to the Magistrate. The investigating officer is entitled to collect all the material, which in his wisdom is required for proving the guilt of the offender. He can record the statement in terms of Section 161 and his power to investigate the matter is a very wide one, which is regulated by the provisions of the Code. The statement recorded under Section 161 is not evidence per se under Section 162 of the Code. The right of the accused to receive the documents/statements submitted before the court is absolute and it must be adhered to by the prosecution and the court must ensure supply of documents/statements to the accused in accordance with

law. Under the proviso to Section 162(1) the accused has a statutory right of confronting the witnesses with the statements recorded under Section 161 of the Code thus indivisible.

217. Further, Section 91 empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code.

Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order.

218. The liberty of an accused cannot be interfered with except under due process of law. The expression 'due process of law' shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforereferred to. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other

cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression 'documents on which the prosecution relies' are not used under Section 207 of the Code.

Therefore, the provisions of Section 207 of the Code will have to be given a liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the court to say that the accused has no right to claim copies of the documents or request the court for

production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect the administration of criminal justice and the defence of the accused prejudicially." (emphasis supplied)

20. The declaration of the law in Manu Sharma [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] may have touched upon the outer fringe of the issues arising in the present case. However, the positive advancement that has been achieved cannot, in our view, be allowed to take a roundabout turn and the march has only to be carried forward. If the claim of the appellant is viewed in the context and perspective outlined above, according to us, a perception of possible prejudice, if the documents or at least an inspection thereof is denied, looms large. The absence of any claim on the part of the accused to the said documents at any earlier point of time cannot have the effect of foreclosing such a right of the accused. Absence of such a claim, till the time when raised, can be understood and explained in several reasonable and acceptable ways. Suffice it would be to say that individual notion of prejudice, difficulty or handicap in putting forward a defence would vary from person to person and there can be no uniform yardstick to measure such perceptions. If the present appellant has perceived certain difficulties in answering or explaining some part of the evidence brought by the prosecution on the basis of specific documents and seeks to ascertain if the allegedly incriminating documents can be better explained by reference to some other documents which are in the court's custody, an opportunity must be given to the accused to satisfy herself in this regard. It is not for the prosecution or for the court to comprehend the prejudice that is likely to be caused to the accused. The perception of prejudice is for the accused to develop and if the same is founded on a reasonable basis it is the duty of the court as well as the prosecution to ensure that the accused should not be made to labour under any such perception and the same must be put to rest at the earliest. Such a view, according to us, is an inalienable attribute of the process of a fair trial that Article 21 guarantees to every accused.

21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of

compliance or non-compliance with the provisions of Section 207 CrPC and would travel beyond the confines of the strict language of the provisions of CrPC and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced." (emphasis added)

41. Thus, we conclude that at the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the chargesheet. In case of the PMLA, at the time of framing charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaint. Though the accused will be entitled to the list of documents, objects, exhibits etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.

RIGHT OF THE ACCUSED TO SEEK DOCUMENTS NOT RELIED UPON BY PROSECUTION AT THE STAGE OF ENTERING UPON DEFENCE

42. In Chapter XVIII of the CrPC containing the provisions regarding trial before a Court of Session, under Section 233, the accused has the right to lead evidence. Section 233 of the CrPC (Section 256 of BNSS) reads thus:

> "233. Entering upon defence (1) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. (2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice." (emphasis added)

43. There is a similar provision in Chapter XIX of the CrPC, which deals with the trial of warrant cases by Magistrates. Section 243 (Section 266 of BNSS) is the provision which reads thus:

"243. Evidence for defence.

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice. (3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court." (emphasis added)

44. At this stage, we may note the difference between the provisions of Section 91 of CrPC and Sections 233 and 243 of CrPC. Section 91 of CrPC read thus:

91. Summons to produce document or other thing.—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary

or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

(emphasis added) On plain reading of sub-section (1) of Section 91, the power of the court is discretionary. The word 'may' appears in sub-section (1) of Section 91. However, if we peruse sub-section (3) of Section 233 and sub-section (2) of Section 243, the word 'shall' has been used. The reason is that these two provisions apply at the stage of the accused leading defence evidence. Therefore, it is provided that if the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the court must issue such process. The prayer for issue of such process cannot be denied unless the court, for reasons to be recorded, holds that the application is made for the purposes of vexation or delay or for defeating the ends of justice. Therefore, the prayer for issuing process for production of documents can be denied by the court only on the limited grounds specified in sub- section (3) of Section 233 and sub-section (2) of Section 243. This right conferred on the accused is on a much higher pedestal than what is provided in Section 91 of the CrPC. Therefore, in case of a trial or trial by Court of Session, the accused under the PMLA can invoke Section 233 of CrPC (Section 256 of BNSS).

45. Therefore, at the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing.

At this stage, he can also apply for the production of a document or a thing that is in the custody of the prosecution but has not been produced. A fair trial is a part of the right guaranteed to an accused under Article 21 of the Constitution. The right to a fair trial of the accused includes the right to defend. The right to defend consists of the right to lead the defence evidence by examining the witnesses and producing the documents. Therefore, the accused is entitled to exercise his right at the stage of entering upon defence by compelling the prosecution or a third party to produce a document or a thing in their possession or custody. The Court can decline the request of the accused for issuing process for the production of documents only on the limited grounds set out in sub-section (3) of section 233 of the CrPC.

46. If, according to the case of the accused, the prosecution or any of the witnesses examined by the prosecution is withholding a document, in his cross-examination, the accused can always ask questions to the concerned prosecution witnesses whether they were willing to produce the said document. On the witnesses' refusal or failure, an argument is always available to the accused during the final hearing that an adverse inference should be drawn against the prosecution for non-production of the document. The accused can always invoke the presumption under clause (g) of Section 114 of the Indian Evidence Act, 1872 (clause (g) of Section 119 of the Bharatiya Sakshya Adhiniyam, 2023).

47. When at the stage of defence of the accused, documents are produced on the prayer of the accused and the accused desires to cross-examine any of the prosecution witnesses based on the said documents, it is always open for the accused to apply under Section 311 of the CrPC (Section 348 of the BNSS) to recall a prosecution witness already examined for further cross- examination. The reason is that the right to effectively cross- examine the prosecution witnesses is also a part of the right to have a fair trial. The accused can exercise this right even if evidence of both sides is closed.

48. In this case, we are dealing with complaints under the PMLA. As far as the applicability of provisions of the CrPC (the BNSS) to the provisions of the PMLA is concerned, the issue is no longer res integra. In paragraphs 22 to 25 of the decision of this Court in the case of Directorate of Enforcement v. Bibhu Prasad Acharya & Ors.13, this Court held thus:

> "22. As far as the applicability of Section 197CrPC to PMLA is concerned, there are two relevant provisions in the form of Sections 65 and 71 PMLA which read thus:

"65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

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71. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

23. Section 65 makes the provisions of CrPC applicable to all proceedings under PMLA, provided the same are not inconsistent with the provisions contained in PMLA. The words "all other proceedings" include a complaint under Section 44(1)(b) PMLA. We have carefully perused the provisions of PMLA. We do not find that there is any provision therein which is inconsistent with the provisions of Section 197(1)CrPC. Considering the object of Section 197(1)CrPC, its applicability cannot be excluded unless there is any provision in PMLA which is inconsistent with Section 197(1). No such provision has been pointed out to us. Therefore, we hold that the provisions of Section 197(1)CrPC are applicable to a complaint under Section 44(1)(b) PMLA.

24. Section 71 gives an overriding effect to the provisions of PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 65 is a prior section which specifically makes the provisions of CrPC applicable to PMLA, subject to the condition that only those provisions of CrPC will apply which are not inconsistent with the provisions of PMLA. Therefore, when a particular provision of CrPC applies to proceedings under PMLA by virtue of Section 65 PMLA, Section 71(1) cannot override the provision of CrPC which applies to PMLA.

25. Once we hold that in view of Section 65 PMLA, Section 197(1) will apply to the provisions of PMLA, Section 71 cannot be invoked to say that the provision of Section 197(1)CrPC will not apply to PMLA. A provision of CrPC, made applicable to PMLA by Section 65, will not be overridden by Section 71. Those provisions of CrPC which apply to PMLA by virtue of Section 65 will continue to apply to PMLA, notwithstanding Section 71. If Section 71 is

held applicable to such provisions of CrPC, which apply to PMLA by virtue of Section 65, such interpretation will render Section 65 otiose.

No law can be interpreted in a manner which will render any of its provisions redundant." (emphasis added)

49. After carefully perusing the provisions of the PMLA, we did not find any provision of the PMLA which is inconsistent with Section 91 of the CrPC. The power under sub-section (1) of Section 91 can be exercised by a Court when the production of any document or any other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under the CrPC. The consistent line of judgments of this Court hold that at the stage of framing of charge, the accused is ordinarily not entitled to apply under Section 91 of the CrPC for producing the documents which are not relied upon by the complainant. For the purposes of his defence, the accused has a right to seek production of a document or a thing at the stage of leading defence evidence as Section 233 of CrPC will apply to the trial of an offence under the PMLA, due to the fact that Chapter XVIII of the CrPC is made applicable to such trial in view of clause (d) of Section 44(1) of the PMLA. We find that there is no provision under the PMLA which is inconsistent with Section 233 of the CrPC.

50. Section 24 of the PMLA is material. It reads thus:

"24. Burden of Proof.—In any proceeding relating to proceeds of crime under this Act,—

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money- laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering." This drastic provision was incorporated w.e.f. 15th February, 2013. In the case of Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.14, this Court upheld the constitutional validity of this provision, which puts a negative burden on the accused.

51. Thus, as compared to traditional penal statutes, at the time of trial

of the offence under the PMLA, there is a huge negative burden put on the accused. Therefore, it is all the more necessary that sub-section (3) of Section 233 of CrPC (Sub-section (3) of Section 256 of the BNSS) should be liberally construed in favour of the accused. The reason is that the constitutional validity of Section 24 has been upheld on the ground that the accused has a full opportunity to show that he has not violated the provisions of the PMLA. He is entitled to rebut the presumption. Therefore, if the Special Court refuses the prayer made by the accused in terms of Sub-section (3) of Section 233 for compelling the attendance of any witness or for production of a document in custody of ED or a third party, the accused will not be in a position to discharge the onerous burden on him under Section 24 of the PMLA. Hence, the valuable right of the accused under Section 233(3) of the CrPC needs to be protected.

2022 INSC 757; (2023) 12 SCC 1 THE RIGHT TO SEEK PRODUCTION OF DOCUMENTS FOR THE PURPOSES OF BAIL APPLICATIONS GOVERNED BY SECTION 45(1)(ii)

52. In the context of the PMLA, another issue arises. Section 45 of the PMLA reads thus:

> "45. Offences to be cognizable and non- bailable.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—
>
> (i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:
>
> Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed. (2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail." (emphasis added) The accused can be released on bail only when the Special Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Therefore, at the time of hearing of a bail application, there is a burden on the accused to satisfy the Special Court that there are reasonable grounds for believing that he may not be guilty of the offence under Section 3 of the PMLA. This is an extraordinary and standalone provision which puts the burden on the accused at the stage of seeking bail. Therefore, the question is whether, at the stage of considering the prayer for bail, the accused, by invoking Section 91 of the CrPC (Section 94 of the BNSS), can apply to get the documents produced. If a narrow view is taken, by denying this opportunity to the accused, he will not be in a position to discharge the burden on him, and therefore, it will affect his right to liberty as he may be denied bail. This denial will amount to a violation of his rights guaranteed under Article 21.

Therefore, at the stage of hearing of a bail application to which stringent provisions of Section 45(1)(ii) of the PMLA are applicable, the accused must be allowed to invoke the provision of Section 91 of the CrPC for seeking production of the documents not relied upon by the ED. But, when the investigation is pending, while permitting the accused to seek production of documents that are not relied upon by invoking Section 91 of the CrPC, care has to be taken to ensure that the investigation is not prejudiced. Therefore, when such an application is made, the ED is entitled to resist the production of documents that are not relied upon on the ground that if the said documents are disclosed at that stage to the

accused, it may prejudice the investigation. Though the ED is entitled to raise the said plea, it will have to show the documents to the Court. The Court can, for reasons recorded, deny production of documents only if it is satisfied that the disclosure of the documents may prejudice the ongoing investigation. Needless to add that the ED cannot raise such an objection after the investigation is complete.

53. Provisions like Section 45(1)(ii) or Section 24 of the PMLA are very drastic provisions. Very few penal statutes contain such provisions. Under the said provisions, the accused has a very heavy burden to discharge. Perhaps, the enactment of PMLA was due to the drastic changes in the world we have seen in the 21st century. The presence of modern technology has brought about new categories of crimes. This law has been enacted taking into consideration the changing needs. A Constitution Bench of this Court in the case of Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.15 in paragraph 29 held thus:

> "29. The Constitution Bench in Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] emphasised that the principle of transforming constitutionalism also places (2023) 4 SCC 541 upon the judicial arm a duty to ensure that a sense of transformation is ushered consistently in the society by interpreting and enforcing the constitutional as well as other provisions of law. Constitutional law has developed a great deal during the last few decades. The interpretation of various provisions of the Constitution made by this Court decades back has undergone a drastic change. For example, the narrow interpretation given to Article 21 in the "A.K. Gopalan" era is no longer valid. The concept of freedom has undergone changes. In the 21st Century, society looks completely different from what it looked in the last century. We see a change in the socio-cultural ethos of society. Thus, the interpretation of law must keep pace with changing needs of society."

54. We have seen a major shift in the interpretation of rights conferred by Article 21 of the Constitution after A.K.Gopalan' s case. When the Legislature has felt a need to bring out a legislation like the PMLA, it is the duty of the Court to interpret Article 21 in such a way that the right of a fair trial available to the accused is not affected. The object of the provisions of Section 24 or 45(1)(ii) is not to take away the fundamental right of fair trial conferred on the accused. These provisions are different in the sense that they put a burden on the accused. When such a burden is put on the accused, it is all the more necessary that the right of fair trial guaranteed

under Article 21 to the accused is protected by permitting the accused to lead defence evidence by seeking the production of witnesses and documents not relied upon by the prosecution. Similarly, for discharging the burden under Section 45(1)(ii), the accused has the right to invoke Section 91 of CrPC (Section 94 of the BNSS) for seeking production of documents at the stage of hearing of bail application. CONCLUSION

55. Hence, some of our important conclusions are as under:

(a) When records, instruments or documents of title of the property are seized along with the property under Sections 17 and 18 of the PMLA, the accused from whom the same are seized is entitled to true copies thereof;

(b) Once cognizance is taken on the basis of a complaint under Section 44(1)(b) of the PMLA, the learned Special Judge must direct that along with the process, a copy of the complaint and the following documents be provided to the accused;

(i) Statements recorded by the learned Special Judge of the complainant and the witnesses, if any, before taking cognizance;

(ii) The documents including the copies of the Statements under Section 50 of the PMLA produced before the Special Court, along with the complaint, and the documents produced subsequently by the ED till the date of taking cognizance; and

(iii) Copies of the supplementary complaints and the documents, if any, produced with supplementary complaints.

(c) We hold that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused.

As held by this Court, the object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91 of the CrPC (Section 94 of the BNSS) for providing copies of the documents which are not relied upon by the prosecution.

(d) At the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the chargesheet. In

case of the PMLA, at the time of framing charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaints. Though the accused will be entitled to a list of documents, objects, exhibits etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.

(e) At the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing in accordance with Section 233(3) of the CrPC (Section 256(3) of the BNSS). At this stage, he can also apply for the production of a document or a thing that is in the custody of the prosecution but has not been produced. A fair trial is a part of the right guaranteed to an accused under Article 21 of the Constitution. The right to a fair trial of the accused includes the right to defend. The right to defend consists of the right to lead the defence evidence by examining the witnesses and producing the documents. Therefore, the accused is entitled to exercise his right at the stage of entering upon defence by compelling the prosecution or a third party to produce a document or a thing in their possession or custody. The Court can decline the request of the accused for issuing process for the production of documents only on the limited grounds set out in sub-section (3) of section 233 of the CrPC.

(f) When at the stage of defence evidence of the accused, documents are produced on the prayer of the accused and the accused desires to cross-examine any of the prosecution witnesses based on the said documents, it is always open for the accused to apply under Section 311 of the CrPC (Section 348 of the BNSS) to recall a prosecution witness already examined for further cross-examination. The reason is that the right to effectively cross-examine the prosecution witnesses is also a part of the right to have a fair trial. The accused can exercise this right even if evidence of both sides is closed.

(g) As compared to traditional penal statutes, at the time of trial of the offence under the PMLA, there is a huge negative burden put on the accused. Therefore, it is all the more necessary that sub-section (3) of Section 233 of CrPC (Sub- section (3) of Section 256 of the BNSS) should be liberally construed in favour of the accused. The reason is that the constitutional validity of Section 24 has been upheld on the ground that the accused has a full

opportunity to show that he has not violated the provisions of the PMLA. He is entitled to rebut the presumption. Therefore, if the Special Court refuses the prayer made by the accused in terms of Sub- section (3) of Section 233 for compelling the attendance of any witness or for production of a document in custody of ED or a third party, the accused will not be in a position to discharge the onerous burden on him under Section 24 of the PMLA. Hence, the valuable right of the accused under Section 233(3) of the CrPC needs to be protected.

(h) At the time of hearing of an application for bail governed by Section 45(1)(ii) in connection with the offences under Section 3 of the PMLA, an accused is entitled to invoke Section 91 of the CrPC (Section 94 of the BNSS) seeking production of unrelied upon documents. If investigation or further investigation in progress, the ED is entitled to raise objection to production of documents sought by the accused on the ground that if the documents are disclosed at this stage to the accused, it may prejudice the investigation. Only if the Court after perusing the documents is satisfied that the disclosure of the documents at that stage may prejudice the ongoing investigation, it can deny the prayer for the production of such documents.

56. Hence, we pass following orders:

(i) In Criminal Appeal No. 1622 of 2022, the impugned judgment and order dated 22nd July, 2019 is hereby quashed and set aside. It is held that the appellants are entitled to copies of the documents produced along with the complaint under Section 44(1)(b). The ED is directed to provide soft or legible copies of all the documents produced along with the complaint, which have not been supplied till today within a period of one month from today.

(ii) In Criminal Appeal 730 of 2024, the impugned order is hereby quashed and set aside. We direct the ED to supply true copies of the documents seized from the premises of the accused within a period of one month from today. It will be open for the ED to provide soft copies of the said documents.

57. The appeals are allowed in the above terms.

IN THE HIGH COURT OF ALLAHABAD AT ALLAHABAD
(Siddharth & Jai Krishna Upadhyay, JJ.)

Habeas Corpus Writ Petition No. 139 of 2026

Jai Kumar Aggarwal ... Petitioner(s)

Versus

Directorate General of GST Intelligence & 3 Ors. ... Respondent(s)

Date of Order: 13.02.2026

WHETHER REASONS TO BE RECORDED NEED TO BE SUPPLIED TO THE ACCUSED U/S 69 OF THE CGST ACT.

Held: The reasons need not necessarily be supplied but written grounds of Arrest must be furnished to the accused.

Present for Appellant(s) : Mohit Singh

Present for Respondent(s) : Dhananjay Awasthi, G.A.

ORDER

HON'BLE SIDDHARTH, J.
HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Sri Imran Ullah, learned Senior Counsel assisted by Sri Mohit Singh, Sri Nadeem Murtaza, Sri Vedant Gupta, Ms. Snigdha Singh and Sri Harsh Vardhan Kediya and Sri Vineet Vikram, learned counsel for the petitioner; Sri Dhnanjay Awasthi, Sri Gopi Krishan Soodh and Sri Harmanpreet Singh, Senior Standing Counsel DGGI, Delhi (online), learned counsel for respondent nos. 1 & 2 and Mrs. Manju Thakur, learned A.G.A.-Ist for State-respondent nos. 3 & 4 and perused the material on record.

2. The above noted habeas corpus writ petition has been filed by the petitioner praying for following reliefs:-

i. To issue a writ, order or direction, in the nature of Habeas Corpus directing the respondents herein to produce the corpus/ petitioner while declaring the detention, arrest, and subsequent remand and custody of the petitioner as unconstitutional, illegal and arbitrary and consequently directing that the Petitioner be released forthwith;

ii. to issue a writ, order, or direction in the nature of certiorari setting aside the order dated 17.01.2026 passed by the Chief Judicial Magistrate, Meerut, in Case No. 1361/2025, under Section 132(1)(c) of the CGST Act, 2017, Department DGGI, Ghaziabad, and all consequential proceedings thereof;

iii. to issue any other and further writ, order, or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv. To allow the instant petition with costs.

3. The brief facts of the case is that on 29.12.2025 at about 8:00 a.m., officers of respondent no.1 detained the petitioner and started search proceedings at his residential premises as per Section 67 of CGST Act. After the search proceedings under Section under Section 67 of the CGST Act, petitioner was arrested on 16.1.2026 as per Section 69 of the Act aforesaid.

4. Learned Senior Counsel for the petitioners submits that at about 6:40 p.m. on 16.1.2026 respondent no.1 handed over an arrest memo without any annexure and search memo to the petitioner and directed the petitioner and his wife to accompany them. Apart from the aforesaid documents, no other documents were supplied to the petitioner at the time of his arrest. Neither "ground of arrest" nor "reasons to believe" as mandatorily required under Section 69 CGST Act read with the judgment of Apex Court in the case of ***Radhika Agrawal Vs. Union of India, (2025) 5 SCC 545*** were furnished to the petitioner. It has been submitted that the arrest of the petitioner under Section 69 of CGST Act is unwarranted since the offence alleged is punishable up to 5 years only and therefore in view of the recent judgment of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, dated 11.7.2022,*** the arrest of petitioner could not have been made.

5. Learned Senior Counsel for the petitioner has pointed out to the circular dated 17.8.2022 issued by the department of Central Board of Indirect Taxes and Customs (GST- Investigation Wing), the relevant portion of which reads as under:-

" F.No. GST/INV/Instructions/2021-22 GST-Investigation *Unit*

17th August *2022*

Instruction No. 02/2022-23 [GST - *Investigation]*

Subject: Guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017-reg.

Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

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

Conditions precedent to *arrest:*

1.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub- section (1) of Section 132 which is punishable under clause (i) or clause (ii) of subsection (1), or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at *a* decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible *material.*

1.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal

conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

1.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

1.2.2 Whether arrest is necessary to ensure proper investigation of the offence?

1.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

1.2.4 Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?

1.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

1.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of mens rea / guilty mind is palpable.

1.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses *exists.*

1.5 Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the deterrnining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to

summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc."

6. He has submitted, relying upon the aforesaid circular, that there was no special reason assigned at the time of the arrest of the petitioner justifying his arrest. The arrest of petitioner was made casually in disregard of the procedural safe guards provided in the circular aforesaid.

7. Further reliance has been made on paragraph no. 34 of the judgement of Apex Court in the case of **Radhika Agrawal (Supra),** which is quoted herein below:-

"34. The contention of the DoE that while "grounds of arrest" were mandatorily required to be supplied to the arrestee, "reasons to believe", being an internal and confidential document, need not be disclosed, was decisively rejected in ***Arvind Kejriwal Vs. Directorate of Enforcement, (2025) 2 SCC 248*** . It was held that "reasons to believe" are to be furnished to the arrestee such that they can challenge the legality of their arrest. Exceptions are available in one-off cases where appropriate *redactions* of "reasons to believe" are permissible. The relevant portion *reads:*

"41. Once we hold that the accused is entitled to challenge his arrest under *Section 19(1)* of the PML Act, the court to examine the validity of arrest must catechise both the *existence* and soundness of the "reasons to believe", based upon the material available with the authorized officer. It is difficult to accept that the "reasons to believe", as recorded in writing, are not to be furnished. As observed above, the requirements in *Section 19(1)* are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the "reasons to believe". In reality, this would effectively prevent the accused from challenging their arrest, questioning the "reasons to believe". We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the "reasons to believe" should be furnished to the arrestee to enable him to exercise his right to challenge the validity of arrest.

42. We would accept that in a one-off case, it may not be feasible to reveal all material, including names of witnesses and details

of documents, when the investigation is in progress. This will not be the position in most cases. DoE may claim redaction and exclusion of specific particulars and details. However, the onus to justify redaction would be on the DoE. The officers of the DoE are the authors of the "reasons to believe" and can use appropriate wordings, with details of the material, as are necessary in a particular case. As there may only be a small number of cases where redaction is justified for good cause, this reason is not a good ground to deny the accused's access to a copy of the "reasons to believe" in most cases. Where the non-disclosure of the "reasons to believe" with redaction is justified and claimed, the court must be informed. The file, including the documents, must be produced before the court. Thereupon, the court should examine the request and if they find justification, a portion of the "reasons to believe" and the document may be withheld. This requires consideration and decision by the court. DoE is not the sole *judge.*

43. Section 173(6) of the Code, permits the police officer not to furnish statements or make disclosures to the accused when it is inexpedient in public interest. In such an event, the police officer is to indicate the specific part of the statement and append a note requesting the Magistrate to exclude that part from the copy given to the accused. He has to state the reasons for making such request. The same principle will apply."

8. Further reliance has been made on paragraph Nos. 51, 52, 54, 64 & 66 of the aforesaid judgement:

"51. We shall now draw our attention to the provisions of the GST Acts. We have collectively referred to the Central as well as the State GST as "the GST Act".

55. To a large extent, our reasoning and the ratio on the applicability of the Code to the Customs Act would equally apply to the GST Acts in view of *Sections 4* and 5 of the Code. Sub-section (10) to Section 67 of the GST Acts postulates that the provisions of the Code relating to search and seizure shall, as far as may be, apply to search and seizure under the GST Acts, subject to the modification that for the purpose of sub-section (5) to Section 165 of the Code, the word 'Magistrate' shall be substituted with the word 'Commissioner'. *Section 69*, which deals with the power of arrest, a provision which we will refer to subsequently, also deals with the provisions of the Code when the person arrested for any offence under the GST Acts is produced before a Magistrate. It

also deals with the power of the authorised officers to release an arrested person on bail in case of non-cognizable and bailable offence, having the same power and subject to the same provisions as applicable to an officer in charge of a police station. We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts.

54. Section 69 of the GST Acts states that where a Commissioner has reasons to believe that a person has committed any offence specified in clauses (a) to (d) of sub-section (1) to *Section 132*, which is punishable under clauses (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may authorise any officer of central or state tax to arrest such person. Sub-section (2) requires that when a person is arrested for an offence specified in sub-section (5) to *Section 132*, the officer authorised to arrest, must inform the person of the grounds of arrest and produce him before the Magistrate within 24 hours.

64. The circular also refers to the procedure of arrest and that the Principal Commissioner/Commissioner has to record on the file, after considering the nature of the offence, the role of the person involved, the evidence available and that he has reason to believe that the person has committed an offence as mentioned in Section 132 of the GST Act. The provisions of the Code, read with Section 69(3) of the GST Acts, relating to arrest and procedure thereof, must be adhered to. Compliance must also be made with the directions in ***D.K. Basu Vs. State of W.B., 1997 SCC (Cri) 92.***

64.1. The format of arrest, as prescribed by the Central Board of Indirect Taxes and Customs in Circular No. 128/47/2019-GST dated 23.12.2019, has also been referred to in this Instruction. Therefore, the arrest memo should indicate the relevant section(s) of the GST Act and other laws.

64.2, In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST- Investigation Wing) vide Instruction No. 01/2025-GST dated 13.01.2025 (GST/INV/ Instructions/21-22). The circular dated 13.01.2025 now mandates

that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo.

1.3. Instruction 02/2022-23 GST (Investigation) dated 17.08.2022 further lays down that a person nominated or authorised by the arrested person should be informed immediately, and this fact must be recorded in the arrest memo. The date and time of the arrest should also be mentioned in the arrest memo. Lastly, a copy of the arrest memo should be given to the person arrested under proper acknowledgement.

1.4. The circular also makes other directions concerning medical examination, the duty to take reasonable care of the health and safety of the arrested person, and the procedure of arresting a woman, etc. It also lays down the post-arrest formalities which have to be complied with. It further states that efforts should be made to file a prosecution complaint under Section 132 of the GST Acts at the earliest and preferably within 60 days of arrest, where no bail is granted. Even otherwise, the complaint should be filed within a definite time frame. A report of arrests made must be maintained and submitted as provided in paragraph 6.1 of the Instruction.

9. It has been submitted by learned Senior Counsel for the petitioner that it is clear from remand order dated 17.1.2026 that the “medical report” and “memo of arrest” were served on the petitioner on 17.1.2026 after remand order dated 17.1.2026 was passed by the learned Magistrate, when his arrest was effected on 16.1.2026. Therefore, it is clear that the prior to his arrest, he was no supplied the “grounds of arrest” or “reasons to believe”. In fact the “reasons to believe” have not been supplied to the petitioner as yet. It has been submitted that once it is found by this Court that the after remand order was passed, “grounds of arrest” were supplied to the petitioner, the order of remand become illegal and therefore the court has jurisdiction to entertain the habeas corpus writ petition preferred by the petitioner before this Court in view of the judgment of Apex Court in the case of ***Mihir Rajesh Shah Vs. State of Maharastra and another, MANU/SC/1492/2025. Relevant paragraph no. 56 thereof is quoted herein below:-***

“ 56. In conclusion, it is held *that:*

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under *IPC* 1860 (now BNS *2023);*

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally.

The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

10. It has finally been submitted that from the material on record and judgements cited above at bar it is clear that petitioner has been arrested illegally and detained in jail since 16.1.2026. Hence this writ petitioner deserves to be allowed by granting reliefs sought in the writ petition.

11. Sri Dhnanjay Awasthi, learned counsel for respondent nos. 1 & 2, has vehemently opposed the submissions made by learned Senior Counsel for the petitioner. The first argument of learned counsel for respondent nos. 1 & 2 is that "reasons to believe" are not required to be supplied to the petitioner. There are only internal documents to be perused by the department and the court as Section 69 (1) of the CGST Act, only provides that where Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

12. He has submitted that "reasons to believe" are not required to be supplied to such person and only Commissioner should have "reasons to believe" that such person has committed the alleged offence. He has submitted that word "may" used in Section has effect of word "shall" and is mandatory in nature and not merely directory.

13. Second argument of learned counsel for respondent nos. 1 & 2 is that in paragraph no. 58 of the judgment in the case of ***Radhika Agrawal (supra)*** the Apex Court has held that Commissioner must record "reasons to believe" in his order while directing arrest of the person so implicated. There is no requirement of serving copy of the "reasons to believe" of the accused.

14. He has thirdly submitted that vires of Section 69 of CGST Act has already been upheld in the case of ***Radhika Agrawal (supra)*** and therefore argument made by learned counsel for the petitioner is legally misconceived and deserves to be turned down.

15. He has forthly submitted that since vires of Section 69 and 70 of CGST Act has been upheld by the Apex Court in the case of ***Radhika Agrawal (supra)***, therefore, unless the aforesaid provisions of CGST Act are again challenged with reference to the service of "reasons to believe", it is not open for the petitioner to raise such an argument as has been raised before this Court.

16. Learned Counsel for respondent nos. 1 and 2 has finally submitted that judgment of Apex Court in the Case of ***Satendra Kumar Antil Vs. C.B.I. & Another (supra)*** does not applies to the case of CGST Act which is complete code in itself and judgment of the Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another (supra)*** is contrary in part to the judgment of the Apex Court in the case of ***Radhika Agrawal (Supra)***. He submits that the ratio of case ***Satendra Kumar Antil Vs. C.B.I. & Another (supra),*** that where offence is/are punishable upto 7 years or below arrest cannot be effected, is not applicable to the present case under CGST Act.

17. Learned counsel for respondent nos. 1 & 2 has submitted that the service of grounds of arrest on the petitioner on 17.1.20256 at 5:00 p.m. will not affect the merits of the remand order since grounds of arrest was admittedly supplied to the petitioner.

18. After hearing the rival submissions, this Court finds that the first issue to be decided is regarding the maintainability of the writ petition. It has been vehemently argued by the learned counsel for respondent nos. 1 & 2 that the petition is not maintainable since petitioner has been arrested by following procedure of law as per Section 67/69 of CGST Act. We find that such a contention raised before this Court is not apparent from record. It is settled law that if the court finds that the order of remand passed by the Magistrate is not in accordance with law. The arrest of the accused in such a case becomes illegal and the this Court has jurisdiction to entertain the habeas corpus writ petition preferred under Article 226 of the Constitution of India. This view finds support from the paragraph no. 28 of the judgement of Apex Court in the case of ***V. Senthil Balaji Vs. State represented by Deputy Director and others, (2024) 2 Supreme Court Cases 51.***

19. The argument of learned Senior Counsel for the petitioner that the "reasons to believe" were required to be furnished to the petitioner alongwith the "grounds of arrest" also needs consideration. From the paragraph no.34 of the judgment of Apex Court in the case of ***Radhika Agrawal (supra)*** it is clear that "grounds of arrest" and "reasons to believe" are mandatorily required to be supplied to the arrestee. We find that the aforesaid observation of Hon'ble Supreme Court was with regard to the provisions of P.M.L.A. Act and not GST Act.

20 Our view finds support from the paragraph nos. 58, 59, 60, 61, 64.2 of the judgment of Apex Court in the case of ***Radhika Agrawal (supra),*** quoted herein below:-

> "58. It is clear from the aforesaid provisions that, to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, vide the reasons to believe recorded by him, that the person to be arrested has committed a non- bailable offence and that the pre-conditions of sub-section (5) to *Section 132* of the Act are satisfied. Failure to do so would result in an illegal arrest. With regard to the submission made on behalf of the Revenue that arrests are not made in case of bailable offences, in our considered view, the Commissioner, while recording the reasons to believe should state *his* satisfaction and refer to the 'material' forming the basis of his finding regarding the commission of a non-bailable offence specified in clauses
>
> (a) to (d) of sub-section (1) to *Section 132*. The computation of the tax involved in terms of the monetary limits under clause (i) of sub-section (1), which make the offence cognizable and non-bailable, should be supported by referring to relevant and sufficient material.
>
> *59. The aforesaid exercise should be undertaken in right earnest and objectively, and not on mere ipse dixit without foundational reasoning and material. The arrest must proceed on the belief supported by reasons relying on material that the conditions specified in sub-section (5) of Section 132 are satisfied, and not on suspicion alone. An arrest cannot be made to merely investigate whether the conditions are being met. The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe must be based on the evidence establishing – to the satisfaction of the Commissioner – that the requirements of sub-section* (5) to Section 132 of the GST Act are *met.*

60. Our attention was drawn to the judgment of the High Court of Delhi in Makemytrip (India) Private Limited and Another v. Union of India and Others, 2016 SCC OnLine Del 4951. which is a decision interpreting the power of arrest under the Finance Act, 1994. These provisions are related to service tax. Excise duty, service tax, and other taxes are subsumed under the GST regime. Accordingly, we are in agreement with the findings recorded in this decision to the extent that the power of arrest should be used with great circumspection and not casually. Further, as in the case of service tax, the power of arrest is not to be used on mere suspicion or doubt, or for even investigation, when the conditions of sub-section (5) to Section 132 of the GST Acts are not satisfied.

61. However, relying upon the judgment in the case of Makemytrip (supra), it has been submitted on behalf of the petitioners, that the power under sub-section (5) to Section 132 cannot be exercised unless the procedure under Section 73 of the GST Act is completed and an assessment order is passed quantifying the tax evaded or erroneously refunded or input tax credit wrongly availed. According to us, this contention should not be accepted as a general or broad proposition. We would accept that normally the assessment proceedings would quantify the amount of tax evaded, etc. and go on to show whether there is any violation in terms of clauses (a) to (d) to sub-section (1) of Section 132 of the GST Acts and that clause (i) to sub-section (1) is attracted. But there could be cases where even without a formal order of assessment, the department/Revenue is certain that it is a case of offence under *clauses* (a) to (d) to sub-section (1) of *Section 132* and the amount of tax evaded, etc. falls within clause (i) of sub-section (1) to Section 132 of the GST Acts with sufficient degree of certainty. In such cases, the Commissioner may authorise arrest when he is able to ascertain and record reasons to believe. As indicated above, the reasons to believe must be explicit and refer to the material and evidence underlying such opinion. There has to be a degree of certainty to establish that the offence is committed and that such offence is non-bailable. The principle of benefit of doubt would equally be applicable and should not be ignored either by the Commissioner or by the Magistrate when the accused is produced before the Magistrate.

64.2. In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction

regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST- Investigation Wing) vide Instruction No. 01/2025-GST dated 13.01.2025 (GST/INV/ Instructions/21-22). The circular dated 13.01.2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo."

21. It is amply clear from the above paragraphs of the judgment of Apex Court in the case of ***Radhika Agrawal (supra)*** that it is for the Commissioner to ascertain and record the "reasons to believe" explicitly and with reference to the material and evidence underlying his opinion. It is not provided anywhere that the "reasons to believe" should be supplied to the accused. Therefore, the arguments advanced by learned Senior Counsel for the petitioner is turned down.

23. The argument of learned Senior Counsel for the petitioner that the petitioner ought not to have been arrested since he has been implicated for committing an offence, which is punishable below 7 years appears to be correct since Apex Court in the case of ***Satendra Kumar Antil (supra)*** has not excluded the application of ratio of the judgment to the offences covered under the Special Act. Therefore we agree that the ratio of the judgment in the case of ***Satendra Kumar Antil (supra)*** will apply to this case also.

24. Learned counsel for respondent nos. 1 & 2 has pointed to the counter affidavit and has demonstrated that the arrest memo, *Jama Talasi*, grounds of arrest and intimation regarding arrest of the petitioner sent to his wife were handed over to the petitioner and his wife and their signatures were taken on 16.1.2026 itself when the remand order was passed on 17.1.2026. Therefore, it is clear that the service of grounds of arrest and other documents were made on the petitioner before producing him before Remand Magistrate on 17.1.2026. Therefore, there is full compliance of the mandate of law regarding providing of the "memo of arrest" and "grounds of arrest" to the petitioner and also providing the copy of intimation to his wife about his arrest.

25. Learned Senior Counsel for the petitioner submits that the argument of counsel for respondent nos.1&2 is absolutely incorrect. He has submitted that the signatures of the petitioner were taken on all the documents while in custody and the copy of the same was never supplied to the petitioner or his wife. He has submitted that before the Remand

Magistrate it was specifically argued on behalf of the petitioner that the "grounds of arrest" of petitioner was never provided to him in violation of the judgment of Apex Court in the case of ***Radhika Agrawal (supra), Rihan Kumar, etc.*** and the mandate of Apex Court has been violated. There is also no document evidencing that "reasons to believe" were present on the record and hence remand application of the prosecution should have been rejected. He has pointed out further that the Remand Magistrate has not recorded any finding that the "grounds of arrest" has been supplied to the petitioner. The findings recorded by the Remand Magistrate only is that on 16.1.2026 the accused was arrested and the"grounds of arrest"were communicated to him in Hindi and English, orally and his signatures were taken thereon 16.1.2026 and after his arrest, memo of "grounds of arrest" was provided to him which has been brought on record. The copy of "reasons to believe" has been provided to the Court in sealed cover by the prosecution, which has been perused by the Court.

26. We find from paragraph No. 64.2 of the judgment of Apex Court in the case of ***Rakhika Agrawal (Supra)*** that as per the circular dated 13.1.2025, grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. In this case we find that in the arrest memo, there is no mention of any annexure. Therefore it appears that opposite party nos. 1 & 2 have not been complied their own circular dated 13.1.2025 by furnishing to the petitioner the "grounds of arrest" alongwith the arrest memo as its annexure. On this account also we find that the remand order of petitioner is illegal.

27. Learned Senior Counsel for the petitioner has pointed out that the copy of medical report and grounds of arrest were received by learned counsel for the petitioner in Court at 5:00 p.m. on 17.1.2026 as per the endorsement made in the remand order dated 17.1.2026. Therefore he contends that after the remand order was passed, the medical report and grounds of arrest were provided to the counsel for the petitioner. Earlier his signatures were taken only on grounds of arrest. Further the court did the "reasons to believe" recorded by Commissioner by opening the sealed cover, wherein it was produced before the court. As per the paragraph of the judgement of Apex Court in the case of ***Radhika Agrawal (Supra)*** the court was required to ascertain whether the "reasons to believe" show that the arrest of petitioner has been made relying upon any credible evidence or it has been made only to investigate the suspicion against petitioner. Whether the power of arrest was used with circumspection and case was required to be ascertained by court before allowing remand application of respondents, which is not apparent from the remand order.

28. After the considering the fact that there is serious factual dispute about actual service of “grounds of arrest” on the petitioner before affecting his arrest since in the remand order, there is no recital that the copy of “grounds of arrest” was provided to the petitioner at the time of his arrest and before producing him before the Remand Magistrate and finding of the remand order to be not in accordance with law and also keeping in view of the judgement of Apex Court in the case of ***Satendra Kumar Antil (supra),*** we hold that the remand order suffers from legal infirmity and cannot be sustained. It is hereby set aside.

29. This writ petition is **allowed.**

30. The petitioner shall be released from custody on production of copy of this order before the court/authority concerned duly downloaded in official website of this Court without waiting for production of certified copy of this order, which shall be filed after the court reopens after weekly holidays.

31. It shall be open for the respondent to proceed afresh against the petitioner in accordance with law, if so warranted.

Proportionality and Privacy in GST Compliance: Navigating India's Digital Tax Infrastructure under the DPDP Act, 2023

By Manish Khurana, Advocate

''न हि ज्ञानेन सदृशं पवित्रमिह विद्यते।
तत्स्वयं योगसंसिद्धः कालेनात्मनि विन्दति''

(Bhagavad Geeta, Chapter 4, Verse 38)

Translation: "In this world there is nothing so pure and sublime as knowledge; one perfected in yoga finds it within the self in due course"

This Sanskrit verse exalts the transformative power of knowledge (Kku) and disciplined insight. Analogously, in our digital era the "knowledge" drawn from data, notably taxpayers' digital footprints, can yield clarity and efficiency in governance. Yet as the verse implies, such knowledge must be acquired and applied with restraint and ethical discipline; only then can it be truly *pavitra* (pure). If data is harvested indiscriminately or misused, it can erode trust and fundamental values. This framing sets the stage for examining India's evolving law on data protection in the context of the Goods and Services Tax (GST) regime.

Constitutional Foundations of Privacy

The Constitution of India now firmly protects privacy as a fundamental right under Article 21. In *Justice K.S. Puttaswamy v. Union of India*[1], a nine-judge bench of the Hon'ble Supreme Court of India unanimously held that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21. The Hon'ble Court overruled prior contrary rulings and clarified that any state action encroaching on privacy must satisfy strict tests. Specifically, it adopted the classic three-part framework for any limitation on a fundamental right: **legality** (a valid law must authorize the intrusion), **necessity** (the law must pursue a legitimate state objective), and **proportionality** (there must be a rational connection and minimal impairment between the measure and its aim). This doctrine of proportionality means that even if a valid law exists (legality) and a legitimate goal is identified, the means chosen (*e.g.,* data collection) must be carefully tailored.

1 (2017) 10 SCC 1.

The guarantee of personal liberty and dignity under Article 21 of the Constitution, thus, imposes a substantive check on administrative data regimes. For instance, if GST authorities required Aadhaar authentication for all taxpayers, that requirement would have to be scrutinized under *Puttaswamy*'s standard. Absent a compelling justification, such a requirement could be struck down as disproportionate. In short, the constitutional baseline is exacting: privacy rights cannot be overridden save by demonstrably justified state action. This is the crucible through which any GST-related data policy must pass.

The GST Compliance Ecosystem: Data Collection and Privacy

The Goods and Services Tax regime in India is fundamentally data-driven. Under a single online portal (GSTN), businesses submit exhaustive information such as business identifiers, turnover, sales/purchase registers, input tax credits, etc. to comply with registration and return-filing requirements. Through mandatory e-invoicing (for businesses above prescribed thresholds), every sizable invoice is reported in real time to the GST portal. In effect, the GST system generates a comprehensive digital ledger of transactions for the entire economy.

Some compliance measures explicitly involve personal data. Under Rule 8(4A) of the CGST Rules, a taxpayer's Aadhaar number (or Virtual ID) and biometrics may be used for verification at GST Seva Kendras. The GST Seva Kendra (GSK) scheduling system itself explains that it collects such Personally Identifiable Information (PII) only to "validate the details provided" by taxpayers, and insists the data will be "handled with strict privacy measures… only for the intended purposes".[2] Indeed, the GSK privacy notice lists the fields it collects (*e.g.,* name, email, Aadhaar/VID, fingerprints) and emphasizes that these are used solely for authentication.

Meanwhile, the GSTN is aggregating *huge volumes* of data. The GSTN is constituted as a Special Purpose Vehicle under Section 146 of the CGST Act, 2017, and its vision statement declares it a "trusted National Information Utility (NIU)" providing the IT backbone for GST. The portal reportedly processes *billions* of invoices per month. Commentators have warned that this massive system "deals with huge data pertaining to trade and commerce" and that any breach "will cause irreparable damage to the

2 https://www.aagamshahca.com/news-detail/Data-Privacy-in-the-GST-Era-Aadhaar-Biom

whole of the Indian economy". In short, GSTN sits atop a vast repository of business and personal data, making its security paramount.[3]

Accordingly, GSTN is subject to stringent security norms. Under the Information Technology Act, 2000, entities handling sensitive data must implement "reasonable security practices" or face liability. In particular, Section 43A of the IT Act provides that anybody corporate handling sensitive personal data is liable for damages if it negligently fails to secure the data. The GSTN's own policies commit it to international standards: for example, it must meet ISO/IEC 27001 requirements for an information security management system. Analysts emphasize the core triad of **Confidentiality, Integrity and Availability (CIA)** as guiding principles. This means strictly controlling access, encrypting data at rest and in transit, and ensuring continuous availability of services. Periodic audits and certifications (as the GSTN is claimed to undertake) are essential to verify these measures.

It is also noteworthy that even before DPDP, Indian laws already treated much of this data as sensitive. The erstwhile IT Rules (2011) classified bank account details, health information, biometrics, and the like as "sensitive personal data," requiring explicit consent and robust safeguards. Those Rules applied to *any* entity processing a resident's sensitive data in India, imposing fiduciary duties on both the data collector and processor. Thus, GST-compliance data has long been presumed to demand high protection.

The Digital Personal Data Protection Act, 2023

The newly enacted Digital Personal Data Protection (DPDP) Act, 2023 now provides a statutory scaffold for processing personal data across sectors. Its Preamble explicitly balances "the right of individuals to protect their personal data" against "the need to process such personal data for lawful purposes".[4] In effect, the Act affirms that data processing (including for taxation) is legitimate only if it respects individual privacy.

Key features of the DPDP Act echo the European GDPR, but with an Indian inflection. It requires explicit consent for processing, defined as "free, specific, informed, unconditional and unambiguous." Unlike the GDPR, however, it also enumerates several lawful bases beyond consent.

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3 https://www.rostrumlegal.com/security-concerns-in-goods-services-tax-network-gstn/

4 https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf

These "legitimate purposes" include processing data voluntarily shared by the principal for a specified purpose, processing required to comply with a law or court order, processing for employment, or in response to medical emergencies or epidemics.[5] Notably for tax, the Act expressly exempts processing "necessary for enforcing any legal right or claim".[6] Thus, activities like collecting tax or investigating fraud, arguably legal claims or law-enforcement functions, fall outside the stricter consent regime. Similarly, processing for crime prevention or by courts is exempt.

The DPDP Act also imposes obligations on data fiduciaries (akin to controllers). They must furnish clear notices of data use, minimize data collection to what is needed, appoint Data Protection Officers (for significant entities), and establish grievance mechanisms. A data fiduciary that violates the Act faces penalties (currently up to ₹250 crore). In practice, the GSTN and related platforms would have to comply with these duties: they may be designated "Significant Data Fiduciaries" given the scale of processing. For example, GSTN would need to document its data flows, conduct audits, and possibly submit to oversight by the Data Protection Board.

At the same time, the DPDP Act diverges from GDPR in scope and enforcement. Its territorial reach is narrower: it regulates processing within India, and applies to foreigners only if they target Indians with goods or services. It allows more explicit carve-outs for government use (for national security and public interest the law itself is entirely exempt). It does not impose blanket data localization requirements, nor does it automatically grant a right to erasure (only withdrawal of consent, after which data must be deleted, applies). Moreover, the DPDP Board's powers are less extensive than a European Data Protection Authority, the Board can investigate breaches and order penalties, but it cannot itself issue binding regulations or codes these await delegated rules. Thus, the Act reflects a compromise: it enshrines key privacy principles, but also accommodates state and legitimate interests.

Comparative Perspectives

International experience provides useful benchmarks. Under the GDPR, personal data must be processed "in a fair and lawful manner, for a

5 https://www.lw.com/admin/upload/SiteAttachments/Indias-Digital-Personal-Data-Protection-Act-2023-vs-the-GDPR-A-Comparison.pdf

6 https://carnegieendowment.org/research/2023/10/understanding-indias-new-data-protection-law?lang=en

specified and legitimate purpose," and only to the extent necessary.[7] Explicit consent (or another lawful basis) is generally required for each purpose. Strong data-subject rights (access, correction, deletion, portability) are guaranteed, and robust enforcement regimes (independent DPAs imposing high fines) back them. India's DPDP regime is narrower: its fines are lower, it lacks an independent regulator (at least so far), and it explicitly permits certain government processing. Nonetheless, both systems embody the principle that privacy is not absolute but subject to democratic justification.

On the tax side, many other countries are also digitizing VAT/GST. For example, the European Commission's "VAT in the Digital Age" proposals mandate real-time e-reporting of invoices to a central system. The EU's Data Protection Supervisor has noted that some new mandatory fields (such as the seller's bank account identifier) could constitute personal data and thus raise privacy concerns.[8] In practice, the EU frameworks strive to balance fraud prevention with data protection: standardized invoice formats are being designed with privacy in mind, and oversight is required. India's approach is analogous in that it uses e-invoicing to prevent tax evasion, but it diverges in legal detail. For instance, no Indian statute grants taxpayers a general right to access or delete their GST records (beyond their statutory filings), whereas in Europe an invoice's data is subject to GDPR's access and portability rights.

Beyond law, different jurisdictions vary on enforcement. Some countries (*e.g.,* China) mandate strict localization of data, while India's DPDP Act defers such questions to future rules. In federal systems (like the U.S.), privacy is often governed by sectoral statutes and state laws, and VAT (sales tax) is typically decentralized; India's unified GST portal is relatively unique. Comparative scholarship is still emerging, but commentators already note that Indian DPDP is broadly inspired by global norms even as it incorporates local necessities (*e.g.,* carve-outs for legal compliance).

Policy Tensions and Critique

The convergence of GST compliance and privacy law has attracted intense policy debate. Proponents of the digital GST system point to its benefits: seamless e-invoicing and data analytics can close revenue gaps, reduce manual audits, and increase transparency. In theory, the same data

7 https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index_en.htm

8 https://www.itrworldtax.com/NewsAndAnalysis/VAT-reporting-obligations-in-the-Digital-Age-any-risk-for-personal-data-processi/Index/1311

that powers efficient tax collection could also foster better policymaking (through analysis of consumption patterns) and simplify business compliance (through a single portal instead of multiple state systems). Indeed, the GSTN vision highlights "minimal indirect tax compliance cost" through shared infrastructure.

Critics, however, warn of mission creep and privacy erosion. Some small businesses and consumer-rights groups argue that the compliance burden is already heavy and that extending Aadhaar authentication or intrusive checks could be overkill. They fear that the GST portal effectively creates a centralized dossier on every business, which, if leaked or misused, could advantage competitors or abuse market power. Detractors also note that the GST law's promise of taxpayer confidentiality is undermined if vast personal data is circulating electronically. In short, skeptics contend that without strong checks, the data-savvy state (and possibly large businesses) could encroach on individual autonomy under the guise of tax enforcement.

These concerns were dramatically underscored in 2025. A reported breach of GST portal data sparked a political outcry. In Chhatrapati Sambhajinagar, Maharashtra's Leader of Opposition Shri Ambadas Danve demanded a high-level probe after businesses began receiving unsolicited bank loan offers immediately following GST registration. He observed that this "pattern clearly shows that some officials or staff within the GST system are either selling or illegally passing on taxpayer data".[9] Citing the GST law's confidentiality mandate, he warned that such leaks constitute "a direct violation of statutory confidentiality provisions and a serious breach of public trust". This episode illustrates how real the risk is: sensitive GST data (including GSTINs, turnover figures, bank details) was apparently being traded on messaging platforms.

Defenders of the system might respond that Indian law already criminalizes unauthorized disclosure of taxpayer information (GST rules impose penalties for such breaches) and that GSTN's multilayered access controls should deter improper access. They would argue that most GST data processing is legitimately done for tax audits or credit verification, which the DPDP Act itself exempts as "legal claims" or compliance with law. Moreover, the technological safeguards (encryption, audit logs, etc.) continue to improve. Nonetheless, the breach highlights enforcement gaps: the DPDP Act's tougher standards and independent oversight will come

9 https://timesofindia.indiatimes.com/city/aurangabad/alleging-gst-data-leak-ambadas-danve-demands-high-level-probe/articleshow/121119008.cms

into force at a time when civil society's sensitivity to privacy has grown. Tax authorities will have to adapt to this new legal climate and possibly re-think internal protocols in light of the constitutional ethos and the DPDP Board's eventual scrutiny.

Implications for Stakeholders

Businesses and Aggregators: Companies that operate on digital platforms and engage in GST compliance face dual obligations. For instance, an ecommerce marketplace that onboards thousands of merchants must collect PANs, GSTINs, bank accounts and sales data to issue invoices (as per GST law). Under the new DPDP regime, much of this same information is personal data of the merchants and customers. Practically, such a platform must update its privacy policies, obtain explicit consent where required, and implement data-security measures for both GST records and other personal data. Larger businesses should map their GST-related data flows into their overall data-protection programme. They may also need to appoint a Data Protection Officer if they qualify as significant entities under the Act. Non-compliance could now invite not just tax notices, but data breach fines.

GSTN (the Data Fiduciary): The GST portal itself becomes a textbook example of a data fiduciary. It must apply "privacy by design." This means enforcing strict data minimization (collecting only necessary information), transparent notices (clearly explaining each use of data), and robust security. For example, if a taxpayer's Aadhaar was collected, GSTN should delete it after verification or unlink it, subject to legal retention requirements. GSTN must also ensure that any sharing of data (with tax officers, with state authorities, or under court orders) is logged, justified, and limited to the declared purpose. Internally, GSTN needs strong governance: a board or committee overseeing data-protection compliance (reflecting the DPDP Act's governance emphasis) and readiness to respond to any Principal's grievances. Given the DPDP Act's mandate, GSTN may have to hold regular data-audits, file compliance reports, and possibly face inquiries by the Data Protection Board if a systematic problem is suspected.

Taxpayers (Data Principals): Individual taxpayers and business owners also have a stake. They now possess statutory rights regarding their data. A taxpayer can, in principle, request access to the personal data held by GSTN (such as the taxpayer's name, PAN, or other details provided) and seek corrections. For example, if a sole proprietor's address was entered incorrectly in the portal, the proprietor could invoke DPDP to have it rectified. Although ordinary GST law allowed corrections during

filing, DPDP provides an independent basis for accuracy and redress. The Act also permits withdrawing consent. In practice, since much GST compliance is mandatory, withdrawal may have limited effect (one cannot usually opt out of filing returns). However, withdrawal could compel GSTN to delete any secondary uses of data (*e.g.,* marketing, analytics) that depended on consent. The right to data portability (not yet explicitly in Indian law) may come through rules, benefiting businesses migrating data between systems. Overall, taxpayers gain a clearer legal avenue to complain about data misuse, complementing administrative grievance processes.

Conclusion

India's tax and privacy regimes have reached an inflection point. The GST revolution was built on digitization, promising transparency and ease of compliance. Simultaneously, the Constitution and new statutory law insist that this digital revolution must respect the sanctity of the individual. The jurisprudence of *Puttaswamy* and Article 21 demands that any intrusion on privacy be strictly necessary and proportionate. The DPDP Act enshrines many data-privilege safeguards, reflecting that every "tax subject" is also a rights-holder under Part III of the Constitution.

The ancient verse with which we began reminds us that **knowledge can be purifying or polluting, depending on discipline**. If India's tax authorities and businesses handle GST data transparently, securely, and with respect for individual dignity, the resulting insights will indeed be "*pavitra*," purifying the tax system and enhancing equity. But if these digital footprints are gathered carelessly or exploited beyond legitimate bounds, they will taint the public trust that underlies taxation itself. The road ahead must balance enforcement with empathy, data-harvesting with due process, and efficiency with ethics. Only by upholding the proportionality doctrine and embracing the new data-protection norms can we ensure that India's digital tax net remains both effective and just.

Guidelines for Arrest and Bail in Relation to Offences Punishable under the CGST Act, 2017

Instruction No. 01/2025-GST

(Amendment to Instruction No. 02/2022-23 GST (Investigation) dated 17.8.2022)

SUBJECT: GUIDELINES FOR ARREST AND BAIL IN RELATION TO OFFENCES PUNISHABLE UNDER THE CGST ACT, 2017-REG.

Please refer to Instruction No. 02/2022-23 GST (Investigation) dated 17.8.2022 on the above subject.

Hon'ble High Court of Delhi in case of KSHITIJ GHILDIYAL versus DIRECTOR GENERAL OF GST INTELLIGENCE, DELHI [W.P. (CRL) No. 3770/2024], vide judgement dated 16.12.2024, has held that the grounds of arrest have to be communicated in writing to the arrested person. In coming to this conclusion, the Hon'ble High Court has relied on the judgements of Hon'ble Supreme Court the cases of Pankaj Bansal Versus Union of India & Ors., Criminal Appeal Nos. 3051-3052 of 2023 {@ Special Leave Petition (Crl.) Nos. 9220-21 of 2023) dated 3rd October, 2023, and PRABIR PURKAYASTHA VS STATE (NCT OF DELHI), CRIMINAL APPEAL (D. No. 42896/2023) Judgement dated 15th May, 2024.

In this context it is relevant to note the distinction between 'reasons for arrest' and 'grounds of arrest made by the Hon'ble Supreme Court in the case of PRABIR PURKAYASTHA VS STATE (NCT OF DELHI), CRIMINAL APPEAL (D. No. 42896/2023). The relevant para of the said Judgement dated 15th May, 2024, reads as follows:

> "49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest. The reasons for arrest as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details

in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

In light of the above, Para 4.2.1 of Instruction 02/2022-23 GST (Investigation) dated 17.8.2022 is amended and may be read as follows -

Para 4.2.1 The grounds of arrest must be explained to the arrested person and also furnished to him in writing as an Annexure to the Arrest Memo. Acknowledgement of the same should be taken from the arrested person at the time of service of the Arrest Memo.

Hindi version to follow.

(उपेन्द्र सिंह यादव)
आयुक्त, जी एस टी – अन्वेषण, सी.बी.आई.सी.
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Procedure to be followed in Department Appeal Filed against Interest and/or Penalty only, related to Section 128A of the CGST Act, 2017

Room No.159-A , North Block, New Delhi,
7th February, 2025

Instruction No. 02/2025-GST

To,

All the Principal Chief Commissioners/Chief Commissioners of the Central Tax

Madam/Sir,

Subject: Procedure to be followed in department appeal filed against interest and/or penalty only, related to Section 128A of the CGST Act, 2017 -regarding.

Kind attention is invited to the Section 128A of the Central Goods and Service Tax Act, 2017 (hereinafter referred as 'the CGST Act') read with Rule 164 of the Central Goods and Service Tax Rules, 2017 (hereinafter

referred as 'the CGST Rules') which provides waiver of interest or penalty or both, relating to demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20, subject to certain conditions. Further vide Circular No. 238/32/2024-GST dated 15th October, 2024, various doubts related to section 128A were clarified.

2. In this regard, references have been received from various field formations seeking clarification from the Board as to whether the benefit of section 128A (supra) be extended to taxpayers in cases where the tax amount has been paid but the department has gone in Appeal on the basis of wrong arithmetic calculation of interest, or where penalty is either not imposed or imposed less than the prescribed threshold etc.

3. The matter has been examined by the Board. It has been observed that at S. No. 4 of the Table under para 4 in the aforesaid circular, it is clarified that cases where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of section 128A. Hence, it is evident that in cases where the taxpayer has paid the full amount of tax and only interest and/or penalty is in dispute by the taxpayer, then he is eligible to avail the benefit of Section 128A of the CGST Act. On the similar pattern, it is felt that just because the department has gone in appeal or is in the process of filing an appeal, a taxpayer who is otherwise eligible for availing the benefit of section 128A, should not be denied the benefits. Further the intention of the said provision is to reduce litigation and a taxpayer should not be denied the benefit of the provision on mere technicalities.

4. Based on the above, it is decided that in cases where the tax amount has been fully paid by the taxpayer on demands made under section 73 of the CGST Act and the department is in appeal or under the process of filing an appeal only on account of wrong interest calculation and/or wrong imposition or non-imposition of penalty amount under the provisions of CGST Act or IGST Act and the taxpayer fulfils other conditions of section 128A and the rules made thereunder, the proper officer may proceed towards withdrawing such appeal filed and in case where the order under section 73 is under review stage only, accept the same.

5. Difficulties, if any, in the implementation of these instructions may be informed to the Board.

Yours faithfully,

(Gaurav Singh)
Commissioner (GST Policy Wing)

Instructions for Processing of Applications for GST Registration

F.No.CBIC-20016/24/2025-GST
New Delhi, dated 17th April, 2025

Instruction No. 03/2025-GST

To,

All the Principal Chief Commissioners / Chief Commissioners

Madam/Sir,

Subject: Instructions for processing of applications for GST registration – regarding.

References have been received in the Board regarding difficulties being faced by the applicants in getting a GST registration, mainly on account of nature of clarifications being sought by the officers with respect to information submitted in the application **FORM GST REG-01** and seeking of additional documents which are not prescribed in the List of Documents appended to **FORM GST REG-01**. While on one hand, there is a need to prevent registration of fraudulent firms created for passing on input tax credit (ITC) without any underlying supply, on the other hand, there is a need to ensure that genuine applicants seeking registration are not unduly harassed.

2. It is noted that varied practices are being followed by the officers in respect of verification of documents and details provided in **FORM GST REG-01**. It has also been observed that while processing the application, avoidable clarifications are being sought by the officers leading to delay in getting registration as well as rejection of applications.

3. An analysis of the information/clarifications/documents sought in **FORM GST REG-03** reveals that these were mainly on account of proof of principal place of business, constitution of business, identity details of authorized signatory, owner etc.

4. Guidelines for processing of application for registration were earlier issued vide instruction No. 03/2023-GST dated 14th June, 2023. However, as there have been a number of changes in the back office and due to increasing number of registration related complaints, a comprehensive instruction is being issued to take care of the latest developments and to provide clarity to the officers for processing of registration application.

Accordingly, in supersession of the aforesaid instruction, the following instructions are being issued.

5. An indicative list of documents has been prescribed in **FORM GST REG-01**, for submission along with the registration application. The officers handling registration applications should go through the documents list referred to above and should strictly adhere to the following instructions in respect of processing of registration application:

6. **Documents to be sought from applicant while processing applications:**

A. Documents in respect of Principal Place of Business (PPOB): An indicative list of documents is prescribed in FORM GST REG-01 for proof of Principal Place of Business.

(i) In case of **owned premises,** the applicant has to upload the document as listed in the above-mentioned list. The list includes latest Property Tax receipt or Municipal Khata copy or copy of Electricity Bill of the owner. In this regard, it is to be noted that **any one of the documents** mentioned in the said list or any similar document such as water bill or any other document prescribed under the State or the local laws which clearly establishes the ownership of the premises submitted by the applicant should suffice. Any one document uploaded on the portal will be sufficient and no additional document should be requested from the applicant for proof of ownership of the premises of the applicant. While processing registration application, query should not be raised by the officer seeking original physical copy of these documents.

(iia) In cases **where premises is rented,** the applicant is required to upload the valid Rent/Lease agreement alongwith **any one of the documents,** mentioned in the indicative list of documents in **FORM GST REG-01** to establish the ownership of the premise by the lessor. The list includes latest Property Tax receipt or Municipal Khata copy or copy of Electricity Bill. However, it has been observed that additional documents of the lessor are being sought by the field formations such as his PAN card, Aadhar Card, photograph of the lessor in front of/or inside the property, etc. It is hereby advised that **any one of the documents**

mentioned in the said list or similar documents such as water bill or any document prescribed under the State or the local laws which clearly establishes the ownership of the premises by the lessor should be sufficient proof of the principal place of business.

(iib) It is further advised that in case where Rent/Lease Agreement is not registered, then agreement alongwith any one of the documents mentioned in the above list and a copy of the identity proof of the lessor should be sufficient. In case where Rent/Lease Agreement is registered, agreement alongwith any one of the documents mentioned in the above list should suffice and no identity proof of the lessor should be sought. However, in case the electricity or water connection is in the name of the applicant tenant, the document evidencing the same alongwith the rent agreement should be accepted as a valid proof and no additional documents pertaining to the lessor should be sought.

(iii) **For premises not covered under (i) and (ii) above**, such as where the ownership of premises is with spouse, relative etc., a consent letter in plain paper by the concerned owner of the premises alongwith a copy of the identity proof of the person granting consent alongwith **any one of the documents** as mentioned in list of documents appended to **FORM GST REG-01** in support of ownership of the premises of the consenter should suffice. The list includes latest Property Tax receipt or Municipal Khata copy or copy of Electricity Bill. Any one of these documents or similar documents such as water bill or any document prescribed under the State or the local laws which clearly establishes the ownership of the premises by the consenter should suffice and no additional documents from the applicant should be sought.

(iva) In respect of **shared premises**, where Rent/Lease agreement is available, the applicant may upload copy of the agreement alongwith any one of the documents in the said list relating to the ownership of the premises which includes latest Property Tax receipt or Municipal Khata copy or copy of Electricity Bill. In cases where Rent/Lease Agreement is not registered, then agreement alongwith any one of the

documents mentioned in the above list and a copy of the identity proof of the lessor should be sufficient. In case where Rent/Lease Agreement is registered, agreement alongwith any one of the documents mentioned in the above list should suffice and no identity proof of the lessor should be sought.

(ivb) In cases where Rent/Lease agreement is not available, the applicant may upload a consent letter in plain paper from the consenter alongwith his identity proof of the consenter and any of the said documents in support of ownership of the premises of the consenter. In such cases, **any one of the documents** mentioned in the said list or similar document prescribed under the State or the local laws which clearly establishes the ownership of the premises by the consenter should suffice and no additional document should be sought from the applicant for proof of ownership of the premises by the consenter.

(v) In case of **rented/leased premises, where rent or lease agreement is not available,** an affidavit to that effect along with **any document** prescribed in the **FORM GST REG-01** in support of the possession of the premises of the applicant such as copy of Electricity Bill in the name of the applicant should suffice. It may be noted that in such cases, the said affidavit is to be executed on non-judicial stamp paper of minimum value in the presence of First-Class Judicial Magistrate or Executive Magistrate or Notary Public.

(vi) If the principal place of business is located in the Special Economic Zone or the applicant is a Special Economic Zone developer, necessary documents/certificates issued by the Government of India are required to be uploaded.

B. Issues in respect of Constitution of Business:

(i) In respect of constitution of business, where the applicant is one of the partners, Partnership Deed for the proof of constitution of business is required to be uploaded by the applicant. **No additional** document like Udhyam certificate, MSME certificate, shop establishment certificate, trade license etc. should be sought from the applicant.

(ii) In cases, where the applicant is Society, Trust, Club, Government Department, Association of Persons or Body of Individuals, Local Authority, Statutory Body and Others etc., Registration Certificate/Proof of Constitution is required to be uploaded by the applicant.

7. It has been observed that various unwarranted documents are being sought by raising presumptive queries. Some of the common queries raised are that residential address of the applicant/Managing Director/Authorized Signatory is not in the same city or the State where the registration has been sought; HSN code of goods mentioned by the applicant in Registration application is banned or prohibited for sale in the State where the applicant wishes to conduct business; the kind of activities mentioned in the registration application can not be conducted from the particular premises etc. Officers handling registration applications should not ask any presumptive query which is not related to the documents or information submitted by the applicant.

8. Processing of registration application:

(i) As mentioned above, **FORM GST REG-01** prescribes a list of documents to be uploaded by the applicant in respect of photograph, constitution of business, principal place of business, bank account, etc. The proper officer shall carefully scrutinize the said documents to ensure that the documents are legible, complete and relevant. Further, the details or information furnished by the applicant in the application should also be carefully examined by the proper officer to check completeness of the same, to correlate and cross-verify the same with the uploaded documents and to check the authenticity of the applicant. The details of the address of principal and additional places of business and the corresponding documents uploaded with the application as proof of address may be closely scrutinised to verify completeness and correctness of address of such places of business. Further, to the extent possible, the authenticity of the documents furnished as proof of address may be cross-verified from the publicly available sources, such as websites of the concerned authorities such as land registry, electricity distribution companies, municipalities, and local bodies, etc.

(ii) Where applications have not been flagged as risky on the common portal based on data analysis and risk parameters, and

the same are found to be complete and without any deficiency, the officers should approve the application within 07 working days of submission of application.

(iii) Where applications fall under the following conditions, **the registration shall be granted within thirty days of submission of application after physical verification of the place of business:**

a. The applicant has undergone authentication of Aadhaar number and is flagged as risky on the common portal based on the data analysis and risk parameters, or

b. The applicant fails to undergo authentication of Aadhar number, or does not opt for Aadhar authentication, or

c. The officer deems it fit to carry out physical verification of place of business, with the approval of the officer not below the rank of Assistant Commissioner.

iv. In cases mentioned above, where physical verification is to be carried out, the proper officer shall immediately initiate the process for physical verification of the place of business in accordance with provisions of rule 9 of CGST Rules read with rule 25 thereof. In this regard, the concerned officer must ensure that the physical verification report along with the other documents, including photographs, is uploaded on the system in **FORM GST REG-30** at least 05 days prior to the expiry of the time period 30 days from the date of submission of application. The officer carrying out physical verification shall ensure the following:

a. Give a specific report regarding existence/non-existence of principal place of business declared by the applicant.

b. In case entity is found non-existing, efforts made in respect of locating the said premises, need to be recorded in the physical verification report.

c. Upload on the portal, GPS enabled site photograph and other documents, if any, during physical verification visit.

d. In case the ARN assigned for physical verification belongs to a different jurisdiction, the same should immediately be

reassigned by the concerned officer to its correct jurisdiction through the portal.

(v) The proper officer may seek clarification or information or document(s) in **FORM GST REG-03** in the following cases:

a. Where any document is incomplete or not legible, the proper officer may seek complete or legible copy of the same.

b. Where the address of place of business does not match with the document uploaded by the applicant, or where such uploaded document does not appear to be a valid proof of the address of the said place of business, the proper officer may seek additional documents as mentioned in para 6 above to confirm the address details.

c. Where the address of place of business is incomplete or vague, the proper officer may seek complete and unambiguous details of the address along with the corresponding documentary proof.

d. Where any GSTIN linked to the PAN of the applicant is found cancelled or suspended, the proper officer may seek clarification or reasons for the same from the applicant, if required.

(vi) The proper officer shall issue a notice to the applicant electronically in **FORM GST REG-03** only on the basis of above mentioned grounds, within 07 working days from the date of submission of application in cases where the applications have not been flagged as risky as mentioned in para 8(ii) above or within 30 days from the date of submission of application in cases where the applications have been flagged as risky as mentioned in para 8(v) above. However, while processing the applications for registration**, if any document apart from the listed documents is required to be sought, the officer shall seek the same only after the approval of the concerned Deputy/Assistant Commissioner.** It must be ensured that no application for grant of registration is approved on deemed basis for want of timely action on the part of tax officers. The officer shall also ensure that no documents in addition to those as mentioned above and no clarification/information/documents

on the basis of presumptive grounds shall be sought from the applicant. Further, the officer shall also ensure that queries are not raised for minor deficiencies which are not relevant for establishing Proof of Place of Business or Constitution of Business etc.

(vii) The applicant is required to furnish reply in **FORM GST REG-04** within 07 working days from the date of receipt of notice issued in **FORM GST REG-03.** The proper officer shall carefully examine the clarification, information or documents furnished by the applicant in **FORM GST REG-04**. Where the proper officer is satisfied with the reply furnished by the applicant in **FORM GST REG-04**, he shall approve the application for registration within 07 working days from the date of receipt of such reply. However, where the proper officer is not satisfied with the clarification, information or documents furnished by the applicant, he may, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05** within 07 working days from the date of receipt of reply.

(viii) In cases where no reply to the notice is furnished by the applicant within 07 working days from the date of issuance of notice in **FORM GST REG-03**, the officer may, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05** within 07 working days from the date of expiry of time limit of filing reply.

9. Principal Chief Commissioners/ Chief Commissioners are hereby advised to:

i. Closely supervise the status of processing of the applications of registration, including physical verifications, nature of queries being raised, deemed registrations etc. through periodic review within their Zones;

ii. Strict action may be taken against the officer deviating from these instructions;

iii. Post sufficient staff for handling registration applications to ensure timely disposal of registration applications;

iv. Issue trade notices to address unique local systems to provide for acceptable documentary evidence to be submitted with the application.

10. Difficulties, if any, in implementation of these instructions may be informed to the Board on the email id **gst-cbec@gov.in**.

Your faithfully,

Shrunkhala Kangale
Deputy Secretary
Government of India

Grievance Redressal Mechanism for processing of application for GST registration

F. No. CBIC- 20016/24/2025-GST
New Delhi, dated 2nd May, 2025

Instruction No. 04/2025-GST

To,

All the Principal Chief Commissioners / Chief Commissioners of Central Tax

Madam/Sir,

Subject: Grievance Redressal Mechanism for processing of application for GST registration -reg.

Reference is invited to instruction No. 03/2025 dated 17.04.2025 issued by Central Board of Indirect Taxes and Customs ("Board") for processing of GST registration application. Any applicant whose Application Reference Number (ARN) has been assigned to Central jurisdiction and who has a grievance in respect of any query raised in contravention of the said instructions, regarding grounds of rejection of application etc. may approach the jurisdictional Zonal Principal Chief Commissioner/Chief Commissioner.

2. In order to provide a quick and effective grievance redressal mechanism to applicants, the following instructions are being issued:

i. Principal Chief Commissioner/Chief Commissioner of CGST Zones may publicize an email address on which the applicants can raise their grievances. Wide publicity may be given to this email id.

ii. The applicants may send grievances containing ARN details, jurisdiction details (Centre/State) and issue in brief on that email address.

iii. In case where grievance received pertains to State Jurisdiction, the office of Principal Chief Commissioner/Chief Commissioner shall forward the same to the concerned State jurisdiction and a copy endorsed to the GST Council Secretariat.

iv. Principal Chief Commissioner/Chief Commissioner may ensure timely resolution of grievances received by them and intimate the applicants regarding the same. In case where queries raised by the officer are found to be proper, the applicants may be suitably advised.

vi. Principal Chief Commissioner/Chief Commissioner may submit a monthly report on the status of grievance redressal to DGGST who would compile the same and put up for perusal of the Board.

3. Difficulties, if any, in implementation of these instructions may be brought to the notice of the Board.

Yours faithfully,

Gaurav Singh
Commissioner (GST)

Timely Production of Records/Information for Audit

F. No. CBIC 20015/2/2025 GST

Instruction No. 05/2025 GST

Room No. 159 A, North Block,
New Delhi. Dated 2nd May, 2025

To,

All the Principal Chief Commissioners / Chief Commissioners of the Central Tax
All the Principal Director Generals/Director Generals

Madam/Sir,

Subject: Timely production of records/information for audit reg.

Kind attention is invited to the Comptroller and Auditor General of India, Audit Report 7 of 2024, Department of Revenue (Indirect Taxes Goods and Services Tax), wherein the C&AG has pointed out the non production/ partial production of records to the C&AG Audit teams for carrying out their statutory duties. The issue of non production of records/information by the field formations to C&AG Audit teams has been raised by the office of C&AG in various Exit Conference meetings held with the Ministry on GST related matters.

2. Attention is also drawn to Article 149 of the Constitution of India, which empowers the C&AG to conduct audit of government accounts, public sector undertakings, and other entities funded or controlled by the Central or State governments. Therefore, it becomes sine qua non for the field formations to provide the records/ information available with them and/ or required to be maintained by the field formations.

3. In view of the above, you are requested to ensure that the officers under your jurisdiction are suitably sensitized/ instructed to expeditiously provide the records/ information available with them/ required to be maintained by them, to the C&AG audit team, as and when required.

4. The jurisdictional officers may also be directed that in cases where the documents sought by the audit team are available with the taxpayer, a letter may be sent to the concerned taxpayer requesting that they provide the documents expeditiously. Necessary follow ups may also be done, as and when required, so that the data requested by the C&AG Audit team is provided as soon as possible.

5. This issues with the approval of the Chairman, CBIC.

Yours faithfully,

(Gaurav Singh)
Commissioner (GST)

Provisional Sanction of Refund Claims on the Basis of Identification and Evaluation of Risk by the System

File No.: CBIC-20006/4/2025-GST
New Delhi, dated 3rd October, 2025

Instruction No. 06/2025-GST

To,

All the Principal Chief Commissioners / Chief Commissioners of Central Tax

Madam/Sir,

Subject: Provisional sanction of refund claims on the basis of identification and evaluation of risk by the system - reg.

The 56th meeting of the Goods and Services Tax Council held on 3rd September 2025, recommended amendment in rule 91(2) of CGST Rules, 2017 to provide for sanction of 90% of refund claimed on provisional basis by the proper officer on the basis of identification and evaluation of risk by the system. In addition, a proviso has been inserted in rule 91(2) to provide that, on case-by-case basis, where the proper officer is of the opinion that in a particular case, provisional refund should not be granted, he can, for reasons to be recorded in writing, instead of grant of refund on provisional basis, proceed with detailed examination of the application. Further, vide notification No. 14/2025-Central Tax dated 17.09.2025, category of registered persons has been notified under section 54(6) of the CGST Act, 2017, who shall not be allowed refund on provisional basis for zero rated supplies.

2. In order to ensure uniformity in the implementation of the provisions of the Act across field formations and to streamline the process of GST refunds, the Board, hereby issues the following instructions with respect to processing of refund claims, filed with the proper officer, on account of zero rated supply of goods or services or both.

3. Manner of processing refund applications:

3.1 While processing refund applications, the following may be ensured:

a. The refund application, consequent to its filing, shall continue to be processed as per extant guidelines till the issuance of FORM GST RFD-02 or FORM GST RFD-03, as the case may be. The extant timeline prescribed for the issuance of FORM GST RFD-02 or FORM GST RFD-03, as the case may be, should be strictly adhered to.

b. Categorization of refund applications as "low-risk" on the basis of risk score provided by the system shall be taken into account and 90% of the refund amount claimed shall be sanctioned on provisional basis in such cases.

c. It may be noted that once an acknowledgment has been issued in FORM GST RFD-02, scrutiny is not required to be done for low risk refund applications for sanctioning of refund on provisional basis unless the said refund application is covered under the first proviso to rule 91(2) of the CGST Rules, 2017, whereby the officer, for reasons to be recorded in writing, may proceed with the examination of the application in accordance with the provisions of rule 92, instead of grant of refund on provisional basis.

d. For refund applications, which are not categorised as "low-risk" by the system, refund shall not be sanctioned on provisional basis and in such cases, the proper officer shall proceed with detailed scrutiny of refund application and further action as per the extant guidelines.

3.2 The statutory conditions prescribed for grant of provisional refund, including non-eligibility of the notified category of registered persons under section 54(6) vide notification No. 14/2025-Central Tax dated 17.09.2025, the requirement under rule 91(1) regarding non-prosecution, shall continue to be applicable in these cases. Further, as no adjustment or withholding of refund, as provided under sub-sections (10) and (11) of section 54 of the CGST Act, can be done in respect of the provisionally sanctioned amount, therefore, in such cases, 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. Also, provisional refund may not be sanctioned where, in respect of any previous refund application filed by the claimant, the issue involved is pending in an appellate forum, or where a show cause notice is issued or where an order has been passed but matter has not attained finality.

3.3 It is clarified that as the said amendment has been made for trade

facilitation, therefore the said proviso to rule 91(2) of the CGST Rules, 2017 may be used sparingly and on case-to-case basis, so that the provisional refund is not denied merely on the basis of presumptive reason(s), initiation of routine proceedings such as scrutiny etc.

3.4 It also needs to be noted that if, on detailed examination, it appears to the proper officer that the refund amount sanctioned provisionally is more than the refund amount finally found admissible, in such case, the proper officer shall 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 or 74A of the CGST Act, as is presently being done.

4. As the amendment in rule 91(2) of CGST Rules, 2017 has been notified vide notification No. 13/2025-Central Tax dated 17.09.2025 to come into effect from 01.10.2025, therefore the provisions related to risk-based sanction of provisional refund shall be applicable for all refund applications filed on or after 01.10.2025.

5. It is worthwhile to note that the GST Council, in its 56th meeting, has also recommended amending Section 54(6) of the CGST Act, 2017, to provide for sanction of 90% of the refund amount claimed on provisional basis, in case of refund claims filed on account of inverted duty structure (IDS), similar to the provisions in place for zero-rated supplies. However, the said amendment to the Act will be incorporated through the forthcoming Finance Act and States will also be required to pass the corresponding amendments in their respective legislations, which will take time.

5.1 Therefore, as an interim measure of trade facilitation, it has been decided by the Central Government that till this amendment in the Act is effected, in case of refund applications filed on account of IDS, **on or after 01.10.2025,** 90% of the refund amount so claimed may be sanctioned on provisional basis in similar manner as is being sanctioned provisionally for refund claims filed on account of zero-rated supplies.

5.2 The manner for processing such refund applications shall be the same as specified in para 3.1 to para 3.4 above. Further, the statutory conditions prescribed for grant of provisional refund in case of zero rated supplies shall equally apply in these cases.

5.3 It is further stated that the functionality for issuance of provisional refund in such cases has been made available by GSTN, on lines similar to the provisional refund processing for refund applications filed on account of zero rated supply of goods or services or both.

6. The implementation of this instruction may be supervised by the jurisdictional Principal Commissioner/ Commissioner and a report in this regard may be sent to the jurisdictional Principal Chief Commissioner/ Chief Commissioner. Principal Chief Commissioner/ Chief Commissioner should ensure that the trade facilitation measures decided upon by the Government are implemented in letter and spirit and there is proper monitoring regarding the same.

7. Difficulty, if any, in implementation of this instruction may please be brought to the notice of the Board.

Yours faithfully,
(Gaurav Singh)
Commissioner (GST)

F. No. 190341/12/2025-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

North Block, New Delhi
Dated the 31.01.2025

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Information received from Ministry of Civil Aviation (MoCA) with respect to Gazette notification No. 08/2024 - Integrated Tax (Rate) dated 08.10.2024 notified by Department of Revenue- reg.

The undersigned is directed to refer to O.M. dated 20.01.2025 (copy enclosed) from Ministry of Civil Aviation (MoCA) providing information in respect of Gazette notification No. 08/2024 - Integrated Tax (Rate) dated 08.10.2024 notified by Department of Revenue.

2. It may be recalled that based on recommendations of the 54th GST Council meeting held on 09.09.2024 import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration was exempted subject to following conditions:

- *Provided that GST at applicable rates is paid by the establishment of the foreign airline company in India on transport of goods and passengers as may be applicable;*

- *Provided that Ministry of Civil Aviation certifies that the establishment of the foreign company in India is that of an airline company which has been designated by the foreign government under the applicable bilateral air services agreement with India;*

- *Provided further that, Ministry of Civil Aviation certifies that on a reciprocal basis, designated Indian airlines are not subject to levy of similar taxes by whatever name called for the same services appearing under the entry, by the Government of the country designating the foreign airline company.*

3. The second and third conditions, reproduced above relate to MoCA. With respect to second condition MoCA has provided a list of designated foreign airlines that are currently operating from India as per ongoing Winter 2024-25 schedule [Annexure I of the O.M].

3.1 With respect to third condition, MoCA has informed that the matter was discussed with Indian carriers operating international services and comments received from the Indian carriers namely, Air India, IndiGo and Akasa Air have also been shared [Annexure II to the O.M.].

4. The O.M. received from MoCA along with the relevant Annexures is being placed on the CBIC website for information of the field formations.

Encl: As above

Yours faithfully,

Smita Roy
Technical officer TRU-II

Seeks to extend the due date for furnishing FORM GSTR-3B for the month of July,2025 upto 27.08.2025, for the taxpayers registered in Mumbai (City), Mumbai (sub-urban), Thane, Raigad and Palghar districts of Maharashtra

NOTIFICATION
No. 12/2025 – CENTRAL TAX

New Delhi, the 20th August, 2025

G.S.R (E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of July, 2025 till the twenty-seventh day of August, 2025, for the registered persons whose principal place of business is located in the districts of Mumbai (City), Mumbai (sub-urban), Thane, Raigad and Palghar in the State of Maharashtra and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

[F. No. CBIC-20006/45/2025-GST]
(Kangale Shrunkhala Motiram)
Deputy Secretary

Seeks to notify the Central Goods and Services Tax (Third Amendment) Rules 2025.

NOTIFICATION
No. 13/2025–Central Tax

New Delhi, the 17th day of September, 2025

G.S.R... (E.) In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement**. (1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2025.

(2) Save as otherwise provided in these rules, they shall come into force from 22nd day of September, 2025.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 31A, in sub-rule (2), for the figure "128", the figure "140" shall be substituted.

3. In the said rules, with effect from the 1st day of April, 2025, in rule 39, in sub-rule (1A), after the words and figures "of section 9", following shall be inserted, namely: –

"of the Central Goods and Services Tax Act, 2017 or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Service Tax Act, 2017 (13 of 2025)".

4. In the said rules, with effect from the 1st day of October, 2025, in rule 91, for sub-rule (2), the following sub-rule shall be substituted, namely:—

"(2). The proper officer, on the basis of identification and evaluation of risk by the system, shall make an order in FORM GST RFD-04, within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90:

Provided that the proper officer, for reasons to be recorded in writing, may not grant refund on provisional basis and proceed with the order under rule 92:

Provided further that the order issued in FORM GST RFD-04 shall not be required to be revalidated by the proper officer.".

5. In the said rules, in rule 110 , —

(a) in sub-rule (1), -

(i) after the words "electronically and provisional acknowledgement", the words, letters and figures "in Part A of FORM GST APL-02A" shall be inserted;

(ii) the proviso shall be omitted;

(b) in sub-rule (2), the proviso shall be omitted;

(c) in sub-rule (4), for the words, letters and figures "in FORM GST APL-02", wherever they occur, the words, letters and figures " in Part B of FORM GST APL-02A" shall be substituted.

6. In the said rules, after rule 110, the following rule shall be inserted, namely: —

"**110A. Procedure for the Appeals to be heard by a single Member Bench. -**

(1) The President or the Vice-President if so authorised by the President in respect of any State Bench, may either on his own motion or an application filed by the parties to the appeal, scrutinise the appeal and transfer such appeal to any single Member Bench within the respective State if the appeal does not involve a question of law.

(2) In case the single Member Bench, while hearing the appeal allotted under sub-rule (1), comes to a conclusion that the appeal may involve a question of law, such Bench shall for reasons to be recorded in writing send back the appeal to the President or the Vice-President, as the case may be, for reconsideration.

(3) During the scrutiny of appeal under sub-rule (1) or reconsideration of appeal under sub-rule (2), the fact as to whether in respect of the same taxable person within a State, the same issue for the same or a different tax period has already been heard or decided by a Bench comprising of a Technical Member and a Judicial Member, shall be taken into consideration and where such a matter exists, the appeal shall be heard by a Bench comprising of a Technical Member and a Judicial Member.

(4) For the purpose of reckoning the amount of fifty lakh rupees under sub-section (8) of section 109, the cumulative tax or input tax credit involved, or the amount of fine, fee or penalty, shall be determined with reference to all issues and all tax periods covered in the order appealed against.".

7. In the said rules, in rule 111, —

(a) in sub-rule (1), -

(i) after the words "provisional acknowledgement", the words, letters and figures "in Part A of FORM GST APL-02A" shall be inserted;

(ii) the proviso shall be omitted;

(b) in sub-rule (2), the proviso shall be omitted;

(c) in sub-rule (4), -

(i) for the words, letters and figures “in FORM GST APL-02”, wherever they occur, the words, figures and letters “in Part B of FORM GST APL-02A” shall be substituted;

(ii) in the second proviso, for the words “self-certified copy” the words “self-attested copy” shall be substituted.

8. In the said rules, in rule 113, for sub-rule (2), the following sub-rule shall be substituted, namely: -

“(2) The Appellate Tribunal shall, along with its order under sub-section (1) of section 113, issue, or cause to be issued, a summary of the order in FORM GST APL-04A clearly indicating the final amount of demand confirmed by the Appellate Tribunal.”

9. In the said rules, in FORM GSTR-9, -

(a) in the Table, -

(i) in Pt. III, under the heading “Details of ITC for the financial year”, -

(A) against serial number 6, under the heading “Details of ITC availed during the financial year”, -

(I) after the serial number A, and the entries relating thereto, the following shall be inserted, namely, -

“A1	ITC of preceding financial year availed in the financial year (which is included in 6A above) other than ITC reclaimed under rule 37 and rule 37A				
A2	Net ITC of the financial year =(A-A1)”				

(II) in the entry against serial number H, the words, brackets and letter “(other than B above)” shall be omitted;

(III) in the entry against serial number H, the words, brackets and letter “(other than B above)” shall be omitted; for serial number J and the entries relating thereto, the following shall be substituted, namely:-

“J	Difference(I-A2 above)”				

(IV) for serial number M and the entries relating thereto, the following shall be substituted, namely:-

“

M	ITC availed through ITC-01, ITC 02 and ITC-02A (other than GSTR-3B and TRAN Forms)				

”;

(B) against serial number 7, under the heading “Details of ITC reversed and Ineligible ITC for the financial year”,-

(I) after serial number A and the entries relating thereto, the following shall be inserted, namely: -

“

A1	As per Rule 37A				
A2	As per rule 38”				

”;

(C) against serial number 8, under the heading “Other ITC related information”,-

(I). for the entries against serial number B, the following shall be substituted, namely:-

“

B	ITC as per 6(B) above”	<Auto>			

”;

(II). in the entries against serial number H, after the words, brackets, figure and letter “(as per 6(E) above)”, the words “in the financial year” shall be inserted;

(III). after serial number H and the entries relating thereto, the following shall be inserted namely, -

“

“H1	IGST Credit availed on Import of goods in next financial year”				

”;

(IV) for serial number I and the entry relating thereto, the following shall be substituted namely:-

“

“I	Difference [G- (H +H1)]”				

”;

(ii) in Pt. IV, under the heading "Details of tax paid as declared in returns filed during the financial year"-

(A) for serial number 9, and the entries relating thereto, the following shall be substituted, namely: -

"

9	Description	Tax Pay-able	Paid through cash	Paid through ITC				Total Tax Paid	Differ-ence between Tax pay-able and paid
				Cen-tral Tax	State Tax / UT Tax	Inte-grated Tax	Cess		
	1	2	3	4	5	6	7	8= 3+4+5+6+7	2-8
	Integrated Tax								
	Central Tax								
	State/UT Tax								
	Cess								
	Interest								
	Late fee								
	Penalty								
	Other								

";

(iii) in Pt. V, under the heading "Particulars of the transactions for the financial year declared in returns of the next financial year till the specified period."-

(A) for serial numbers 10, 11, 12, 13 and 14 and the entries relating thereto, the following shall be substituted, namely :-

"

10	Supplies / tax declared through Invoices / Debit Note / Amendments (+)					
11	Supplies / tax reduced through Amendments / Credit Note (-)					
12	ITC of the financial year reversed in the next financial year					
13	ITC of the financial year availed in the next financial year					
14	Differential tax paid on account of declaration in 10 & 11 above					
	Description	Payable	Paid	Difference		
	1	2	3	2-3"		

	Integrated Tax			
	Central Tax			
	State/UT Tax			
	Cess			
	Interest			

";

"(B) under the heading "Instructions", –

(i) for paragraph 1, the following paragraph shall be substituted namely:–

"1. Terms used:

(a) GSTIN: Goods and Services Tax Identification Number

(b) UQC: Unit Quantity Code

(c) HSN: Harmonised System of Nomenclature Code

(d) ITC: Input Tax Credit";

(ii) in paragraph 2A,–

(A) after the words, "financial year only", the words "for which annual return is being filed" shall be inserted;

(B) after the words "not be reported here", the words "until unless specifically required" shall be inserted;

(iii) in paragraph 4, -

(A) after the words, letters and figures "or FY 2023-24" the words, letters and figures "or FY 2024-25" shall be inserted;

(B) In the Table, -

(I). in second column, against table number "5D, 5E and 5F", after the letters and figures "FY 2023-24", the letters and figures "and FY 2024-25," shall be inserted;

(II). in second column, against table numbers 5H, 5I and "5J and 5K", for the word and figures "2022-23 and 2023-24", the figures and word "2022-23, 2023-24 and 2024-25," shall be substituted;

(iv) In paragraph 5, in the Table, -

(A) in second column, against table number 6A, for the word "taxpayer" the words "financial year" shall be substituted;

(B) after table number 6A and the entries relating thereto, the following shall be inserted namely, -

“

6A1	ITC in respect of the preceding financial year, but availed through FORM GSTR-3B of April to October of the Financial Year for which annual return is furnished, filed till 30th November of the Financial Year for which annual return is furnished and included in auto populated values in table 6A above, should be declared here. Also, if any ITC which was claimed and reversed (due to rule 37 or rule 37A) in any of the preceding financial year but reclaimed during the financial year for which this return is being filed, shall not be reported here as this will be reported in the Table 6H below. Also, if any ITC which was claimed and reversed (other than due to rule 37 or rule 37A) in preceding financial year but reclaimed during the financial year for which this return is being filed, shall be reported here and this will not be reported in the Table 6H below.

”;

(C) in second column, against table number 6B, -

(I) after the words, figures, brackets and letters “separately under 6(H) below.”, the following shall be inserted, namely: –

“However, for FY 2024-25 onwards, in case of ITC availed, reversed and then reclaimed, ITC which was availed (for the first time) should be declared in this table. ITC which was reversed should be declared in the Table 7 and ITC that is reclaimed should only be declared in Table 6H.”;

(II) for the figures and word “2022-23 and 2023-24” the figures and word “2022- 23, 2023-24 and 2024-25,” shall be substituted.

(D) in second column, against table numbers 6C and 6D for the words and figures “2022-23 and 2023-24” the words and figures “2022-23, 2023-24 and 2024-25,” shall be substituted.

(E) in second column, against table number 6H after the words “shall be declared here.” the following shall be inserted, namely:–

“However, for FY 2024-25 onwards, in case of ITC availed, reversed and then reclaimed, ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) which was availed (for the first time) should be declared in Table 6B above. ITC which was reversed should be declared in the Table 7 and ITC that is reclaimed should only be declared in here.

Also, if any ITC which was claimed and reversed (due to rule 37 or rule 37A) in any of the preceding financial year but reclaimed during the financial year for which this return is being filed, shall be reported here.

Also, if any ITC which was claimed and reversed (other than rule 37 or rule 37A) in preceding financial year but reclaimed during the financial year for which this return is being filed, shall not be reported here as it is to be reported in the Table 6A1 above.";

(F) in second column, against table number 6J, after the words "this amount should be zero.", the following shall be inserted, namely: –

"However, for FY 2024-25 onwards, the difference between the total amount of net ITC of the financial year availed through FORM GSTR-3B as per Table 6A2 and input tax credit declared in row B to H shall be auto populated here. Ideally, this amount should be zero.";

(G) for table number 6M and the entries relating thereto, the following table and entries shall be substituted, namely, -

"

6M	Details of ITC availed through **FORM ITC-01, FORM ITC-02 and ITC-02A** (i.e. ITC availed through Forms other than GSTR 3B, TRAN-1 and TRAN-II) in the financial year shall be declared here.

";

(H) for table number "7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H" and the entries relating thereto, the following table and entries shall be substituted namely, -

"

7A, 7A1, 7A2, 7B, 7C, 7D, 7E, 7F, 7G and 7H	Details of input tax credit reversed due to ineligibility or reversals required under rule 37, 37A, 38, 39, 42 and 43 of the CGST Rules, 2017 shall be declared here. This column should also contain details of any input tax credit reversed under section 17(5) of the CGST Act, 2017 and details of ineligible transition credit claimed under **FORM GST TRAN-I** or **FORM GST TRAN-II** and then subsequently reversed. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details. Any ITC reversed through **FORM ITC -03** or any other reversal not specified in any row above shall be declared in 7H. For FY 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24, the registered person shall have an option to either fill his information on reversals separately in Table 7A to 7E or report the entire amount of reversal under Table 7H only.

";

(I) against table number 8B, after the words and brackets "(without the CA certification).", the following shall be inserted, namely: –

"However, for FY 2024-25 onwards, the input tax credit as declared in Table 6B shall be auto-populated here." shall be inserted.

(J) in second column against table number 8H after the words "The input tax credit", words "availed in the financial year" shall be inserted.

(K) after table number 8H and the entries relating thereto, the following shall be inserted, namely, -

8H1	Out of 8G, the input tax credit on Import of goods which is availed in next financial year shall be declared here.

(v) . in paragraph 7,-

(A) after the words, letters and figures "filed upto 30th November, 2024" the following shall be inserted, namely:–

"From FY 2024-25 onwards, Part V consists of particulars of transactions for the financial year for which annual return is furnished but declared in the FORM GSTR-3B filed for the months of April to October of next financial year, filed upto 30th November of next financial year.";

(B) In the Table, –

(I) in second column, against table number "10 & 11", after the words, letters and figures "30th November, 2024 shall be declared here" the following shall be inserted, namely:–

"From FY 2024-25 onwards, for Table 10, details of supplies or tax increased through invoices or debit note or upward amendment of the same pertaining to the financial year but furnished in FORM GSTR-1 or as amended in FORM GSTR-1A or furnished through invoice furnishing facility of April to October of the next financial year, filed upto 30th November of next financial year shall be declared here.

From FY 2024-25 onwards, for Table 11, details of supplies or tax reduced through invoices or credit note pertaining to the financial year but furnished in FORM GSTR-1 or as amended in FORM GSTR-1A or furnished through invoice furnishing facility of April to October of the next financial year, filed upto 30th November of next financial year shall be declared here.";

(II) in second column, against table number 12, after the letters, words and figures “and 2023-24, the registered person shall have an option to not fill this table” the following shall be inserted, namely:–

“For FY 2024-25 onwards, aggregate value of reversed ITC of the financial year which has been reversed through the return filed in next financial year filed upto 30th November, shall be declared here (This will not be part of Table 7). Table 4(B) of FORM GSTR-3B of next financial year may be used for filling up these details.”;

(III) in second column, against table number 13, after the letters, words and figures “and 2023-24, the registered person shall have an option to not fill this table” the following shall be inserted, namely:–

“For FY 2024-25 onwards, details of ITC on supply of goods or services received pertaining to the financial year but ITC for the same was availed in return from April to October of next financial year filed upto 30th November, of next financial year shall be declared here. Table 4(A) of FORM GSTR-3B of April to October of next financial year may be used for filling up these details.

However, any ITC which was reversed in any of the financial years as per rule 37 or rule 37A but was reclaimed in next financial year, the details of such ITC reclaimed shall be furnished in the Table 6H of GSTR-9 to be filed for next financial year only. The same shall not to be reported here .”;

(vi) in paragraph 8, in the Table, in second column, against serial numbers “15A, 15B, 15C and 15D”, “15E, 15F and 15G”, 16A, 16B, 16C, and “17&18”, for the figures and word “2022-23 and 2023-24”, wherever they occur, the figures and word “2022-23, 2023-24 and 2024-25,” shall be substituted;

(vii) in paragraph 9, for the word “only”, the words “or electronic credit ledger” shall be substituted.

10. In the said rules, in FORM GSTR-9C, –

(a) in the Table,-

(i) in Pt. II, under the heading “Reconciliation of turnover declared in audited Annual Financial Statement with

turnover declared in Annual Return (GSTR-9) ", against serial number 7, under the heading " Reconciliation of Taxable Turnover",–

(A) after the serial number D and the entries relating thereto, the following shall be inserted, namely, -

"

D1	Supplies on which tax is to be paid by e- commerce operators as per sub-section (5) of section 9 [Supplier to report]				

";

(B) in second column, against serial number E, for the letter and brackets (A- B-C-D)" the letters and brackets (A-B-C-D-D1)" shall be substituted;

(ii) in Pt. III under the heading "Reconciliation of tax paid",-

(A) against serial number 9 under the heading "Reconciliation or rate wise liability and amount payable thereon",-

(I) after the entry serial number "K-1" and the entries relating thereto, the following shall be inserted, namely, -

"

K- 2	Supplies on which e-commerce operator is required to pay tax as per sub- section (5) of section 9 [E- commerce operator to report]	NA			

";

(II) in second column, against serial number Q, for the word "paid" the word "payable" shall be substituted;

(B) against serial number11, under the heading "Additional amount payable but not paid (due to reasons specified under Table 6,8 and 10 above)",-

(I) for the word "Cash" the words and letters "cash or ITC" shall be substituted;

(II) after the entry relating to "Others", the following entry shall be inserted, namely: -

“

Supplies on which e- commerce operator is required to pay tax as per sub-section (5) of section 9 [E-commerce operator to report]	NA				

(iii) In Part V under the heading “Additional liability due to on-reconciliation”, -

(A) for the word “Cash” the words and letters “cash or ITC” shall be substituted;

(B) after the entry relating to “Others”, the following shall be inserted namely:-

“

Supplies on which e- commerce operator is required to pay tax as per sub- section (5) of section 9 [E-commerce operator to report]					

”;

(iv) after part V, the following shall be inserted, namely: -

“

17	Late fee payable and paid		
	Description	Payable	Paid
	1	2	3
A	1ntegrated Tax		
B	Central Tax		
C	State Tax/UT Tax		

”;

(b) under the heading “Instructions”,-

(i) in paragraph 4, in the Table, -

(A) in second column, for the figures and word “2022-23 and 2023-24”, wherever they occur, the figures and word “2022-23, 2023-24 and 2024-25,” shall be substituted;

(B) after table number 7D and entries relating thereto, the following shall be inserted namely: -

“

7D1	Supplies on which tax is to be paid by e-commerce operators as per sub-section (5) of section 9 shall be declared here by the supplier.

”:

(C) in second column, against table number 7E, for the words, figures, letters and brackets “reverse charge etc.) declared in Table 7B, 7C, 7D above.” the words, figures, letters and brackets “reverse charge, supplies made sub-under section (5) of section 9 etc.) declared in Table 7B, 7C, and 7D and 7D1 above.” shall be substituted;

(D) in second column against table 7F, for the letters, figures and brackets “(4N – 4G)”, the letters, figures and brackets “(4N – 4G- 4G1)” shall be substituted;

(ii) in paragraph 6, in the Table-

(A) in second column against table number 14, for the figures and word “2022-23 and 2023-24”, the figures and word “2022-23, 2023-24 and 2024-25,” shall be substituted;

(C) after the table number 16 and entries relating thereto, the following shall be inserted, namely:–

“

17	Late fee will be payable as per section 47(2).

”;

(iii) in paragraph 8, for the word “only”, the words “or electronic credit ledger.” shall be substituted.

11. In the said rules, after FORM GST APL-02, the following Form shall be inserted, namely: —

“FORM GST APL-02A
[See rules 110 and 111]
Part A

Provisional Acknowledgment for submission of Appeal/Application

<Name of applicant><GSTIN/Temp ID/UIN/Reference Number/BO ID with date>

“Your appeal has been successfully filed against <Application Reference Number>.

An appeal/application has been submitted by you on the Goods and Services Tax Appellate Tribunal portal which is hereby provisionally acknowledged and its acceptance/admission is subject to scrutiny by the Registry/Bench. The Provisional Acknowledgement number is <Daily Number > dated _.”

GSTIN/Temporary ID/UIN/ENR - Date of filing -

Time of filing -

filing/provisional acknowledgement number - Name of the person filing the appeal - Appeal fees -

Transaction Id -

<Signature>

Place:

Date: Name

Designation

ON Behalf of GST Appellate Tribunal

Part B

Final Acknowledgement communicating registration/rejection of Appeal/ Application

Your appeal/application has been successfully filed/registered against <application reference number > dated< Date>.

GSTIN/Temporary ID/UIN/ENR -

Case Registration Number -

Date of acceptance –

Date of appearance: Time:

Court Number: Bench:

AR/JR/DR/R

GSTAT …….

Bench”

OR

Your appeal/application filed vide provisional acknowledgment reference number ..... dated ..... has been rejected

Date of rejection:

AR/JR/DR/R

GSTAT .. …….

Bench

OR

Your appeal/application having provisional acknowledgment reference number ------ dated ..... has been dismissed as withdrawn

Date of Dismissal:

AR/JR/DR/R

GSTAT .....

Bench”

OR

Your appeal/application having provisional acknowledgment reference number ..... dated ..... has been Rejected due to Wrong Jurisdiction

Date of Rejection:

AR/JR/DR/R

GSTAT .....

Bench”

OR

Your Appeal/application having provisional acknowledgment reference number ..... dated ..... has been rejected due to wrong applicability of place of supply issue.

AR/JR/DR/R

GSTAT .....

Bench”

12. In the said rules, after FORM GST APL-04, the following Form shall be inserted, namely: —

“Form GST APL-04 A
[See rule 113(2)]

Summary of the order and demand after issue of order by the Goods and Services Tax Appellate Tribunal

Whether remand order: Yes / No

Order Reference no.- Date of order-

1. GSTIN/Temporary ID/UIN –
2. Appeal Case Reference no. – Date:-
3. Name of the appellant –
4. Name of the Respondent –
5. Order appealed against –
   a) Order Type -- *Demand, Registration, Refund, Enforcement, Refund & Others*
   b) Ref Number – Date –

6. Personal Hearing – *(All hearing dates)*

7. Status of Order under Appeal-

   Confirmed/Modified/Rejected Confirmed – Order under Appeal is confirmed

   Modified – Order under Appeal is modified

   Rejected - - Order under Appeal is annulled

8. Order in brief: *(Free text, Max 2500 characters)–*

9. If demand order, then whether demand quantified: *(Yes/No) (If the answer is YES, the demand quantified as follows:)*

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax										
(b) Interest										
(c) Penalty										
(d) Fees										
(e) Others										
(f) Refund										

Section-II

Place of Supply/ Name of State/UT	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7
	Amount in dispute					
	Amount Determined					
Add rows						

10. For Other orders and Demand orders which are not quantified

Issues as raised by proper officer	Issues as determined by Appellate/ Revisional authority	Order by GST Appellate Tribunal

11. If remanded with directions:

    a) Remanded to: *(specify authority to whom remanded. Adjudicating Authority, Appellate authority, Revisional authority, any other)*

b) Directions subject to which remanded, if any: *(Free text, Max 1000 words)*

Section-III (Anti-profiteering)

12. Order In brief: (Drop -Down Values)

a) *Reduction in Price*
b) *Return to Recipient of Amount not passed on, along with interest*
c) *Deposit in Consumer Welfare Fund/s*
d) *Penalty Imposed (Amount to be specified)*
e) *Cancellation of Registration*

Place: Signature:
Date: Designation:
Jurisdiction:"

13. In the said rules, for FORM GST APL-05, the following Form shall be substituted, namely: —

"Form GST APL-05

See rule 110(1)

Appeal to the Goods and Services Tax Appellate Tribunal

1. GSTIN/Temporary ID/UIN –
2. Name of the appellant –
3. Address of the appellant –
4. Respondent(s):
   (a)
   (b)
   (c)
   .....
   (Specify designation and office of the respondent(s))
5. Details of the authorised representative of the applicant:
   (a) Name…… Mobile …… Email ……
   (b) Name…… Mobile …… Email ……
   ……
6. Order appealed against - *APL-04/Rejected APL-02* Number - Date-
7. Is place of supply involved in the dispute – *Yes/No*
8. Designation and Office of the Appellate Authority/Revisional Authority passing the order appealed against -
9. Date of communication of the order appealed against –
10. Details of order challenged before Appellate authority/Revisional Authority:
    a) Number -Date –

b) *Order type (As per Annexure A)*

c) *Period of dispute from (DDMMYYYY) To (DDMMYYYY) (Applicable for demand related orders)*

11. Details of the authority passing the order specified at Sl. no. 9: *(Specify designation and Office of the said authority)*
12. Name of the authorized representative
    (a) Name…… Mobile …… Email ……
    (b) Name…… Mobile …… Email ……
    ……
13. Act (CGST/ SGST/ IGST/ Cess)
14. Details of the case under dispute:
    a) Brief issue of the case under dispute
    b) Category of case under dispute *(As per Annexure B)*
    c) Market value of goods, where goods have been seized
15. Case Summary *(As per Annexure C)*
16. About Appellant *(As per Annexure D)*
17. Statement of facts *(As per Annexure E)*
18. Grounds of appeal
19. Prayer
20. Details of demand created, disputed and admitted.

Particulars	Central Tax			State/UT Tax			Integrated Tax			Cess			Total Amount		
	Amount determined by Appellate / Revisional authority, if any (A	Amount admitted (B)	Amount under dispute (C) (A- B) (Auto-populated from columns 3, 5,7,9, 10 & 11 of Table of APL -04, where it is system or as per alternate flow of order	Amount determined by Appellate / Revisional authority, if any (A)	Amount admitted (B)	Amount under dispute (C) (A- B) (Auto-populated from columns 3, 5, 7, 9, 10 &11 of Table 9 of APL -04, where it is system or as per alternate flow of order	Amount determined by Appellate / Revisional authority, if any (A)	Amount admitted (B)	Amount under dispute (C) (A- B) (Auto - populated from columns 3, 5, 7, 9, 10 & 11 of Table 9 of APL -04, where it is system or as per alternate flow of order	Amount determined by Appellate / Revisional authority, if any (A)	Amount admitted (B)	Amount under dispute (C) (A- B) (Auto-populated from columns 3, 5, 7, 9, 10 & 11 of Table 9 of APL -04, where it is system or as per alternate flow of order	Amount determined by Appellate / Revisional authority, if any (A)	Amount admitted (B)	Amount under dispute (C) (A-B) (Auto - populated from columns 3, 5, 7, 9, 10 & 11 of Table 9 of APL-04, where it is system or as per alternate flow of order
(a) Tax															
(b) Interest															
(c) Penalty															
(d) Fees															
(e) Other charges															

Details of payment of admitted amount and pre-deposit:

(a) Details of amount payable:

Particulars	Central Tax		State/UT Tax		Integrated		Cess		Total Amount	
	(a) Admitted Amount	(b) Pre-deposit (10% of dispute d tax)	(a) Admitted Amount	(b) Pre-deposit (10% of dispute d tax)	(a) Admitted Amount	(b) Pre-deposit (10% of dispute d tax)	(a) Admitted Amount	(b) Pre-deposit (10% of dispute d tax)	(a) Admitted Amount	(b) Pre-deposit (10% of disputed tax)
(a) Tax										
(b) Interest										
(c) Penalty										
(d) Fees										
(e) Other charges										

(b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed admitted tax and cess)

Sr. No.	Description	Tax payable	Paid through Cash/Credit Ledger	Debit entry no.	Amount of tax paid			
					Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9
1	Integrated tax		Cash Ledger					
			Credit Ledger					
2	Central tax		Cash Ledger					
			Credit Ledger					
3	State/UT tax		Cash Ledger					
			Credit Ledger					
4.	Cess		Cash Ledger					
			Cash Ledger					

(c) Interest, penalty, late fee and any other amount payable and paid:

Sr. No.	Description	Amount payable				Debit entry no.	Amount paid			
		Integrated tax	Central tax	State/UT tax	CESS		Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9	10	11
1	Interest									
2	Penalty									
3	Late fee									
4	Others (specify)									

Verification

I, < ..... >, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and the same is derived from information, documents and records in my possession and further that nothing has been concealed therefrom. I further declare that no appeal against the impugned order has been preferred by me or my behalf before any Court or Authority or is pending before any Court or Authority.

Verified today, the ..... day .....of

..... month .....20 .....

< Signature>

Place: Name of the Applicant

Date: Designation/Status

Annexure A

(Order Type)

S No	List of 'Order Type'
1	Demand Order
2	Refund Order
3	Registration Order
4	Enforcement Order
5	Recovery Order
6	Other order

Annexure B

(Category of case under dispute or issues involved)

S No	**List of 'Category of case under dispute**	**Tab**	**Tab Amount involved (where quantifiable)**
1	Misclassification of any goods or services or both	Mention HSN	
2	Wrong applicability of a notification issued under the provisions of this Act	Mention notification no. and date	
3	Incorrect determination of time of supply of goods or services or both	Mention section and rule specified in Appellate/ Revisionary order	

4	Incorrect determination of value of supply of goods or services or both	Mention section and rule specified in Appellate/ Revisionary order	
5	Incorrect admissibility of input tax credit of tax paid or deemed to have been paid/credit to credit ledger/denial of ITC/blocking of credit	Mention section and rule specified in Appellate/ Revisionary order	
6	Incorrect determination of the liability to pay tax on any goods or services or both	Mention section and rule specified in Appellate/ Revisionary order	
7	Whether applicant is required to be registered or has been granted suo-moto registration	Mention section and rule specified in Appellate/ Revisionary order	
8	Whether any particular thing done by the applicant results in supply of goods or services or both	Mention section and rule and Schedule specified in Appellate/ Revisionary order	
9	Rejection/acceptance of application for registration	Mention section and rule specified in Appellate/ Revisionary order	
10	Rejection/acceptance of application for amendment to registration	Mention section and rule specified in Appellate/ Revisionary order	
11	Suspension of registration	Mention section and rule specified in Appellate/ Revisionary order	
12	Order dropping show-cause in relation to registration	Mention section and rule specified in Appellate/ Revisionary order	
13	Denial of facility to pay tax under composition scheme	Mention section and rule specified in Appellate/ Revisionary order	
14	Cancellation of registration	Mention section and rule specified in Appellate/ Revisionary order	
15	Rejection/acceptance of application for revocation of cancellation of registration	Mention section and rule specified in Appellate/ Revisionary order	
16	Order accepting reply of taxpayer/order dropping show cause notice	Mention section and rule specified in Appellate/ Revisionary order	
17	Order of disqualification of GSTP/cancellation of enrolment of GSTP	Mention section and rule specified in Appellate/ Revisionary order	
18	Transfer/Initiation of recovery/ Special mode of recovery (all kinds of garnishee)	Mention section and rule and Form of order specified in Appellate/ Revisionary order	
19	Tax wrongfully collected/Tax collected not paid to Government.	Mention section and rule specified in Appellate/ Revisionary order	

20	Order of assessment including that of a non-filer or evading registration or protective assessment	Mention section and rule specified in Appellate/ Revisionary order	
21	Determination of tax not paid or short paid on outward supply u/s 73	Mention section and rule specified in Appellate/ Revisionary order	
22	Excess ITC availed/utilized u/s 73	Mention section and rule specified in Appellate/ Revisionary order	
23	Order for re-credit in credit ledger of claim for refund rejected or of wrongly obtained refund being deposited	Mention section and rule specified in Appellate/ Revisionary order	
24	Order rejecting/granting provisional refund	Mention section and rule specified in Appellate/ Revisionary order	
25	Order denying/reducing/withholding/granting refund	Mention section and rule specified in Appellate/ Revisionary order	
26	Issue related to provisional assessment	Mention section and rule specified in Appellate/ Revisionary order	
27	Fraud or wilful suppression of fact leading to non-payment/short payment of tax determined u/s 74	Mention section and rule specified in Appellate/ Revisionary order	
28	Excess ITC availed/utilized determined u/s 74	Mention section and rule specified in Appellate/ Revisionary order	
29	Issues related to seizure/confiscation of goods/ books/property or release of such goods/books/ property	Mention section and rule specified in Appellate/ Revisionary order	
30	Order relating to rectification/withdrawal of an earlier order	Mention section and rule specified in Appellate/ Revisionary order	
31	Order creating/modifying/withdrawing demand under earlier law	Mention section and rule specified in Appellate/ Revisionary order	
32	Order permitting payment in instalments	Mention section and rule specified in Appellate/ Revisionary order	
33	Order relating to provisional attachment of property	Mention section and rule specified in Appellate/ Revisionary order	
34	Order imposing penalty	Mention section and rule specified in Appellate/ Revisionary order	
35	Order permitting compounding of any offense or withdrawing such order	Mention section and rule specified in Appellate/ Revisionary order	
36	Anti profiteering related matter		
37	Others-		
38	Issues related to Place of supply of goods and/ or services		

Annexure C

Case Summary *(indicate Amount in INR, wherever quantified and wherever applicable, Not exceeding 1000 characters in each cell)*

Sr No	Issue related to	As per order of adjudicating authority	As determined by Appellate/ Revisional authority	As per stand of appellant before Tribunal	As declared/ claimed by present Appellant
1	Registration				
2	Revocation of registration				
3	Denial/blocking of ITC				
4	Short or non-payment of tax				
4	Erroneous refund				
5	Levy of Penalty				
6	Levy of interest or late fee or fine				
7	Classification dispute *(mention HSN in corresponding columns of* this row)				
8	Any other				

User can add more than one Issue

Order Type and Issue Related to mapping		
S No	**Type of 'Order Type'**	**Case Summary- Issue related to**
1	Demand Order	1) Short or nonpayment of tax 2) Levy of penalty 3) Levy of interest or late fee or fine 4) Classification dispute
2	Refund Order	1) Erroneous refund
3	Registration Order	1) Registration 2) Revocation of registration
4	Enforcement Order	1) Levy of penalty 2) Levy of interest or late fee or fine
5	Recovery Order	1) Denial/blocking of ITC
6	Other order	Any other

Annexure D

About **Appellant**

Constitution/ Identification Number	Constitution of Business	Statute under which incorporated	Date of Commencement of business	Address	Nature of Business	Any other relevant fact

Appellant to state in free text form as follows:

Appellant to mention:

(a). *his constitution of business (e.g. Company, Partnership, HUF, Trust, etc.)*

(b). *Statute under which incorporated, if any (e.g. Companies Act, Trust Act, Societies Registration Act, etc.)*

(c). *date of its constitution*

(d). *constitution/identification number assigned to it by constituting authority (e.g. Corporate Identification Number in case of a company, etc.)*

(e). *Address of its Head Office and address of its principal place of business in State*

(f). *GSTIN/Temp Id and date from which registered under GST*

(g). *Nature of the business in which he/it is engaged (e.g. manufacturer /wholesaler /retailer / supplier of services, etc.)*

(h). *Any other relevant fact in view of the appellant"*

Annexure E

Statement of Facts (Case History)

(indicate Amount in INR, wherever quantified and wherever applicable, not exceeding 1000 characters in each cell, Upload documents if necessary)

Reference/acknowledgment no.	Action By	Date	Brief Narration
<Add rows, if required>"			

14. In the said rules, for FORM GST APL-06, the following Form shall be substituted, namely: —

"FORM GST APL-06

[See rule 110(2)]

Cross-objections before the Appellate Tribunal under sub-section (5) of section 112

Sr. No.	**Particulars**
1	Appeal No. – Date of filing –
2	Present Cross-objection being filed by: o GSTIN/Temporary ID/UIN/CRN/ARN – o Name – oe-mail id – o Contact number – o Address for communication – o Designation of officer – o Office details – oe-mail id – o Contact number -

3	*Order no. – (**Order of the Appellate/Revisional authority**) - Date-*				
4	*Designation alongwith jurisdiction of the officer passing the order appealed against –* Designation: Jurisdiction: Order Passed by:				
5	Date of communication of the order appealed against –				
6	Name of the authorized representative, where available –				
	e-mail id of said representative –				
	Contact number of said representative				
7	Details of the case under dispute –				
(i)	Period of dispute -				
(ii)	Amount under dispute	Central tax	State/UT tax	Integrated tax	Cess
	(a) Tax				
	(b) Interest				
	(c) Penalty				
	(d) Fees				
	(e) Other charges (specify)				
(iii)	Market value of seized goods, where one of the issues involved is seizure/confiscation of goods -				
8	Summary of Issues involved and summary of reply thereto – ***Annexure A***				
9	Date of receipt of notice of appeal or application filed with the Appellate Tribunal by the taxpayer or the Commissioner of State/Central tax/UT tax, as the case may be - OR Date of receipt of notice of appeal or application filed with the Appellate Tribunal by the person filing the present cross-objection -				
10	Demand Table				
	Category	Tax	As per order of adjudicating authority	As determined by Appellate/ Revisional authority	As per the person filing this cross objection
	Tax	Central Tax			
		State/UT Tax			
		Integrated Tax			
		Cess			
		Total			
	Interest	Central Tax			
		State/UT Tax			
		Integrated Tax			
		Cess			
		Total			

	Penalty	Central Tax			
		State/UT Tax			
		Integrated Tax			
		Cess			
		Total			
	Penalty	Central Tax			
		State/UT Tax			
		Integrated Tax			
		Cess			
		Total			
	Fees	Central Tax			
		State/UT Tax			
		Integrated Tax			
		Cess			
		Total			
	Others	Central Tax			
		State/UT Tax			
		Integrated Tax			
		Cess			
		Total			
	Refund	Central Tax			
		State/UT Tax			
		Integrated Tax			
		Cess			
		Total			
11	Reliefs claimed in memorandum of cross-objections.				
12	Summary of reply ***(Annexure B)***				
13	Grounds of Cross-objection				
14	Para-wise reply (***upload separately***)				
	Verification I, < ____ >, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and the same is derived from information, documents and records in my possession and further that nothing has been concealed therefrom. Verified today, the __ day of ____month__ 20 ...____ Place : Date : <Signature> Name of the person filing this cross-objection : Designation/Status of Applicant/officer :"				

Annexure A

Summary of Issues involved and summary of reply **thereto**

S. No	Category of case under dispute or Issues involved	Tab	Tab Amount involved (where quantifiable)	Summary of Reply
1.	Misclassification of any goods or services or both	Mention HSN		
2.	Wrong applicability of a notification issued under the provisions of this Act	Mention notification no. and date		
3.	Incorrect determination of time of supply of goods or services or both	Mention section and rule specified in Appellate/ Revisionary order		
4.	Incorrect determination of value of supply of goods or services or both	Mention section and rule specified in Appellate/ Revisionary order		
5.	Incorrect admissibility of input tax credit of tax paid or deemed to have been paid/credit to credit ledger/denial of ITC/blocking of credit	Mention section and rule specified in Appellate/ Revisionary order		
6.	Incorrect determination of the liability to pay tax on any goods or services or both	Mention section and rule specified in Appellate/ Revisionary order		
7.	Whether applicant is required to be registered or has been granted suo-moto registration	Mention section and rule specified in Appellate/ Revisionary order		
8.	Whether any particular thing done by the applicant results in supply of goods or services or both	Mention section and rule and Schedule specified in Appellate/ Revisionary order		
9.	Rejection/acceptance of application for registration	Mention section and rule specified in Appellate/ Revisionary order		
10.	Rejection/acceptance of application for amendment to registration	Mention section and rule specified in Appellate/ Revisionary order		
11.	Suspension of registration	Mention section and rule specified in Appellate/ Revisionary order		
12.	Order dropping show-cause in relation to registration	Mention section and rule specified in Appellate/ Revisionary order		
13.	Denial of facility to pay tax under composition scheme	Mention section and rule specified in Appellate/ Revisionary order		

14.	Cancellation of registration	Mention section and rule specified in Appellate/ Revisionary order		
15.	Rejection/acceptance of application for revocation of cancellation of registration	Mention section and rule specified in Appellate/ Revisionary order		
16.	Order accepting reply of taxpayer/order dropping show cause notice	Mention section and rule specified in Appellate/ Revisionary order		
17.	Order of disqualification of GSTP/cancellation of enrolment of GSTP	Mention section and rule specified in Appellate/ Revisionary order		
18.	Transfer/Initiation of recovery/ Special mode of recovery (all kinds of garnishee)	Mention section and rule and Form of order specified in Appellate/ Revisionary order		
19.	Tax wrongfully collected/ Tax collected not paid to Government.	Mention section and rule specified in Appellate/ Revisionary order		
20.	Order of assessment including that of a non-filer or evading registration or protective assessment	Mention section and rule specified in Appellate/ Revisionary order		
21.	Determination of tax not paid or short paid on outward supply u/s 73	Mention section and rule specified in Appellate/ Revisionary order		
22.	Excess ITC availed/utilized u/s 73	Mention section and rule specified in Appellate/		
23.	Order for re-credit in credit ledger of claim for refund rejected or of wrongly obtained refund being deposited	Mention section and rule specified in Appellate/ Revisionary order		
24.	Order rejecting/granting provisional refund	Mention section and rule specified in Appellate/ Revisionary order		
25.	Order denying/reducing/ withholding/granting refund	Mention section and rule specified in Appellate/ Revisionary order		
26.	Issue related to provisional assessment	Mention section and rule specified in Appellate/ Revisionary order		

27.	Fraud or wilful suppression of fact leading to non- payment/ short payment of tax determined u/s 74	Mention section and rule specified in Appellate/ Revisionary order		
28.	Excess ITC availed/utilized determined u/s 74	Mention section and rule specified in Appellate/ Revisionary order		
29.	Issues related to seizure/ confiscation of goods/books/ property or release of such goods/books/property	Mention section and rule specified in Appellate/ Revisionary order		
30.	Order relating to rectification/ withdrawal of an earlier order	Mention section and rule specified in Appellate/ Revisionary order		
31.	Order creating/modifying/ withdrawing demand under earlier law	Mention section and rule specified in Appellate/ Revisionary order		
32.	Order permitting payment in instalments	Mention section and rule specified in Appellate/ Revisionary order		
33.	Order relating to provisional attachment of property	Mention section and rule specified in Appellate/ Revisionary order		
34.	Order imposing penalty	Mention section and rule specified in Appellate/ Revisionary order		
35.	Order permitting compounding of any offense or withdrawing such order	Mention section and rule specified in Appellate/ Revisionary order		
36.	Anti profiteering related matter			
37.	Others-			
38.	Issues related to Place of supply of goods and/or services			

Annexure B

Summary of Reply

(indicate Amount in INR, wherever quantified and wherever *applicable)*
(Not exceeding 1000 characters in each cell)

Sr No	Issue related to	As per order of ad-judicating authority	As determined by Appellate/ Revisional authority	As per stand of appellant before Tribunal	As declared/ claimed by present Appellant	Reply to ground/ issue raised in Appeal before GSTAT
1	Registration					
2	Revocation of cancellation of registration					
3	Denial/blocking of ITC					
4	Short or non-payment of tax					
4	Erroneous refund					
5	Levy of Penalty					
6	Levy of interest or late fee or fine					
7	Classification dispute (mention HSN in corresponding columns of this row)					
8	Any other					

".

15. In the said rules, for FORM GST APL-07, the following Form shall be substituted, namely: —

"FORM GST APL-07
[See rule 111]
(Application to the Appellate Tribunal under sub section (3) of Section 112)

1. Name and designation of the appellant/Office of Appellant:
   (a). Name
   (b). Designation
   (c). Jurisdiction
   (d). State/Centre

2. GSTIN/Temporary ID/UIN (of the respondent) -

3. Name of the respondent

4. Address of the respondent

5. Order appealed against – Number - Date -

6. Complete Designation, along with jurisdiction of the Appellate Authority/Revisional Authority passing the order appealed against –

7. Date of communication of the order appealed against –

8. Details of the case under dispute:

    a. Brief issue of the case under dispute

    b. Period of dispute –

    c. Case Summary *(As per Annexure A)*

    d. Market value of seized goods, where one of the issues involved is seizure/confiscation of goods

9. About Respondent *(As per Annexure B)*

10. Is place of supply involved in the dispute- Yes/No

11. Statement of facts *(As per Annexure C)*

12. Grounds of appeal –

13. Prayer –

14. Category of case under dispute or Issues involved – *(as per Annexure D)*

15. Details of demand:

Particulars	Central Tax		State/UT Tax		Integrated Tax		Cess		Total Amount	
	Amount of demand as per the order of the adjudicating authority (A) (Auto-populated from APL-01/ DRC-07, where it is in the system OR to be manually filled in by appellant)	Amount of demand determined by Appellate / Revisional authority, if any (Auto-populated from columns , where it is in the system or to be manually filled in by appellant)	Amount of demand as per the order of the adjudicating authority (A) (Auto-populated from APL-01/DRC-07, where it is in the system OR to be manually filled in by appellant)	Amount of demand determined by Appellate / Revisional authority, if any (Auto-populated from columns , where it is in the system or to be manually filled in by appellant)	Amount of demand as per the order of the adjudicating authority (A) (Auto-populated from APL-01/DRC-07, where it is in the system OR to be manually filled in by appellant)	Amount of demand determined by Appellate / Revisional authority, if any (Auto-populated from columns , where it is in the system or to be manually filled in by appellant)	Amount of demand as per the order of the adjudicating authority (A) (Auto-populated from APL-01/DRC-07, where it is in the system OR to be manually filled in by appellant)	Amount of demand determined by Appellate / Revisional authority, if any (Auto-populated from columns , where it is in the system or to be manually filled in by appellant)	Amount of demand as per the order of the adjudicating authority (A) (Auto-populated from APL-01/DRC-07, where it is in the system OR to be manually filled in by appellant)	Amount of demand determined by Appellate / Revisional authority, if any (Auto-populated from columns , where it is in the system or to be manually filled in by appellant)
(a) Tax										
(b) Interest										
(c) Penalty										
(d) Fees										
(e) Other charges										

I hereby declare that I have been duly authorized/directed by the Commissioner in accordance with sub-section (3) of Section 112 of the Act to file this application before the Appellate Tribunal and a true copy of the said direction/authorization is being uploaded herewith

Place:

Date: <Signature>

Name of the Officer:

Designation: Jurisdiction:

Annexure A

Case Summary

(indicate Amount in INR, wherever quantified and wherever applicable, not exceeding 1000 characters in each cell)

Sl No	Issue related to	As per order of adjudicating authority	As determined by Appellate/ Revisional authority	As per stand of appellant before Tribunal	As declared/ claimed by present Appellant
1	Registration				
2	Revocation of cancellation of registration				
3	Denial/blocking of ITC				
4	Short or non-payment of tax				
4	Erroneous refund				
5	Levy of Penalty				
6	Levy of interest or late fee or fine				
7	Classification dispute *(mention HSN in corresponding columns of* this row)				
8	Any other				

Annexure B

About Respondent

Constitution of Business	Address	Nature of Business	Any other relevant fact

GSTN/ Temp ID	Constitution of Business	Any other constitution business	Address	Nature of business	Any other relevant fact

Annexure C

Statement of Facts (Case History)

(indicate Amount in INR, wherever quantified and wherever applicable, Not exceeding 1000 characters in each cell, Upload documents if necessary)

Reference/ acknowledgment no.	Action By	Date	Brief Narration

Annexure D

(Category of case under dispute or issues involved)

S No	List of Category of case under dispute	Tab	Tab Amount involved (where quantifiable)
1	Misclassification of any goods or services or both	Mention HSN	
2	Wrong applicability of a notification issued under the provisions of this Act	Mention notification no. and date	
3	Incorrect determination of time of supply of goods or services or both	Mention section and rule specified in Appellate/ Revisionary order	
4	Incorrect determination of value of supply of goods or services or both	Mention section and rule specified in Appellate/ Revisionary order	
5	Incorrect admissibility of input tax credit of tax paid or deemed to have been paid/ credit to credit ledger/denial of ITC/blocking of credit	Mention section and rule specified in Appellate/ Revisionary order	
6	Incorrect determination of the liability to pay tax on any goods or services or both	Mention section and rule specified in Appellate/ Revisionary order	
7	Whether applicant is required to be registered or has been granted suo moto registration	Mention section and rule specified in Appellate/ Revisionary order	
8	Whether any particular thing done by the applicant results in supply of goods or services or both	Mention section and rule and Schedule specified in Appellate/ Revisionary order	
9	Rejection/acceptance of application for registration	Mention section and rule specified in Appellate/ Revisionary order	
10	Rejection/acceptance of application for amendment to registration	Mention section and rule specified in Appellate/ Revisionary order	
11	Suspension of registration	Mention section and rule specified in Appellate/ Revisionary order	
12	Order dropping show-cause in relation to registration	Mention section and rule specified in Appellate/ Revisionary order	
13	Denial of facility to pay tax under composition scheme	Mention section and rule specified in Appellate/ Revisionary order	
14	Cancellation of registration	Mention section and rule specified in Appellate/ Revisionary order	

15	Rejection/acceptance of application for revocation of cancellation of registration	Mention section and rule specified in Appellate/ Revisionary order	
16	Order accepting reply of taxpayer/order dropping show cause notice	Mention section and rule specified in Appellate/ Revisionary order	
17	Order of disqualification of GSTP/ cancellation of enrolment of GSTP	Mention section and rule specified in Appellate/ Revisionary order	
18	Transfer/Initiation of recovery/ Special mode of recovery (all kinds of garnishee)	Mention section and rule and Form of order specified in Appellate/ Revisionary order	
19	Tax wrongfully collected/Tax collected not paid to Government.	Mention section and rule specified in Appellate/ Revisionary order	
20	Order of assessment including that of a non-filer or evading registration or protective assessment	Mention section and rule specified in Appellate/ Revisionary order	
21	Determination of tax not paid or short paid on outward supply u/s 73	Mention section and rule specified in Appellate/ Revisionary order	
22	Excess ITC availed/utilized u/s 73	Mention section and rule specified in Appellate/ Revisionary order	
23	Order for re-credit in credit ledger of claim for refund rejected or of wrongly obtained refund being deposited	Mention section and rule specified in Appellate/ Revisionary order	
24	Order rejecting/granting provisional refund	Mention section and rule specified in Appellate/ Revisionary order	
25	Order denying/reducing/withholding/ granting refund	Mention section and rule specified in Appellate/ Revisionary order	
26	Issue related to provisional assessment	Mention section and rule specified in Appellate/ Revisionary order	
27	Fraud or wilful suppression of fact leading to non-payment/short payment of tax determined u/s 74	Mention section and rule specified in Appellate/ Revisionary order	
28	Excess ITC availed/utilized determined u/s 74	Mention section and rule specified in Appellate/ Revisionary order	
29	Issues related to seizure/confiscation of goods/books/property or release of such goods/books/property	Mention section and rule specified in Appellate/ Revisionary order	
30	Order relating to rectification/withdrawal of an earlier order	Mention section and rule specified in Appellate/ Revisionary order	
31	Order creating/modifying/withdrawing demand under earlier law	Mention section and rule specified in Appellate/ Revisionary order	
32	Order permitting payment in instalments	Mention section and rule specified in Appellate/ Revisionary order	
33	Order relating to provisional attachment of property	Mention section and rule specified in Appellate/ Revisionary order	
34	Order imposing penalty	Mention section and rule specified in Appellate/ Revisionary order	
35	Order permitting compounding of any offense or withdrawing such order	Mention section and rule specified in Appellate/ Revisionary order	
36	Anti-profiteering related matter		
37	Others-		

38	Issues related to Place of supply of goods and/or services"		

[F. No. CBIC-20001/2/2025-GST]
(Raushan Kumar)
Under Secretary

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 were last amended, vide notification No. 11/2025–Central Tax, dated the 27th March, 2025, vide number G.S.R. 201(E), dated the 27th March, 2025.

Seeks to Notify Category of Persons Under Section 54(6).

NOTIFICATION
No. 14/2025 – Central Tax

New Delhi, the 17th day of September 2025

S.O….. (E.) - In exercise of the powers conferred by sub-section (6) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council, hereby notifies the following category of registered persons who shall not be allowed refund on provisional basis under the said Act, namely : –

(a) Any person, who has not undergone Aadhaar authentication under rule 10B of the Central Goods and Services Tax Rules, 2017;

(b) Any person, who is engaged in the supply of the goods bearing description specified in column (3), falling under Chapter or heading or sub-heading or tariff item specified in column (2), of the Table below:

Table

S. No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods
(1)	(2)	(3)
1.	0802 80	Areca nuts
2.	2106 90 20	Pan masala
3.	24	Tobacco and manufactured tobacco substitutes
4.	3301	Essential oils

Explanation. –

(i) In this notification, "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively a tariff item, heading, sub-

heading, and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);

(ii) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of October, 2025.

[F.No.CBIC-20001/2/2025-GST]
(Raushan Kumar)
Under Secretary

Seeks to Exempt Taxpayer with Annual Turnover less than Rs 2 Crore from Filing Annual Return.

NOTIFICATION
No. 15/2025 – Central Tax

New Delhi, the 17th day of September 2025

S.O. .....(E).— In exercise of the powers conferred by the first proviso to sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, in respect of filing of annual return for the financial year 2024-25 onwards, hereby exempts the registered person whose aggregate turnover in any financial year is up to two crore rupees, from filing annual return that said financial year.

[F. No CBIC-20001/2/2025-GST]
(Raushan Kumar)
Under Secretary

Seeks to notify clauses (ii), (iii) of section 121, section 122 to section 124 and section 126 to 134 of Finance Act, 2025 to come into force.

NOTIFICATION
No. 16/2025–Central Tax

New Delhi, dated the 17th September, 2025

S.O. …..(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2025 (7 of 2025), the Central

Government hereby appoints the 1st day of October, 2025, as the date on which the provisions of clauses (ii) and (iii) of section121, sections 122 to 124 and sections 126 to 134 of the said Act, shall come into force.

[F. No.CBIC-20001/2/2025-GST]
(Raushan Kumar)
Under Secretary

Seeks to extend date of filing GSTR-3B.

NOTIFICATION
No. 17/2025 – CENTRAL TAX

New Delhi, the 18 October, 2025

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), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return in FORM GSTR-3B electronically, through the common portal, by the registered persons, as specified under:-

(i) sub-section (1) of section 39, for the month of September,2025, till twenty-fifth day of October, 2025:

(ii) proviso to sub-section (1) of section 39, for the quarter of July, 2025 to September, 2025, till twenty-fifth day of October, 2025.

[F. No. CBIC-20006/45/2025-GST]
(Raushan Kumar)
Under Secretary

Seeks to notify the Central Goods and Services Tax (Fourth Amendment) Rules 2025

NOTIFICATION
No. 18/2025 – Central Tax

New Delhi, the 31st October, 2025

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, 2025.

(2) These rules shall come into force with effect from 1st day of November, 2025.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), after rule 9, the following rule shall be inserted, namely: -

"9A. Grant of registration electronically. - Notwithstanding anything contained in rule 9, any person who has applied for registration under rule 8 or rule 12 or rule 17, shall, upon identification on the common portal based on data analysis and risk parameters, be granted registration electronically by the common portal, within three working days from the date of submission of application.".

3. In the said rules, in sub-rule (1) of rule 10, after the words and figure "under rule 9,", the words, letters and figures "rule 9A and rule 14A," shall be inserted.

4. In the said rules, after rule 14, the following rule shall be inserted, namely: -

"**14A. Option for taxpayers having monthly output tax liability below threshold limit. –**

(1) Any person who has made application for registration under rule 8 and who determines that his total output tax liability on supply of goods or services or both made to registered persons on account of central tax and State tax or Union territory tax and integrated tax and compensation cess, does not exceed two lakh and fifty thousand rupees per month, shall have an option to get registration electronically, in accordance with the provisions of this rule.

(2) Any person, other than a person notified under sub-section (6D) of section 25, who has not opted for authentication of Aadhaar number, shall not be eligible for grant of registration in terms of this rule.

(3) Notwithstanding anything contained in rule 11, a person registered under this rule in a State or Union territory shall not

be eligible to obtain another registration in the same State or Union territory under this rule against the same Permanent Account Number.

(4) Upon successful authentication of Aadhar number, the applicant referred to in sub-rule (1) shall be granted registration electronically by the common portal, within three working days from the date of submission of application.

(5) The registered person who intends to withdraw from the option availed under sub-rule (1), shall file an application, in FORM GST REG-32, duly signed or verified through electronic verification code on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the registered person shall not be allowed to file such application unless he has furnished, -

(a) returns for a period of minimum three months, where such application is filed before 1st April, 2026;

(b) returns for a period of minimum one tax period, where such application is filed on or after 1st April, 2026; and

(c) all the returns due for the period from the effective date of registration till the date of application for withdrawal:

Provided further that the registered person shall be allowed to file such application where no proceedings under section 29 have been initiated against such registered person.

(6) Where there is any change in particulars furnished in FORM GST REG-01 by the person who has been granted registration under this rule, the said registered person shall get the particulars amended under rule 19 before filing an application for withdrawal under sub-rule (5).

(7) Based on data analysis and risk parameters on the common portal, the provisions of sub-rule (4A) of rule 8 relating to authentication of Aadhaar number or biometric-based Aadhaar authentication, taking photograph of the applicant along with verification oforiginal copy of documents uploaded along with registration application in FORM GST REG-01, shall, so far as may be, apply to application for withdrawal filed under sub- rule (5).

(8) The provisions of sub-rules (5) and (6) of rule 8 relating to issuance of acknowledgment, shall, *mutatis mutandis*, apply to the application filed under sub-rule (5).

(9) The application filed for withdrawal under sub-rule (5), shall be verified in accordance with the provisions of rule 9.

(10) Upon verification under sub-rule (9), the proper officer shall issue an order in FORM GST REG-33 allowing the application for withdrawal from the option availed under sub-rule (1) or order for rejection of application in FORM GST REG-05, within a period specified under rule 9, as the case may be, which shall be made available to the registered person on the common portal.

(11) The registered person who has received an order issued under sub-rule (10) allowing withdrawal shall be able to furnish the details of output tax liability on supply of goods or services or both made to registered persons, exceeding the output tax liability as referred to in sub-rule (1), from the first day of succeeding month in which the said order has been issued.

(12) A registered person to whom an order under sub-rule (10) has been issued, shall not amend the details furnished in respect of output tax liability so as to exceed the limit of the output tax liability specified in sub-rule (1) for the period prior to the first day of succeeding month in which the said order has been issued.

(13) Where proceedings for cancellation of registration have been initiated by the proper officer after the filing of withdrawal application and the said proceedings are pending, the withdrawal application under sub-rule (5) shall be rejected by the proper officer and the provisions in relation to approval of application on deemed basis under sub-rule (5) of rule 9, shall not be applicable in such case.".

5. In the said rules, in FORM GST REG-01, —

(a) after the word, letters and figures "FORM GST REG-01" and before the words "Application for Registration", for the brackets, words and figures "*[See rule 8(1)]*", the brackets, words, figures and letter "*[See rules 8(1) and 14A]*" shall be substituted;

(b) in Part-B, in the table, after serial number 4 and the entries relating thereto, the following serial numbers shall be inserted, namely: -

"4.1	Option for registration under rule 14A	YES ☐ NO ☐

4.1.1	Declaration by person opting for registration under rule 14A o I hereby declare that the aforesaid business shall abide by the conditions and restrictions specified in the Act or the rules for opting to register under rule 14A."; and

(c) under the heading 'Instructions for submission of Application for Registration', after serial number 8, the following serial number shall be inserted, namely: -

"8A. Any person opting for registration under rule 14A shall undergo OTP based authentication of Aadhaar number.".

6. In the said rules, in FORM GST REG-02, after the word, letters and figures "FORM GST REG-02", for the brackets, words and figures "*[See rule 8(5)]*", the brackets, words, figures and letter "*[See rules 8(5) and 14A]*" shall be substituted.

7. In the said rules, for the FORM GST REG-03, the following Form shall be substituted, namely: —

"FORM GST REG-03
[See rules 9(2), 19(2) and 14A]

Reference Number: Date–

To
Name of the Applicant:
Address:
GSTIN/GSTP ID (if available):
Application Reference No. (ARN): Date:

Notice for Seeking Additional Information / Clarification / Documents relating to Application for <<Registration/Amendment/Cancellation/Withdrawal>>

This is with reference to your <<registration/amendment/cancellation/withdrawal >> application filed vide ARN <> Dated –DD/MM/YYYY. The Department has examined your application and is not satisfied with it for the following reasons:

1.

2.

3.

…

☐ You are directed to submit your reply by ..... (DD/MM/YYYY)

☐ *You are hereby directed to appear before the undersigned on ……..... (DD/MM/YYYY) at ……. (HH:MM)

If no response is received by the stipulated date or if proceedings under section 29 is initiated against you, your application is liable for rejection.

Please note that no further notice / reminder will be issued in this matter.

Signature
Nameofthe Proper Officer:
Designation:
Jurisdiction:

* Not applicable for New Registration Application and Withdrawal.".

8. In the said rules, for the FORM GST REG-04, the following Form shall be substituted, namely:—

"FORM GST REG-04
[See rules 9(2), 19(3) and 14A]
Clarification/additional information/document for
<<Registration/Amendment/Cancellation/Withdrawal >>

1.	Notice details	Reference No.		Date	
2.	Application details	Reference No.		Date	
3.	GSTIN/GSTP ID, if applicable				
4.	Name of Business (Legal)				
5.	Trade name, if any				
6.	Address				
7.	Whether any modification in the application for registration or fields is required.-				Yes ☐ No ☐ (Tick one)
8.	Additional Information				
9.	List of Documents uploaded				
10.	Verification I ..... hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom. Signature of Authorised Signatory Name Designation/Status: Place: Date:				

Note: -
1. For new registration, original registration application will be available in editable mode if option 'Yes' is selected in item 7.
2. For amendment of registration particulars, the fields intended to be amended will be available in editable mode if option "Yes" is selected in item 7.
3. For withdrawal from option availed under rule 14A, item 7 will be disabled.".

9. In the said rules, for the FORM GST REG-05, the following Form shall be substituted, namely:—

"FORM GST REG-05
[See rules 9(4), 19(4), 23(2)(b) and 14A]

Reference Number: Date–

To

Name of the Applicant

Address -

GSTIN/ GSTP ID (if available)

Order of Rejection of Application for <Registration / Amendment / Cancellation/ Withdrawal>

This has reference to your reply filed vide ARN --- dated----. The reply has been examined and the same has not been found to be satisfactory for the following reasons:

1.

2.

3.

…Therefore, your application is rejected in accordance with the provisions of the Act.

Or

You have not replied to the notice issued vide reference no. …….. dated ..... within the time specified therein. Therefore, your application is hereby rejected in accordance with the provisions of the Act.

Signature
Name
Designation
Jurisdiction".

10. In the said rules, after the FORM GST REG-31, the following Form shall be inserted, namely:—

"FORM GST REG-32
[See rule 14A (5)]
Application for Withdrawal

1. GSTIN	
2. Legal name	
3. Trade name, if any	

4. Address of Principal Place of business	
5. Option for registration under rule 14A	
(i) Yes	☐
(ii) No	☐
6. Aadhaar Authentication	
(i) Primary Authorized Signatory (auto)	
(ii) Promoter/Partner (auto)	
7. Reason for Withdrawal	(i) Output tax liability in respect of supply made to registered person exceeds two lakh fifty thousand rupees per month. (ii) Other -Please specify
8. Verification I___hereby solemnly affirm and declare that I want to withdraw from the option availed under sub-rule (1) of rule 14A and I understand that the provisions of sub- rule (4A), sub-rule (5) and sub-rule (6) of rule 8 and provisions of rule 9 relating to verification of the application and physical verification of places of business and corresponding procedures and time period shall apply to my withdrawal application. Signature of Authorised Signatory Name Designation / Status Place Date	

Instructions for submission of application for withdrawal

1. In 'Option for registration under rule 14A' field, option YES will be disabled on common portal.
2. Permanent Account Number shall be verified with Income Tax database.
3. Aadhaar Authentication of Primary Authorised Signatory and one selected Promoter or Partner is mandatory.
4. Before applying for withdrawal from the option availed under rule 14A, all the pending returns till the date of application shall be furnished. It is mandatory to furnish returns for a period of minimum three months, where such application has been filed before 1st April, 2026, and a minimum one tax period, where such application is filed on or after 1st April, 2026.
5. Please ensure that no amendment application is pending at the time of filing of FORM GST REG-32.
6. Once FORM GST REG-32 is filed, no amendment application will be allowed to be filed till the disposal of application under FORM GST REG-32.
7. ARN will be generated only after successful OTP based authentication of Aadhaar number or completion of the process of biometric based Aadhar authentication along with the verification of original copy of the documents uploaded with the application in FORM GST REG-01.
8. Please note that filing of cancellation application will not be allowed once FORM GST REG- 32 is filed till the disposal of application.
9. In case the proceedings under section 29 have been initiated, application for withdrawal in FORM GST REG-32 will not be allowed to be filed.".

11. In the said rules, after the FORM GST REG-32, the following Form shall be inserted, namely:—

"FORM GST REG-33
[See rule 14A (10)]

Reference Number - **<<>>** Date – DD/MM/YYYY

To
(Name)
(Address)
Registration Number (GSTIN)

Application Reference No. (ARN) Dated – DD/MM/YYYY

Order of withdrawal from option availed under sub-rule (1) of rule 14A

This has reference to your application number ..... dated . . . . . submitted under sub- rule (6) of rule 14 A regarding withdrawal from the option availed under sub-rule (1) of rule 14A. Your application has been examined and the same has been accepted under the provisions of sub-rule (11) of rule 14A ct. The amended certificate of registration is available on your dashboard for download.

Signature
Name
Designation
Jurisdiction

Date:
Place:".

[F. No. CBIC-20013/3/2025-GST]

(Kangale Shrunkhala Motiram)
Director

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 were last amended, vide notification No. 13/2025– Central Tax, dated the 17th September, 2025, vide number G.S.R. 672(E), dated the 17th September, 2025.

Seeks to Notify Supplies Under Section 15(5) of CGST Act for Valuation Based on Retail Sale Price (RSP)

NOTIFICATION
No. 19/2025 – Central Tax

New Delhi, the 31st day of December, 2025

G.S.R. (E).– In exercise of the powers conferred by sub-section (5) of section 15 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. 49/2023-Central Tax, dated the 29th September, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 705(E), dated the 29th September, 2023, namely: —

In the said notification, after clause (iii), the following clause shall be inserted, namely: —

"(iv) supply of the following goods bearing the description specified in column (3), falling under the corresponding Chapter/ heading/ sub-heading/ tariff item specified in column (2), of the Table below, on which retail sale price is declared : -

Table

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
1.	2106 90 20	Pan masala
2.	2401	Unmanufactured tobacco; tobacco refuse [other than tobacco leaves]
3.	2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
4.	2403	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences (other than biris)
5.	2404 11 00	Products containing tobacco or reconstituted tobacco and intended for inhalation without combustion
6.	2404 19 00	Products containing tobacco or nicotine substitutes and intended for inhalation without combustion

Explanation. - For the purposes of this clause, —

(a) "retail sale price" means the maximum price declared on goods at which such goods in packaged form may be sold to the ultimate consumer and includes all taxes, duties, surcharge or cess, by whatever name called;

(b) where on the package of any specified goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price;

(c) where the retail sale price declared on packages of any specified goods is altered to increase the retail sale price at any stage before, during, or after the supply, such altered retail sale price shall be deemed to be the retail sale price;

(d) where different retail sale prices are declared on different packages for the sale of any specified goods above in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the specified goods intended to be sold in the area to which the retail sale price relates.

(e) "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading, and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);

(f) the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this clause."

2. This notification shall come into force on the 1st day of February 2026.

[F. No. CBIC-20001/2/2025-GST]

(Kriti Pandey)
Under Secretary

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i) vide notification No. 49/2023-Central Tax, dated the 29th September, 2023, published *vide* number G.S.R. 705(E), dated the 29th September, 2023.

Seeks to notify Central Goods and Services Tax (Fifth Amendment) Rules, 2025

NOTIFICATION
No. 20/2025–Central Tax

New Delhi, the 31st day of December, 2025

G.S.R... (E). In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement**. (1) These rules may be called as the Central Goods and Services Tax (Fifth Amendment) Rules, 2025.

(2) They shall come into force from 1st day of February, 2026.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), after rule 31C, the following rule shall be inserted, namely: —

"**31D. Value of supply of goods on basis of retail sale price.** -(1) Notwithstanding anything contained in the provisions of this Chapter, the value of supply of goods bearing the description specified in column (3), falling under the corresponding Chapter/ heading/ sub-heading/ tariff item specified in column (2), of the Table below, shall be deemed to be the retail sale price declared on such goods, less the amount of tax as applicable, namely: -

Table

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
1.	2106 90 20	Pan masala
2.	2401	Unmanufactured tobacco; tobacco refuse [other than tobacco leaves]
3.	2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
4.	2403	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences (other than biris)
5.	2404 11 00	Products containing tobacco or reconstituted tobacco and intended for inhalation without combustion
6.	2404 19 00	Products containing tobacco or nicotine substitutes and intended for inhalation without combustion

(2) The amount of applicable tax referred to in sub-rule (1) shall be determined in the following manner, namely: —

Tax amount = (Retail sale price X tax rate in % of applicable taxes) / (100+ sum of applicable tax rate).

***Explanation*.** — For the purposes of this rule, —

(a) "applicable tax" means IGST or CGST or SGST or UTGST as the case may be.

(b) "retail sale price" means the maximum price declared on goods

at which such goods in packaged form may be sold to the ultimate consumer and includes all taxes, duties, surcharge or cess by whatever name called;

(c) where on the package of any specified goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price;

(d) where the retail sale price declared on packages of any specified goods is altered to increase the retail sale price at any stage before, during, or after the supply, such altered retail sale price shall be deemed to be the retail sale price;

(e) where different retail sale prices are declared on different packages for the sale of any specified goods above in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the specified goods intended to be sold in the area to which the retail sale price relates.".

3. In the said rules, in rule 86B, in the first proviso, after clause (e), the following clause shall be inserted, namely: —

"(f) the registered person other than a manufacturer shall be exempted from the provisions of this rule only in respect of goods specified under rule 31D, on which the tax has been paid by the supplier on the basis of retail sale price:".

[F. No. CBIC-20001/2/2025-GST]

(Kriti Pandey)
Under Secretary

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 were last amended, *vide* notification No. 18/2025– Central Tax, dated the 31st October, 2025, vide number G.S.R. 805(E), dated the 31st October, 2025.

X
Dr Puneeta Bedi
Director

Generation and quoting of Document Identification Number(DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons

Circular No. 249/06/2025-GST

New Delhi, Dated - 09-06-2025.

Subject: Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg.

Attention is invited to Board's Circular No. 122/41/2019- GST dated 05th November 2019 and 128/47/2019-GST dated 23.12.2019, which were issued for implementation of decision regarding Generation and Quoting of Document Identification Number (DIN), initially on specified documents and subsequently expanded to all communications (including e-mails) sent to taxpayers and other concerned persons by any office of CBIC. This was done with a view to leverage technology for greater accountability and transparency in communications with the trade/ taxpayers/ other concerned persons.

2. It has been brought to the notice of the Board that thedocuments and summary generated through the common portal of GST always bear a Reference No. (RFN), which is verifiable through the portal (a t https:// services.gst.gov.in/services/verifyRfn). On verification, the portal provides details of the document such as Date of RFN generation, Date of issuing the Document, Module, Type of Communication and Name of the Office issuing the Document.

3. Reference, in this regard, is also invited to Section 169(1)(d) of the CGST Act, 2017, which provides that any decision, order, summons, notice or other communication shall be served by making it available on the common portal. Further vide Instruction No. 4/2023-GST dated 23.11.2023, CBIC emphasised on strict compliance of rule 142 of CGST Rules and directed to ensure that summary of Show Cause Notices in Form GST DRC-01 and summary of the Order-in-Original in Form GST DRC-07 should be served electronically on common portal / uploaded electronically on the common portal.

4. In light of the above, quoting DIN on such communicationsgenerated through the common portal of GST, which already bear RFN, results into two different electronically generated verifiable unique numbers namely RFN & DIN on the same communication, which renders quoting of DIN on such communication unnecessary.

5. It is therefore clarified that for communications via common portal (in compliance with Section 169 of the CGST Act, 2017) having verifiable Reference Number (RFN), quoting of Document Identification Number (DIN) is not required and such communication bearing RFN is to be treated as a valid communication.

6. To the above extent, Circular No. 122/41/2019- GST dated 05th November 2019 and 128/47/2019-GST dated 23.12.2019 issued by the Board, stands modified.

(डॉ. अभिषेक चन्द्र गुप्ता)
आयुक्तजी
जी एस टी–अवेषण, सी.बी.आई.सी.
ई मेल आई डी: gstinv-cbic@gov.in

Reviewing authority, Revisional Authority and Appellate Authority in respect of orders passed by Common Adjudicating Authority (CAA) for show cause notices issued by DGGI

Circular No. 250/07/2025-GST

F. No. CBIC-20010/22/2025-GST

To,

The Principal Chief Commissioners/ Chief Commissioners (All) The Principal Director General/ Director General (All) Madam/Sir,

Subject: Reviewing authority, Revisional Authority and Appellate Authority in respect of orders passed by Common Adjudicating Authority (CAA) for show cause notices issued by DGGI - reg.

Attention is drawn to notification No. 02/2017 dated 19th June 2017 (as amended) read with circular No. 239/33/2024-GST dated 04th December 2024, wherein Joint/Additional Commissioners posted in specified Commissionerates have been designated as Common Adjudicating Authority (CAA) in respect of show cause notices issued by Directorate

General of GST Intelligence (DGGI). The said circular has specified the procedure to be followed in case of assigning such show cause notices to the Common Adjudicating Authority along with their territorial jurisdiction. However, it does not specify the procedure related to review, revision, and appeals for such Orders-in -Original (O-I-Os) passed by CAA.

2. The matter has been examined in consultation with the Union Ministry of Law and Justice which has clarified that section 107 of the CGST Act, 2017 provides a detailed mechanism for handling the appeals by the Appellate authority and by exercising the same power, the rules have also been framed with regard to appeal and review. Similarly, the Reviewing Authority also has the power under the said section to review adjudication orders passed by a CAA who is posted under the said reviewing authority.

3. Similarly, section 108 of the CGST Act, 2017, provides a detailed mechanism for revision of such orders. *Vide* notification No. 05/2020-Central tax dated 13th January, 2020, the jurisdictional Principal Commissioner or Commissioner, as the case may be, has been authorized as revisional authority for decisions or orders passed by Additional or Joint Commissioner of Central Tax who are subordinate to him.

4. Therefore, to ensure uniformity in procedure for review, revision, and appeal against the Orders-in-Original (O-I-Os) adjudicated by Common Adjudicating Authorities, it is hereby clarified that:

a) **Review under Section 107 of the CGST Act, 2017:** The Principal Commissioner or Commissioner of Central Tax under whom the Common Adjudicating Authority (Additional/ Joint Commissioner) is posted shall be the reviewing authority in respect of such O-I-Os.

b) **Revisional Power under Section 108 of the CGST Act, 2017:** The Principal Commissioner or Commissioner of Central Tax under whom the Common Adjudicating Authority (Additional/ Joint Commissioner) is posted shall be the revisional authority in respect of such O-I-Os.

c) **Appeal Procedure under Section 107 of the CGST Act, 2017:** Appeals against the order of Common Adjudicating Authority (Additional/Joint Commissioner) shall lie before the Commissioner (Appeals) corresponding to the territorial jurisdiction of the Principal Commissioner or the Commissioner of Central Tax, under whom the said Common Adjudicating Authority (Additional/ Joint Commissioner) is posted, as specified in Table III of notification No. 02/2017- Central tax dated 19th June, 2017.

d) **Department's Representation in Appeals:** The Principal Commissioner or Commissioner of Central Tax of such Commissionerate under whom the Common Adjudicating Authority (Additional/Joint Commissioner) is posted shall represent the department in appeal proceedings against the O-I-Os passed by such Common Adjudicating Authority (Additional/ Joint Commissioner) and accordingly may appoint any officer subordinate to him to be the designated officer for filing departmental appeals.

e) The reviewing or revisional authority for such orders may seek comments on the O-I-O from the concerned DGGI formation before proceeding to decide on the order passed by the CAA.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board.

Yours faithfully,
(Gaurav Singh)
Commissioner (GST)

Clarification on Various Doubts Related to Treatment of Secondary or Post-sale Discounts under GST

Circular No. 251/08/2025-GST

F. No CBIC-20001/3/2025-GS-GST

Dated the 12th September, 2025

To,

The Principal Chief Commissioners/ Chief Commissioners of Central Tax (All) The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Clarification on various doubts related to treatment of secondary or post-sale discounts under GST - reg.

Representations have been received seeking clarifications in respect of tax treatment in cases of secondary discounts or post-sale discount.

2. The matter has been examined. In order to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under sub-section (1) of section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") clarifies the issues as under.

S. No.	Issue	Clarification
1.	Whether the full input tax credit is available to the recipient of supply when the recipients make discounted payments to the supplier of goods on account of financial/ commercial credit notes issued by the said supplier?	1. Section 16 (1) of the CGST Act, 2017 provides that every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of his business. 2. It has been clarified vide circular No. 92/11/2019-GST dated 7th March 2019 that the supplier of goods can issue financial/ commercial credit notes and in such cases, he will not be eligible to reduce his original tax liability. As the transaction value is not allowed to be reduced on account of issuance of financial/ commercial credit note, accordingly the tax charged from the recipient would also not get reduced. 3. Thus, it is clarified that the recipient will not be required to reverse the Input Tax Credit attributed to the discount provided on the basis of financial/ commercial Credit notes issued by the supplier, as there is no reduction in the original transaction value of the supply and accordingly the corresponding tax liability would also not get reduced.
2.	Whether a post-sale discount offered by a manufacturer to its dealer/ distributor, would be treated as a consideration paid by the manufacturer for the dealer's supply of the same goods to the end customer as a monetary value of the inducement to supply of goods manufactured by him to the end customer?	1. Section 2 (31) of the CGST Act, 2017 defines consideration as to include the monetary value of any act for the inducement of the supply of goods or services, whether by the recipient or by any other person. 2. In cases where there is no agreement between the manufacturer and the end customer, there are two independent sale transactions, one from the manufacturer to the dealer and the other from the dealer to the end customer. The essence of the matter is that in a contract of sale, the sale is completed on the transfer of title to the goods to the buyer. Once this happens, the buyer becomes the owner of the goods, and the seller has no vestige

		of the title or claims therein. The dealer takes ownership of the goods purchased from the manufacturer and subsequently sells them to the end customer and transaction between the manufacturers to dealer operates on a principal-to-principal basis. These discounts are simply given for competitive pricing to push sales and merely reduce the sale price of the goods and are not linked to any independent activity rendered to the manufacturer. Therefore, it is clarified that such a discount cannot be included in consideration as the monetary value of the inducement of further supply of these goods. 3. However, in cases where the manufacturer has some agreement with an end customer to supply goods at a discounted price, the manufacturer may issue commercial or financial credit notes to the dealer, enabling such dealer to provide the goods at the agreed discounted rate to the end consumer. Therefore, it is clarified that such a post sale discount, given by the manufacturer to the dealer for supplying goods to the end customer at a discounted rate, should be included in the overall consideration as it is an inducement towards the supply of goods by the dealer to the end customer.
3.	Whether a post-sale discount extended by the manufacturer to the dealer can be treated as a consideration in lieu of the activities performed to promote the sale of the goods?	1. The matter has been examined. When dealers receive such post-sale discounts, they may engage in promotional activities to boost sales. However, these activities ultimately enhance the sale of goods that the dealers themselves own, thereby increasing their own revenue. In this context, the discount merely reduces the sale price of the goods and is not linked to any independent service rendered to the manufacturer. Therefore, it is clarified that post-sale discounts offered by manufacturers to dealers in such cases shall not be treated as consideration for a separate transaction of supply of services. 2. However, GST would be leviable in cases where a dealer undertakes specific sales promotional activities, such as advertising campaigns, co-branding, customization services, special sales drives, exhibition arrangements, or customer support services, etc., only when such services are explicitly stated in the agreement with a clearly defined consideration payable for such a supply. In such cases, the dealer provides a distinct service to the supplier, and accordingly, GST would be chargeable.

3. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

4. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Gaurav Singh)
Commissioner (GST)

Communication to taxpayers through eOffice - requirement of Document Identification Number (DIN)

Circular No. 252/09/2025 -GST

New Delhi, Dated – 23rd September 2025.

Subject: Communication to taxpayers through eOffice - requirement of Document Identification Number (DIN) - reg.

Attention is invited to Board's Circular No. 122/41/2019- GST dated 05th November 2019 and 128/47/2019-GST dated 23rd December 2019 regarding Generation and Quoting of Document Identification Number (DIN), initially on specified documents and subsequently expanded to all communications (including e-mails) sent to taxpayers and concerned persons.

2. Attention is also invited to subsequent Board's Circular No. 249/06/2025-GST dt. 09th June 2025 clarifying that for communications via GST common portal (in compliance with Section 169 of the CGST Act, 2017) having verifiable Reference Number (RFN), quoting of Document Identification Number (DIN) is not required and such communication bearing RFN is to be treated as a valid communication.

3. On similar lines, it has been brought to the notice of the Board that communications issued through eOffice of CBIC bear an automatically generated unique 'Issue number'. However, no online utility was available to verify the authenticity of such communications through Issue number, hence DIN was required to be generated and quoted on such communications. Now an online utility has been developed and made functional (URL https://verifydocument.cbic.gov.in), where the taxpayers and other concerned persons can verify online the electronically generated unique "Issue number" borne on communications dispatched using public option in eOffice application by CBIC officers. Upon verification, this utility confirms the Issue number, and other details and provides information to

authenticate the document, like, -

i. File number,
ii. Date of issuing the document,
iii. Type of communication,
iv. Name of Office issuing the document,
v. Recipient name (masked),
vi. Recipient address (masked),
vii. Recipient email (masked).

4. The name of the office issuing the document is captured from the data available within eOffice, while the document type, recipient name, recipient address, recipient email are entered in the metadata by the officers creating the document. Officers responsible for issuing communications via CBIC's eOffice must mandatorily fill and ensure correctness of this information in the metadata while creating the draft before its approval.

5. In light of the above, quoting separate DIN on such communications dispatched using public option in eOffice application, which already bear issue number, will result into two different electronically generated verifiable unique numbers namely Issue No. & DIN on the same communication, which renders quoting of separate DIN on such communication unnecessary. It is therefore decided that **for communications dispatched using public option in CBIC's eOffice application**, the verifiable eOffice 'Issue number' shall be deemed to be the Document Identification Number and such communication shall be treated as a valid communication.

6. The Document Identification Number generated through DIN utility shall continue to be mandatorily quoted on all other communications which have either not been dispatched using public option in CBIC's eOffice application or which do not bear the verifiable Reference Number (RFN) generated on GST common portal.

7. To the above extent, Circular No. 122/41/2019- GST dated 05th November 2019, Circular No. 128/47/2019-GST dated 23rd December 2019 and Circular No. 249/06/2025- GST dated 09th June 2025 issued by the Board, stands modified.

(डॉ. अभिषेक चन्द्र गुप्ता)
आयुक्तजी
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Regarding withdrawal of circular No. 212/6/2024-GST.

Circular No. 253/10/2025 – GST

North Block, New Delhi
Dated the 1st October, 2025

To

The Principal Chief Commissioners / Chief Commissioners (All)
The Principal Director Generals / Director Generals (All)

Madam/ Sir,

Subject: Withdrawal of circular No. 212/6/2024-GST dated 26th June, 2024 – reg.

Kind attention is invited to circular No. 212/6/2024-GST dated 26th June, 2024 wherein clarifications were given in relation to mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers.

2. In order 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 Central Goods and Services Tax Act, 2017, hereby withdraws, circular No. 212/6/2024-GST dated 26th June, 2024. Therefore, the procedure prescribed vide the aforesaid circular for providing evidence of compliance of conditions of Section 15(3)(b)(ii) shall not be required.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this circular may please be brought to the notice of the Board.

Yours faithfully,

(Gaurav Singh)
Commissioner (GST)

Assigning proper officer under section 74A, section 75(2) and section 122 of the Central Goods and Services Tax Act, 2017

Circular No. 254/11/2025-GST

To,

The Principal Chief Commissioners/ Chief Commissioners (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Assigning proper officer under section 74A, section 75(2) and section 122 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder– reg.

Attention is invited to the Board's circular No. 1/1/2017-GST dated 26th June, 2017, through which the Board had assigned proper officers for provisions relating to registration and composition levy under the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the "CGST Act") and the rules made thereunder. Further, attention is also invited to the Board's circular No. 3/3/2017-GST dated 5th July, 2017 and circular No. 31/05/2018- GST dated 9th February, 2018 (as amended) regarding appointment of proper officers under various provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereinafter referred to as the "IGST Act").

2. It is observed that no proper officer has been assigned in respect of the following provisions of the CGST Act and the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"):

a) Section 74A of the CGST Act which shall be applicable for determination of tax not paid or short paid or erroneously refunded or input tax credit availed or utilised for any reason for the Financial Year 2024-25 onwards.

b) Section 75(2) of the CGST Act which provides where any Appellate Authority/ Appellate Tribunal/ Court concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable, deeming as if the notice were issued under section 73(1) of CGST Act.

c) Section 122 of the CGST Act, 2017 which provides for the penalties in respect of certain offences.

d) Rule 142(1A) of the CGST Rules 2017 which provides for issuance of a communication in FORM GST DRC-01A before issuance of any show cause notice under section 73 or section 74 or section 74 A of the CGST Act, 2017.

3. In exercise of the powers conferred by clause (91) of section 2 of the CGST Act read with Section 20 of the IGST Act and subject to sub-sections (1) and (2) of section 5 of the CGST Act, the Board hereby assigns the officers mentioned in Column (2) of the Table-I below, to functions as the proper officers in relation to the two sections of the Central Goods and Services Tax Act, 2017 or the rule, as given in the corresponding entry in Column (3) of the said Table:-

Table-I

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	a. Additional or Joint Commissioner of Central Tax,	i. Sub-sections (1), (2), (3), (6), (7), (8), (9) and (10) of Section 74 A. ii. Section 122. iii. Rule 142(1A) of the CGST Rules, 2017.
	b. Deputy or Assistant Commissioner of Central Tax,	
	c. Superintendent of Central Tax	

4. Whereas, for optimal distribution of work relating to the issuance of show cause notices and orders under section 74A and section 122 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of Central Tax need to be prescribed.

5.1 Therefore, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act and subject to sub-sections (1) and (2) of section 5 of the CGST Act, the Board hereby assigns the officers mentioned in column (2) of the Table-II below, the functions as the proper officers in relation to issuance of show cause notices and passing orders under section 74A of the CGST Act and section 20 of the IGST Act (read with section 74A of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

Table-II

Monetary limit for issuance of show cause notices and passing of orders under section 74A of CGST Act

Sl. No.	Officer of Central Tax	Monetary limit of the amount of Central Tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Central Tax wrongly availed or utilized for issuance of show cause notices and passing of orders under section 74A of CGST Act	Monetary limit of the amount of Integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under section 74A of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act	Monetary limit of the amount of Central Tax and Integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Central Tax and Integrated Tax wrongly availed or utilized for issuance of show cause notices and passing of orders under section 74A of CGST Act made applicable to Integrated tax vide section 20 of the IGST Act
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakh	Not exceeding Rupees 20 lakh	Not exceeding Rupees 20 lakh
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakh and not exceeding Rupees 1 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crore without any limit	Above Rupees 2 crore without any limit

1.2. It is clarified that where a show cause notice issued under section (1) of the section 73 or section 74 or section 74A of CGST Act, 2017 involves demand of both Central Tax and Integrated Tax (including cess), the proper officer shall be determined on the basis of the combined amount of Central Tax and Integrated Tax (including cess), mentioned in column (5) of the Table-II above, irrespective of the individual amounts of Central Tax or Integrated Tax (including cess) which may exceed the monetary limit prescribed in column (3) or column (4) of the Table-II above.

1.3. The proper officer may serve a statement under sub-sections (3) and (4) of section 73 or section 74 or section 74A of the CGST Act, 2017 containing details of tax not paid or short paid for a subsequent period after the show cause notice has been issued under sub-section (1) of section 73 or section 74 or section 74A of the CGST Act, 2017 of the said section. In such cases it is clarified that:

a) The proper officer shall be determined based on the highest amount of tax specified in the show cause notice and statement across all tax periods.

b) Where the notice under sub-section (1) of section 73 or section 74 or section 74A of the CGST Act, 2017 has been issued by a proper officer within his monetary limit but the amount of tax demanded in the subsequent statement goes beyond his monetary limits and which pertains to monetary limit corresponding to the competency of a higher- ranked officer as per the prescribed monetary limits, the proper officer for issuing the statement shall also be decided on the basis of the prescribed monetary limits in Table- II above. The proper officer who has issued the earlier show cause notice and statement (if any issued), shall issue a corrigendum and make the earlier show cause notice and statement (if any issued) answerable to the proper officer competent to adjudicate the statement with the higher amount of tax demanded.

c) In case there is no change in the monetary limit when the statement is issued, the statement shall be issued by the same proper officer who has issued the show cause notice in sub-section (1) of section 73 or section 74 or section 74A of CGST Act, and he shall make the statement answerable to the same adjudication authority mentioned in the show cause notice issued earlier.

d) The proper officer shall be determined based solely on the amount of tax demanded, excluding penalties from the calculations.

e) For notices issued by officers of Audit Commissionerate of Central Tax, the proper officer of the jurisdictional Central Tax Commissionerate of the noticee shall make the statement to be issued under sub-sections (3) and (4) of section 73 or section 74 or section 74A of the CGST Act answerable to the adjudicating authority mentioned in the earlier show cause notice issued under sub-section (1) of section 73 or section 74 or section 74A of the CGST Act, 2017.

6. Section 75(2) of CGST Act provides that where any Appellate Authority or Appellate Tribunal or Court concludes that the notice issued under section 74(1) of CGST Act, is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under section 73(1) of CGST Act. It is clarified that the proper officer for this purpose shall be the same officer who is the adjudicating authority for such show cause notice in respect of which the Appellate Authority or Appellate Tribunal or Court has concluded that the notice issued under section 74(1) of CGST Act is not sustainable.

7.1. Further, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act and subject to sub-sections (1) and

(2) of section 5 of CGST Act, 2017, the Board hereby assigns the officers mentioned in Column (2) of the Table-III below, the functions as the proper officers in relation to issue of show cause notices and passing orders under section 122 of the CGST Act and section 20 of the IGST Act (read with section 122 of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

Table-III
Monetary limit for issuance of show cause notices and passing of orders under section 122 of CGST Act

Sl. No.	Officer of Central Tax	Monetary limit of the amount of penalty in relation to the Central Tax for issuance of show cause notices involving only penalty and passing of orders under section 122 of CGST Act	Monetary limit of the amount of penalty in relation to the Integrated Tax for issuance of show cause notices involving only penalty and passing of orders under section 122 of CGST Act made applicable to matters in relation to Integrated Tax vide section 20 of the IGST Act	Monetary limit of the amount of penalty in relation to the Central Tax and Integrated Tax for issuance of show cause notices involving only penalty and passing of orders under section 122 of CGST Act made applicable to matters in relation to Integrated Tax vide section 20 of the IGST Act
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakh	Not exceeding Rupees 20 lakh	Not exceeding Rupees 20 lakh
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakh and not exceeding Rupees 1 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crore without any limit	Above Rupees 2 crore without any limit

7.2 It is also clarified that where a show cause notice is issued under section 122 of the CGST Act, 2017 and involves demand of penalty in relation to both Central Tax and Integrated Tax, the proper officer shall be determined on the basis of the combined amount of penalty in relation to both Central Tax and Integrated Tax, mentioned in column (5) of the Table-III above, irrespective of the individual amounts of penalty in relation to the Central Tax and Integrated Tax, which may exceed the monetary limit prescribed in column (3) or column (4) of the Table- III above.

8. It is requested that suitable trade notices may be issued to publicise the contents of this circular.

9. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board.

Yours faithfully,
(Gaurav Singh)
Commissioner (GST)